

115TH CONGRESS
1ST SESSION

H. R. 59

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

Ms. JACKSON LEE 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 enhance the security of chemical facilities, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Frank Lautenberg Me-
5 morial Secure Chemical Facilities Act”.

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

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

8 (1) The chemical sector of the United States
9 represents a target that terrorists could exploit to

1 cause consequences, including death, injury, or seri-
2 ous adverse effects to human health, the environ-
3 ment, critical infrastructure, public health, homeland
4 security, national security, and the national econ-
5 omy.

6 (2) Small chemical facilities pose particular
7 challenges to Homeland Security because they may
8 lack the expertise or resources to register with the
9 Department of Homeland Security's Chemical Facil-
10 ity Anti-Terrorism Standards (CFATS) program.

11 (3) Small chemical facilities such as the fer-
12 tilizer plant in the town of West Texas destroyed by
13 an explosion may not have been fully compliant with
14 State and Federal law.

15 (4) Small chemical facilities have less physical
16 security.

17 (5) Chemical facilities that pose such potential
18 consequences and that are vulnerable to terrorist at-
19 tacks must be protected.

20 (6) The Secretary of Homeland Security has
21 statutory authority under section 550 of the Depart-
22 ment of Homeland Security Appropriations Act,
23 2007 (6 U.S.C. 121 note) to regulate the security
24 practices at chemical facilities that are at significant
25 risk of being terrorist targets.

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

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

9 **SEC. 3. EXTENSION, MODIFICATION, AND RECODIFICATION**
10 **OF AUTHORITY OF SECRETARY OF HOME-**
11 **LAND SECURITY TO REGULATE SECURITY**
12 **PRACTICES AT CHEMICAL FACILITIES.**

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

16 **“TITLE XXII—REGULATION OF**
17 **SECURITY PRACTICES AT**
18 **CHEMICAL FACILITIES**

19 **“SEC. 2201. DEFINITIONS.**

20 “In this title:

21 “(1) ACADEMIC LABORATORY.—The term ‘aca-
22 demic laboratory’ means a facility or area owned by
23 an institution of higher education (as defined under
24 section 101 of the Higher Education Act of 1965
25 (20 U.S.C. 1001)) or a nonprofit research institute

1 or teaching hospital that has a formal affiliation
2 with an institution of higher education, including
3 photo laboratories, art studios, field laboratories, re-
4 search farms, chemical stockrooms, and preparatory
5 laboratories, where relatively small quantities of
6 chemicals and other substances, as determined by
7 the Secretary, are—

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

9 “(i) teaching;

10 “(ii) research; or

11 “(iii) diagnostic purposes; and

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

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

16 “(A) at which the owner or operator of the
17 facility possesses or plans to possess a sub-
18 stance of concern; or

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

21 “(3) CHEMICAL FACILITY SECURITY PERFORM-
22 ANCE STANDARDS.—The term ‘chemical facility se-
23 curity performance standards’ means risk-based
24 standards established by the Secretary under section
25 2103(e).

1 “(4) CHEMICAL FACILITY TERRORIST INCI-
2 DENT.—The term ‘chemical facility terrorist inci-
3 dent’ means any act or attempted act of terrorism
4 or terrorist incident committed at, near, or against
5 a chemical facility, including such an act that in-
6 volves the intent to cause injury or harm or the
7 threat of causing injury or harm—

8 “(A) the release of a substance of concern
9 from a chemical facility;

10 “(B) the theft, misappropriation, or misuse
11 of a substance of concern from a chemical facil-
12 ity; or

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

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

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

1 “(7) EMPLOYEE REPRESENTATIVE.—The term
2 ‘employee representative’ means the representative
3 of a certified or recognized bargaining agent en-
4 gaged in a collective bargaining relationship with the
5 owner or operator of a chemical facility.

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

10 “(9) METHOD TO REDUCE THE CONSEQUENCES
11 OF A TERRORIST ATTACK.—The term ‘method to re-
12 duce the consequences of a terrorist attack’ means
13 a measure used at a chemical facility that reduces
14 or eliminates the potential consequences of a chem-
15 ical facility terrorist incident, including—

16 “(A) the elimination or reduction in the
17 amount of a substance of concern possessed or
18 planned to be possessed by an owner or oper-
19 ator of a covered chemical facility through the
20 use of alternate substances, formulations, or
21 processes;

22 “(B) the modification of pressures, tem-
23 peratures, or concentrations of a substance of
24 concern;

1 “(C) the reduction or elimination of onsite
2 handling of a substance of concern through im-
3 provement of inventory control or chemical use
4 efficiency;

5 “(D) increasing the physical security of the
6 chemical facility; and

7 “(E) registering the chemical facility with
8 the CFATS program.

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

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

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

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

15 “(11) PERSON.—The term ‘person’—

16 “(A) means an individual, trust, firm, joint
17 stock company, corporation (including a govern-
18 ment corporation), partnership, association,
19 State, municipality, commission, political sub-
20 division of a State, or interstate body; and

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

23 “(12) PROTECTED INFORMATION.—

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

1 “(i) security vulnerability assessments
2 and site security plans, including any as-
3 sessment required under section 2111;

4 “(ii) portions of the following docu-
5 ments, records, orders, notices, or letters
6 that the Secretary has determined by regu-
7 lation would be detrimental to chemical fa-
8 cility security if disclosed and that are de-
9 veloped by the Secretary or the owner or
10 operator of a covered chemical facility for
11 the purposes of this title—

12 “(I) documents directly related to
13 the review and approval or dis-
14 approval of a security vulnerability as-
15 sessment or site security plan under
16 this title by the Secretary;

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

20 “(III) an order, notice, commu-
21 nication, or letter regarding the com-
22 pliance of a covered chemical facility
23 with this title;

24 “(IV) information or a document
25 or record required to be provided to or

1 created by the Secretary under sub-
2 section (b) or (c) of section 2102; and

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

8 “(iii) any other information, docu-
9 ment, or record developed exclusively for
10 the purposes of this title that the Secretary
11 has determined, by rule, would, if dis-
12 closed, be detrimental to chemical facility
13 security.

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

16 “(i) information, other than a security
17 vulnerability assessment or site security
18 plan, that the Secretary has determined,
19 by rule, to be—

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

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

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

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

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

17 “(13) RELEASE.—The term ‘release’ means any
18 spilling, leaking, pumping, pouring, emitting,
19 emptying, discharging, injecting, escaping, leaching,
20 dumping, or disposing into the environment (includ-
21 ing the abandonment or discarding of barrels, con-
22 tainers, and other closed receptacles containing any
23 hazardous substance or pollutant or contaminant).

24 “(14) STORAGE.—The term ‘storage’ means
25 any location on or off site where chemicals des-

1 ignated as risks may be stored that meet standards
2 established by the Secretary.

3 “(15) DISPOSAL.—The term ‘disposal’ means
4 any location on or off-site where chemicals are de-
5 stroyed, stored with no intent to sale, repurpose, or
6 use.

7 “(16) DESTRUCTION.—The term ‘destruction’
8 means any process that is intended to render the
9 chemical designated as a risk by the Secretary is
10 rendered inert or of no further threat as defined by
11 the Secretary in consultation with the State where
12 the destruction takes place and Federal Environ-
13 mental Protection Agency rules.

14 “(17) SECURITY VULNERABILITY ASSESS-
15 MENT.—The term ‘security vulnerability assessment’
16 means an assessment described in section
17 2103(a)(1)(B)(i).

18 “(18) SITE SECURITY PLAN.—The term ‘site
19 security plan’ means a plan described in section
20 2103(a)(1)(B)(ii).

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

1 **“SEC. 2202. RISK-BASED DESIGNATION AND RANKING OF**
2 **CHEMICAL FACILITIES.**

3 “(a) SUBSTANCES OF CONCERN.—

4 “(1) DESIGNATION BY THE SECRETARY.—The
5 Secretary may—

6 “(A) designate any chemical substance as
7 a substance of concern; and

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

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

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

22 “(1) CRITERIA FOR LIST OF FACILITIES.—The
23 Secretary may designate a chemical facility as a cov-
24 ered chemical facility if the Secretary determines the
25 chemical facility is a sufficient security risk based
26 on—

1 “(A) the potential threat or likelihood that
2 the chemical facility will be a target of a chem-
3 ical facility terrorist incident;

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

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

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

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

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

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

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

13 “(3) NOTIFICATION.—

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

23 “(B) REQUIRED INFORMATION.—A notifi-
24 cation made by the Secretary under subpara-
25 graph (A) shall include—

1 “(i) the reason for the determination
2 or change described in subparagraph (A);
3 and

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

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

12 “(II) information relating to why
13 the covered chemical facility is consid-
14 ered critical; and

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

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

19 “(1) shall periodically review—

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

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

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

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

13 **“SEC. 2203. SECURITY VULNERABILITY ASSESSMENTS AND**
14 **SITE SECURITY PLANS.**

15 “(a) IN GENERAL.—

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

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

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

23 “(i) conduct and submit to the Sec-
24 retary an assessment of the vulnerability of
25 the covered chemical facility to a range of

1 chemical facility terrorist incidents, includ-
2 ing an incident that results in a worst-case
3 release of a substance of concern;

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

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

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

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

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

24 “(iv) include, with the submission of
25 the security vulnerability assessment and

1 the site security plan of the covered chem-
2 ical facility, a signed statement by the
3 owner or operator of the covered chemical
4 facility that certifies that the submission is
5 provided to the Secretary with knowledge
6 of the possible penalties under section
7 2107;

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

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

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

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

1 “(ii) any material modification to the
2 operations or site of the covered chemical
3 facility that may affect the security vulner-
4 ability assessment or site security plan
5 submitted by the covered chemical facility;

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

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

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

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

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

1 “(2) INHERENTLY GOVERNMENTAL FUNC-
2 TION.—The approval or disapproval of a security
3 vulnerability assessment or site security plan by the
4 Secretary under this section is an inherently govern-
5 mental function.

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

18 “(c) FELLOWSHIPS TO SMALL CHEMICAL FACILITIES
19 TO PARTICIPATE IN PREPARATION OF SECURITY VUL-
20 NERABILITY ASSESSMENTS OR SITE SECURITY PLANS.—
21 Any person selected by the owner or operator of a covered
22 chemical facility that is designated as a ‘small chemical
23 facility’ by the Secretary of Homeland Security that pro-
24 duces, stores, processes or transports chemicals designated
25 as a ‘risk’ by the Secretary, shall qualify for assistance

1 to receive training, technical assistance and logistical sup-
2 port to meet the requirements set forth by the Secretary
3 of a secure facility or other criteria as designated by the
4 Secretary.

5 “(d) CHEMICAL FACILITY SECURITY PERFORMANCE
6 STANDARDS.—The Secretary shall establish risk-based
7 performance standards to ensure or enhance the security
8 of a covered chemical facility against a chemical facility
9 terrorist incident that are designed to address—

10 “(1) restricting the area perimeter of the cov-
11 ered chemical facility;

12 “(2) securing site assets;

13 “(3) screening and controlling access to the cov-
14 ered chemical facility and to restricted areas within
15 the covered chemical facility by screening or inspect-
16 ing individuals and vehicles as they enter, includ-
17 ing—

18 “(A) measures to deter the unauthorized
19 introduction of dangerous substances and de-
20 vices that may facilitate a chemical facility ter-
21 rorist incident or actions having serious nega-
22 tive consequences for the population sur-
23 rounding the covered chemical facility; and

24 “(B) measures implementing a regularly
25 updated identification system that checks the

1 identification of covered chemical facility per-
2 sonnel and other persons seeking access to the
3 covered chemical facility and that discourages
4 abuse through established disciplinary meas-
5 ures;

6 “(4) methods to deter, detect, and delay a
7 chemical facility terrorist incident, creating sufficient
8 time between detection of a chemical facility ter-
9 rorist incident and the point at which the chemical
10 facility terrorist incident becomes successful, includ-
11 ing measures to—

12 “(A) deter vehicles from penetrating the
13 perimeter of the covered chemical facility, gain-
14 ing unauthorized access to restricted areas, or
15 otherwise presenting a hazard to potentially
16 critical targets;

17 “(B) deter chemical facility terrorist inci-
18 dents through visible, professional, well-main-
19 tained security measures and systems, includ-
20 ing—

21 “(i) security personnel;

22 “(ii) detection systems;

23 “(iii) barriers and barricades; and

24 “(iv) hardened or reduced value tar-
25 gets;

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

3 “(i) counter-surveillance at the site of
4 the covered chemical facility;

5 “(ii) frustration of opportunity to ob-
6 serve potential targets;

7 “(iii) site surveillance and sensing sys-
8 tems; and

9 “(iv) barriers and barricades; and

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

13 “(i) onsite security response;

14 “(ii) barriers and barricades;

15 “(iii) hardened targets; and

16 “(iv) well-coordinated response plan-
17 ning;

18 “(5) securing and monitoring the shipping, re-
19 ceipt, and storage of a substance of concern for the
20 covered chemical facility;

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

23 “(7) deterring insider sabotage;

1 “(8) deterring cyber sabotage, including by pre-
2 venting unauthorized onsite or remote access to crit-
3 ical process controls, including—

4 “(A) supervisory control and data acqui-
5 sion systems;

6 “(B) distributed control systems;

7 “(C) process control systems;

8 “(D) industrial control systems;

9 “(E) critical business systems; and

10 “(F) other sensitive computerized systems;

11 “(9) developing and conducting exercises of an
12 internal emergency plan for owners, operators, and
13 covered individuals for a covered chemical facility for
14 responding to chemical facility terrorist incidents at
15 the covered chemical facility, including providing ap-
16 propriate information to any local emergency plan-
17 ning committee, State emergency response commis-
18 sion, local law enforcement officials, and emergency
19 response providers to ensure an effective, collective
20 response to terrorist incidents;

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

23 “(A) measures designed to ensure that se-
24 curity systems and equipment are in good work-

1 ing order and inspected, tested, calibrated, and
2 otherwise maintained;

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

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

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

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

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

3 “(B) measures designed to check criminal
4 history;

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

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

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

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

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

17 “(16) identifying, investigating, reporting, and
18 maintaining records of significant security incidents
19 and suspicious activities at or near the covered
20 chemical facility;

21 “(17) establishing one or more officials and an
22 organization responsible for—

23 “(A) security;

24 “(B) compliance with the standards estab-
25 lished under this subsection;

1 “(C) serving as the point of contact for in-
2 cident management purposes with Federal
3 agencies, agencies of State or local government
4 (including law enforcement agencies), and emer-
5 gency response providers; and

6 “(D) coordination with Federal agencies,
7 agencies of State or local government (including
8 law enforcement agencies), and emergency re-
9 sponse providers regarding plans and security
10 measures for the collective response to a chem-
11 ical facility terrorist incident;

12 “(18) maintaining appropriate records relating
13 to the security of the covered chemical facility, in-
14 cluding a copy of the most recent security vulner-
15 ability assessment and site security plan, at the cov-
16 ered chemical facility;

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

20 “(20) methods to recover or mitigate the re-
21 lease of a substance of concern in the event of a
22 chemical facility terrorist incident;

23 “(21) methods to mitigate the risks of exposure
24 to chemical agents by maintaining an adequate sup-
25 ply of equipment and products to provide for decon-

1 tamination procedures designed to neutralize the
2 chemical agents; and

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

5 “(e) RISK-BASED CHEMICAL SECURITY PERFORM-
6 ANCE STANDARDS.—

7 “(1) IN GENERAL.—The Secretary shall estab-
8 lish risk-based chemical security performance stand-
9 ards for the site security plans required to be sub-
10 mitted by covered chemical facilities under sub-
11 section (a).

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

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

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

1 “(f) COLLOCATED CHEMICAL FACILITIES.—The Sec-
2 retary may allow an owner or operator of a covered chem-
3 ical facility that is located geographically close, as deter-
4 mined by the Secretary, to another covered chemical facil-
5 ity to develop and implement coordinated security vulner-
6 ability assessments and site security plans.

7 “(g) ALTERNATE SECURITY PROGRAMS AS COMPO-
8 NENT OF SECURITY VULNERABILITY ASSESSMENT AND
9 SITE SECURITY PLAN.—

10 “(1) ACCEPTANCE OF PROGRAM.—At the re-
11 quest of an owner or operator of a covered chemical
12 facility, the Secretary may accept an alternate secu-
13 rity program submitted by the owner or operator as
14 a component of the security vulnerability assessment
15 or site security plan required under this section, if
16 the Secretary determines that the alternate security
17 program, in combination with other components of
18 the security vulnerability assessment and site secu-
19 rity plan submitted by the owner or operator of the
20 covered chemical facility—

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

24 “(B) provides the level of security that is
25 equivalent to the level of security required

1 under this title and the regulations promulgated
2 under this title; and

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

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

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

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

15 “(3) OBLIGATIONS OF COVERED CHEMICAL FA-
16 CILITY UNAFFECTED.—Nothing in this subsection
17 shall relieve a covered chemical facility of the obliga-
18 tion and responsibility to comply with any require-
19 ment under this title.

20 “(4) GRANTS OR TECHNICAL ASSISTANCE TO
21 SMALL CHEMICAL FACILITIES.—Grants or technical
22 assistance to small chemical facilities to comply with
23 section 2103. Security Vulnerability Assessments
24 and Site Security Plans of the bill.

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

8 “(A) meets the requirements of section
9 2115; and

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

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

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

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

21 “(h) OTHER AUTHORITIES.—

22 “(1) REGULATION OF MARITIME FACILITIES.—

23 “(A) RISK-BASED TIERING.—The owner or
24 operator of a chemical facility required to sub-
25 mit a facility security plan under section

1 70103(c) of title 46, United States Code, shall
2 be required to submit information to the Sec-
3 retary necessary to—

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

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

10 “(B) ADDITIONAL MEASURES.—Subject to
11 subparagraph (C), in the case of a facility for
12 which a facility security plan is required to be
13 submitted under section 70103(c) of title 46,
14 United States Code, that is designated as a cov-
15 ered chemical facility, the Commandant of the
16 Coast Guard, after consultation with the Sec-
17 retary, shall require the owner or operator of
18 the facility to update the security vulnerability
19 assessments and facility security plans required
20 under section 70103(c) of title 46, United
21 States Code, if necessary, to ensure a level of
22 security for substances of concern that is equiv-
23 alent to the level of security required by regula-
24 tions promulgated under this title, including the
25 requirements under section 2111, in the same

1 manner as other covered chemical facilities in
2 this title.

3 “(C) PERSONNEL SURETY.—

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

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

1 a covered chemical facility that is owned or
2 operated by the same owner or operator.

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

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

18 “(F) FORMAL AGREEMENT.—The Sec-
19 retary shall—

20 “(i) require the Office of Infrastruc-
21 ture Protection and the Coast Guard to
22 enter into a formal agreement detailing the
23 respective roles and responsibilities of the
24 Office of Infrastructure Protection and the
25 Coast Guard in carrying out this title,

1 which shall ensure that the enforcement
2 and compliance requirements under this
3 title and section 70103 of title 46, United
4 States Code, are not conflicting or duplica-
5 tive; and

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

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

21 “(i) ROLE OF EMPLOYEES.—

22 “(1) DESCRIPTION OF ROLE REQUIRED.—A site
23 security plan for an owner or operator of a covered
24 chemical facility shall describe the roles or respon-
25 sibilities that covered individuals are expected to per-

1 form to deter or respond to a chemical facility ter-
2 rorist incident.

3 “(2) ANNUAL TRAINING FOR EMPLOYEES.—

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

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

14 “(i) include an identification and dis-
15 cussion of substances of concern;

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

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

23 “(iv) include a review of information
24 protection requirements;

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

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

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

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

19 “(ix) use multiple training media and
20 methods;

21 “(x) include a discussion of appro-
22 priate emergency response procedures, in-
23 cluding procedures to mitigate the effects
24 of a chemical facility terrorist incident; and

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

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

13 “(4) WORKER TRAINING GRANT PROGRAM.—

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

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

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

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

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

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

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

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

19 “(D) ELIGIBLE ENTITIES.—In this para-
20 graph, the term ‘eligible entity’ means a non-
21 profit organization with demonstrated experi-
22 ence in implementing and operating successful
23 health and safety or security training programs
24 for employees or emergency response providers.

1 “(E) PRESUMPTION OF CONGRESS RELAT-
2 ING TO COMPETITIVE PROCEDURES.—

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

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

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

23 **“SEC. 2204. SITE INSPECTIONS.**

24 “(a) RIGHT OF ENTRY.—For purposes of carrying
25 out this title, the Secretary, accompanied by a designated

1 local or State official, shall have, at a reasonable time and
2 on presentation of credentials, a right of entry to, on, or
3 through any property of a covered chemical facility or any
4 property on which any record required to be maintained
5 under this section is located.

6 “(b) INSPECTIONS AND VERIFICATIONS.—

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

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 an
16 inspection or verification under paragraph (1), the
17 Secretary shall have access to the owners, operators,
18 employees, and employee representatives, if any, of
19 a covered chemical facility.

20 “(c) UNANNOUNCED INSPECTIONS.—

21 “(1) IN GENERAL.—In addition to any inspec-
22 tion conducted under subsection (b), the Secretary
23 shall conduct unannounced facility inspections of
24 covered chemical facilities assigned to tier 1 or tier
25 2 under section 2102(c)(1).

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

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

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

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

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

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

20 “(C) conducted so as not to affect the ac-
21 tual security, physical integrity, safety, or reg-
22 ular operations of the covered chemical facility
23 or the employees of the covered chemical facility
24 while the inspection is conducted; and

25 “(D) conducted—

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

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

6 “(3) POST-INSPECTION NOTICE.—After con-
7 ducting an unannounced inspection of a facility
8 under this subsection, the Secretary shall provide
9 post-inspection notice to a designated local or State
10 office with oversight responsibility for that facility.

11 “(d) CHEMICAL FACILITY INSPECTORS AUTHOR-
12 IZED.—During fiscal years 2015 and 2016, and subject
13 to the availability of appropriations, the Secretary shall
14 increase by not less than 100 the total number of chemical
15 facility inspectors within the Department to ensure com-
16 pliance with this title.

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

24 “(f) RIGHT TO ACCOMPANY DURING PHYSICAL IN-
25 SPECTION.—If a representative of the owner or operator

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

8 **“SEC. 2205. RECORDS.**

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

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

21 **“SEC. 2206. TIMELY SHARING OF THREAT INFORMATION.**

22 “(a) RESPONSIBILITIES OF SECRETARY.—Upon the
23 receipt of information concerning a threat that is relevant
24 to a certain covered chemical facility, the Secretary shall
25 provide the information in a timely manner, to the max-

1 imum extent practicable under applicable authority and in
2 the interests of national security, to—

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

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

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

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

15 “(1) information concerning—

16 “(A) a threat about any significant secu-
17 rity incident or threat to the covered chemical
18 facility; or

19 “(B) any intentional or unauthorized pene-
20 tration of the physical security or cyber security
21 of the covered chemical facility, whether suc-
22 cessful or unsuccessful; and

23 “(2) the local and State office with oversight
24 authority over the facility.

1 **“SEC. 2207. ENFORCEMENT.**

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

4 “(1) DISAPPROVAL.—The Secretary shall dis-
5 approve a security vulnerability assessment or site
6 security plan submitted under this title if the Sec-
7 retary determines that—

8 “(A) the security vulnerability assessment
9 or site security plan does not comply with the
10 standards, protocols, or procedures under sec-
11 tion 2103(a)(1)(A); or

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

13 “(i) the site security plan or the im-
14 plementation of the site security plan is in-
15 sufficient to address vulnerabilities identi-
16 fied in a security vulnerability assessment,
17 site inspection, or unannounced inspection
18 of the covered chemical facility; or

19 “(ii) the site security plan fails to
20 meet all applicable chemical facility secu-
21 rity performance standards.

22 “(2) NOTIFICATION OF DISAPPROVAL.—If the
23 Secretary disapproves the security vulnerability as-
24 sessment or site security plan submitted by a cov-
25 ered chemical facility under this title or the imple-
26 mentation of a site security plan by a covered chem-

1 ical facility, the Secretary shall provide the owner or
2 operator of the covered chemical facility a written
3 notification of the disapproval not later than 14 days
4 after the date on which the Secretary disapproves
5 the security vulnerability assessment or site security
6 plan, which shall—

7 “(A) include a clear explanation of defi-
8 ciencies in the security vulnerability assessment,
9 site security plan, or implementation of the site
10 security plan; and

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

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

16 “(ii) by such date as the Secretary de-
17 termines is appropriate, submit the revised
18 security vulnerability assessment or site se-
19 curity plan to the Secretary.

20 “(b) REMEDIES.—

21 “(1) ORDER FOR COMPLIANCE.—If the Sec-
22 retary determines that an owner or operator of a
23 covered chemical facility has violated or is in viola-
24 tion of any requirement of this title or has failed or
25 is failing to address any deficiencies in the security

1 vulnerability assessment, site security plan, or imple-
2 mentation of the site security plan for the covered
3 chemical facility by such date as designated by the
4 Secretary, the Secretary may—

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

17 “(B) in a civil action, obtain appropriate
18 equitable relief, a civil penalty of not more than
19 \$25,000 for each day before, on, or after the
20 date of the order that the violation occurs or for
21 each day after the date of the order that a fail-
22 ure to comply continues, or both.

23 “(2) ORDER TO CEASE OPERATIONS.—If the
24 Secretary determines that an owner or operator of
25 a covered chemical facility continues to be in non-

1 compliance after an order for compliance is issued
2 under paragraph (1), the Secretary may issue an
3 order to the owner or operator to cease operations
4 at the covered chemical facility until the Secretary
5 determines the owner or operator is in compliance.

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

10 **“SEC. 2208. WHISTLEBLOWER PROTECTIONS.**

11 “(a) ESTABLISHMENT.—

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

19 “(2) CONFIDENTIALITY.—

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

23 “(B) COMPLIANCE WITH SECTION 2110.—A
24 report submitted under this subsection shall be
25 treated as protected information under section

1 2110 to the extent that the report does not con-
2 sist of publicly available information.

3 “(3) ACKNOWLEDGMENT OF RECEIPT.—If a re-
4 port submitted under this subsection identifies the
5 individual submitting the report, the Secretary shall
6 respond promptly to the individual to acknowledge
7 receipt of the report.

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

10 “(A) review and consider the information
11 provided in a report submitted under this sub-
12 section; and

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

16 “(b) RETALIATION PROHIBITED.—

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

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

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

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

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

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

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

25 “(2) ENFORCEMENT ACTION.—

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

8 “(B) DISTRICT COURT REVIEW.—An em-
9 ployee who brings an action under subpara-
10 graph (A) may seek review by a district court
11 of the United States as set forth in subsection
12 (d)(3) of section 20109 of title 49, United
13 States Code, not later than 90 days after re-
14 ceiving a written final determination by the
15 Secretary of Labor.

16 “(3) PROHIBITED PERSONNEL PRACTICES AF-
17 FECTING THE DEPARTMENT.—

18 “(A) IN GENERAL.—Notwithstanding any
19 other provision of law, an individual holding or
20 applying for a position within the Department
21 shall be covered by—

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

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

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

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

16 **“SEC. 2209. FEDERAL PREEMPTION.**

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

1 **“SEC. 2210. PROTECTION OF INFORMATION.**

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

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

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

9 “(b) INFORMATION SHARING.—

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

14 “(2) SHARING OF PROTECTED INFORMATION.—

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

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

22 “(ii) emergency response providers;

23 “(iii) law enforcement officials;

24 “(iv) designated supervisory and non-
25 supervisory covered chemical facility per-
26 sonnel with security, operational, or fidu-

1 ciary responsibility for the covered chem-
2 ical facility; and

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

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

18 “(C) PENALTIES.—

19 “(i) IN GENERAL.—Protected infor-
20 mation shall not be shared except in ac-
21 cordance with the standards provided by
22 the regulations prescribed under paragraph
23 (1).

24 “(ii) KNOWING VIOLATION.—Any per-
25 son that discloses protected information in

1 knowing violation of the regulations issued
2 under paragraph (1) shall—

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

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

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

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

21 “(1) employees of the chemical facility;

22 “(2) employee organizations;

23 “(3) health professionals;

24 “(4) emergency response organizations; or

1 “(1) a description of the methods to reduce the
2 consequences of a terrorist attack implemented and
3 considered for implementation by the covered chem-
4 ical facility;

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

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

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

19 “(5) the design of computing systems and de-
20 velopment of plans, exercises, and drills to re-engage
21 computing systems used in the processing, transport,
22 storage of chemicals that are designed as a “risk”
23 by the Secretary using protocols for trusted recovery
24 under the worse case conditions; and

1 “(6) the conduct of tests of facilities should in-
2 clude blue hat, red hat, and white hat hackers to
3 validate the security measures instituted to address
4 cyber based threats.

5 “(c) IMPLEMENTATION.—

6 “(1) IMPLEMENTATION.—

7 “(A) IN GENERAL.—The owner or operator
8 of a covered chemical facility that is assigned to
9 tier 1 or tier 2 because of the potential extent
10 and likelihood of death, injury, or serious ad-
11 verse effects to human health, the environment,
12 critical infrastructure, public health, homeland
13 security, national security, or the national econ-
14 omy from a release of a substance of concern
15 at the covered chemical facility shall implement
16 methods to reduce the consequences of a ter-
17 rorist attack on the covered chemical facility if
18 the Director of the Office of Chemical Facility
19 Security determines, using the assessment con-
20 ducted under subsection (b), that the implemen-
21 tation of the methods at the covered chemical
22 facility—

23 “(i)(I) would significantly reduce the
24 risk of death, injury, or serious adverse ef-

1 fects to human health resulting from a
2 chemical facility terrorist incident; and

3 “(II) would not—

4 “(aa) increase the interim stor-
5 age of a substance of concern outside
6 the covered chemical facility;

7 “(bb) directly result in the cre-
8 ation of a covered chemical facility as-
9 signed to tier 1 or tier 2 because of
10 the potential extent and likelihood of
11 death, injury, or serious adverse ef-
12 fects to human health, the environ-
13 ment, critical infrastructure, public
14 health, homeland security, national se-
15 curity, or the national economy from
16 a release of a substance of concern at
17 the covered chemical facility;

18 “(cc) result in the reassignment
19 of a covered chemical facility from tier
20 3 or tier 4 to tier 1 or tier 2 because
21 of the potential extent and likelihood
22 of death, injury, or serious adverse ef-
23 fects to human health, the environ-
24 ment, critical infrastructure, public
25 health, homeland security, national se-

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

4 “(dd) significantly increase the
5 potential extent and likelihood of
6 death, injury, or serious adverse ef-
7 fects to human health, the environ-
8 ment, critical infrastructure, public
9 health, homeland security, national se-
10 curity, or the national economy from
11 a release of a substance of concern
12 due to a terrorist attack on the trans-
13 portation infrastructure of the United
14 States;

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

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

23 “(B) WRITTEN DETERMINATION.—A de-
24 termination made by the Director of the Office
25 of Chemical Facility Security under subpara-

1 graph (A) shall be made in writing and include
2 the basis and reasons for the determination, in-
3 cluding the analysis of the Director of the as-
4 sessment by the covered chemical facility of the
5 technical feasibility, costs, avoided costs (includ-
6 ing liabilities), personnel implications, savings,
7 and applicability of implementing each method
8 to reduce the consequences of a terrorist attack.

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

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

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

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

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

7 “(B) REVIEW.—

8 “(i) IN GENERAL.—Not later than
9 120 days after receipt of an explanation
10 submitted by an owner or operator of a
11 covered chemical facility under subpara-
12 graph (A), the Secretary, after consulting
13 with the owner or operator, as well as ex-
14 perts in the subjects of environmental
15 health and safety, security, chemistry, de-
16 sign and engineering, process controls and
17 implementation, maintenance, production
18 and operations, chemical process safety,
19 and occupational health, as appropriate,
20 shall provide to the owner or operator a
21 written determination of whether, in the
22 discretion of the Secretary, implementation
23 shall be required under paragraph (1).

24 “(ii) DETERMINATION THAT IMPLE-
25 MENTATION IS REQUIRED.—If the Sec-

1 retary determines that implementation is
2 required under clause (i), the Secretary
3 shall issue an order that establishes the
4 basis for the determination, including—

5 “(I) the findings of the relevant
6 experts;

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

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

12 “(d) AGRICULTURAL SECTOR.—

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

14 “(A) FARM SUPPLIES MERCHANT WHOLE-
15 SALER.—The term ‘farm supplies merchant
16 wholesaler’ means a covered chemical facility
17 that is primarily engaged in the merchant
18 wholesale distribution of farm supplies, includ-
19 ing animal feeds, fertilizers, agricultural chemi-
20 cals, pesticides, plant seeds, and plant bulbs.

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

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

- 1 “(ii) ranches and rangeland;
2 “(iii) poultry, dairy, and equine facili-
3 ties;
4 “(iv) turfgrass growers;
5 “(v) golf courses;
6 “(vi) nurseries;
7 “(vii) floricultural operations; and
8 “(viii) public and private parks.

9 “(2) GUIDANCE FOR FARM SUPPLIES MER-
10 CHANT WHOLESALERS.—

11 “(A) IN GENERAL.—The Secretary shall
12 provide guidance and, as appropriate, tools,
13 methodologies, or computer software, to assist
14 farm supplies merchant wholesalers in com-
15 plying with this section.

16 “(B) GRANTS AUTHORIZED.—The Sec-
17 retary may award grants to farm supplies mer-
18 chant wholesalers to assist compliance with sub-
19 section (b), and in awarding grants, shall give
20 priority to farm supplies merchant wholesalers
21 that, in the discretion of the Secretary, have the
22 greatest need for the grants.

23 “(3) ASSESSMENT OF AGRICULTURAL IM-
24 PACTS.—Not later than 6 months after the date of
25 the enactment of this title, the Secretary shall sub-

1 mit an assessment of the potential impacts of com-
2 pliance with this section regarding the assessment
3 and, as appropriate, implementation of methods to
4 reduce the consequences of a terrorist attack on the
5 agricultural sector to—

6 “(A) the Committee on Homeland Security
7 and Governmental Affairs, the Committee on
8 Environment and Public Works, and the Com-
9 mittee on Agriculture, Nutrition, and Forestry
10 of the Senate; and

11 “(B) the Committee on Homeland Secu-
12 rity, the Committee on Energy and Commerce,
13 and the Committee on Agriculture of the House
14 of Representatives.

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

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

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

23 “(i) the number and type of manufac-
24 turers, retailers, aerial commercial applica-
25 tors, and distributors of pesticide and fer-

1 tilizer required to assess methods to reduce
2 the consequences of a terrorist attack
3 under subsection (b); and

4 “(ii) the number and type of manufac-
5 turers, retailers, aerial commercial applica-
6 tors, and distributors of pesticide and fer-
7 tilizer assigned to tier 1 or tier 2 or to a
8 designation for small covered chemical fa-
9 cilities by the Secretary because of the
10 potential extent and likelihood of death,
11 injury, or serious adverse effects to human
12 health, the environment, critical infrastruc-
13 ture, public health, homeland security, na-
14 tional security, or the national economy
15 from the release of a substance of concern
16 at the covered chemical facility;

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

1 “(C) an analysis of how the assessment of
2 methods to reduce the consequences of a ter-
3 rorist attack under subsection (b) by manufac-
4 turers, retailers, aerial commercial applicators,
5 and distributors of pesticide and fertilizer, and,
6 as appropriate, the implementation of methods
7 to reduce the consequences of a terrorist attack
8 by such manufacturers, retailers, aerial com-
9 mercial applicators, and distributors of pesticide
10 and fertilizer subject to subsection (c), are like-
11 ly to impact agricultural end-users; and

12 “(D) recommendations for how to mitigate
13 any adverse impacts identified under subpara-
14 graph (C).

15 “(e) SMALL COVERED CHEMICAL FACILITIES.—

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

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

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

23 “(2) GUIDANCE FOR SMALL COVERED CHEM-
24 ICAL FACILITIES.—The Secretary may provide guid-
25 ance and, as appropriate, tools, methodologies, or

1 computer software, to assist small covered chemical
2 facilities in complying with this section.

3 “(3) LIMITATION ON IMPLEMENTATION OF
4 METHODS.—The Secretary may not require a small
5 covered chemical facility to implement methods to
6 reduce the consequences of a terrorist attack under
7 subsection (c) unless the Secretary determines that
8 the implementation of the methods at the small cov-
9 ered chemical facility do not significantly and de-
10 monstrably impair the ability of the owner or oper-
11 ator of the covered chemical facility to continue the
12 business of the covered chemical facility at the loca-
13 tion of the covered chemical facility.

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

16 “(A) IN GENERAL.—Not later than 6
17 months after the date of the enactment of this
18 title, the Secretary shall submit an assessment
19 of the potential effects on small covered chem-
20 ical facilities of compliance with this section re-
21 garding the assessment and, as appropriate, im-
22 plementation of methods to reduce the con-
23 sequences of a terrorist attack to—

24 “(i) the Committee on Environment
25 and Public Works and the Committee on

1 Homeland Security and Governmental Af-
2 fairs of the Senate; and

3 “(ii) the Committee on Energy and
4 Commerce and the Committee on Home-
5 land Security of the House of Representa-
6 tives.

7 “(B) REQUIREMENTS.—The assessment
8 required under subparagraph (A) shall in-
9 clude—

10 “(i) data on the scope of small cov-
11 ered chemical facilities to which this title
12 applies, including—

13 “(I) the number and type of
14 small covered chemical facilities that
15 are required to assess methods to re-
16 duce the consequences of a terrorist
17 attack under subsection (b); and

18 “(II) the number and type of
19 small covered chemical facilities as-
20 signed to tier 1 or tier 2 under section
21 2102(c)(1) by the Secretary because
22 of the potential extent and likelihood
23 of death, injury, or serious adverse ef-
24 fects to human health, the environ-
25 ment, critical infrastructure, public

1 health, homeland security, national se-
2 curity, or the national economy from
3 the release of a substance of concern
4 at the covered chemical facility; and
5 “(ii) a discussion of how the Secretary
6 plans to implement paragraph (3).

7 “(f) PROVISION OF INFORMATION ON ALTERNATIVE
8 APPROACHES.—

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

11 “(A) IN GENERAL.—Not later than 1 year
12 after the date of enactment of the Frank Lau-
13 tenberg Memorial Secure Chemical Facilities
14 Act, the Secretary shall—

15 “(i) make available information on the
16 use and availability of methods to reduce
17 the consequences of a chemical facility ter-
18 rorist attack; and

19 “(ii) periodically update the informa-
20 tion described in clause (i).

21 “(B) INFORMATION TO BE INCLUDED.—
22 The information made available under subpara-
23 graph (A) may include information relating
24 to—

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

4 “(ii) combinations of chemical
5 sources, substances of concern, and haz-
6 ardous processes or conditions for which
7 the methods described in clause (i) could
8 be appropriate;

9 “(iii) the availability of specific meth-
10 ods to reduce the consequences of a ter-
11 rorist attack;

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

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

17 “(vi) the availability of technical as-
18 sistance and best practices; and

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

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

23 “(A) IN GENERAL.—The Secretary shall
24 periodically make available industry sector re-
25 ports on methods to reduce the consequences of

1 a terrorist attack that are in use at chemical fa-
2 cilities.

3 “(B) CONTENTS OF REPORT.—The reports
4 described in subparagraph (A) shall include, by
5 industry sector or appropriate groupings of in-
6 dustry sectors, elements of feasible technologies,
7 techniques, or other means described in sub-
8 section (b) that are—

9 “(i) identified by covered chemical fa-
10 cilities under subsection (b) and submitted
11 to the Secretary under section 2103; or

12 “(ii) identified by the Secretary from
13 relevant information sources.

14 “(C) PUBLIC AVAILABILITY.—Information
15 made available under this paragraph—

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

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

20 “(iii) shall not disclose any propri-
21 etary information.

22 “(g) FUNDING FOR METHODS TO REDUCE THE CON-
23 SEQUENCES OF A TERRORIST ATTACK.—The Secretary
24 shall make grants to covered chemical facilities, with pri-
25 ority given to the highest risk covered chemical facilities,

1 as determined by the Secretary, to supplement a portion
2 of the costs of implementing methods to reduce the con-
3 sequences of a terrorist attack.

4 **“SEC. 2212. APPLICABILITY.**

5 “This title shall not apply to—

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

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

12 “(3) all or a specified portion of any chemical
13 facility that—

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

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

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

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

8 “(5) any treatment works, as defined in section
9 212 of the Federal Water Pollution Control Act (33
10 U.S.C. 1292).

11 **“SEC. 2213. SAVINGS CLAUSE.**

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

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

17 “(2) the Federal Water Pollution Control Act
18 (33 U.S.C. 1251 et seq.);

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

21 “(4) the National Environmental Policy Act of
22 1969 (42 U.S.C. 4321 et seq.);

23 “(5) the Occupational Safety and Health Act
24 (29 U.S.C. 651 et seq.);

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

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

6 “(8) the Safe Drinking Water Act (42 U.S.C.
7 300f et seq.);

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

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

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

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

17 “(13) the Fair Credit Reporting Act (15 U.S.C.
18 1681 et seq.).

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

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

4 **“SEC. 2214. OFFICE OF CHEMICAL FACILITY SECURITY.**

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

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

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

13 “(b) PROFESSIONAL QUALIFICATIONS.—The indi-
14 vidual selected by the Secretary as the Director of the Of-
15 fice of Chemical Facility Security shall have professional
16 qualifications and experience necessary for effectively di-
17 recting the Office of Chemical Facility Security and car-
18 rying out this title, including—

19 “(1) a demonstrated knowledge of—

20 “(A) physical infrastructure protection;

21 “(B) cybersecurity;

22 “(C) chemical facility security;

23 “(D) hazard analysis;

24 “(E) chemical process engineering;

25 “(F) chemical process safety reviews; or

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

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

4 “(1) make a reasonable effort to select an indi-
5 vidual to serve as the Director of the Office of
6 Chemical Facility Security from among a group of
7 candidates that is diverse with respect to race, eth-
8 nicity, age, gender, and disability characteristics;
9 and

10 “(2) submit information on the selection proc-
11 ess, including details on efforts to assure diversity
12 among the candidates, to—

13 “(A) the Committee on Homeland Security
14 and Governmental Affairs of the Senate; and

15 “(B) the Committee on Homeland Security
16 and the Committee on Energy and Commerce
17 of the House of Representatives.

18 “(d) OUTREACH SUPPORT.—

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

24 “(2) OUTREACH.—The Secretary shall, as ap-
25 propriate, and in accordance with this title, inform

1 State emergency response commissions appointed
2 under section 301(a) of the Emergency Planning
3 and Community Right-To-Know Act of 1986 (42
4 U.S.C. 11001), local emergency planning committees
5 appointed under section 301(c) of that Act, and any
6 other entity designated by the Secretary of the find-
7 ings of the Office of Chemical Facility Security so
8 that the commissions and committees may update
9 emergency planning and training procedures.

10 **“SEC. 2215. SECURITY BACKGROUND CHECKS OF COVERED**
11 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
12 **TIES.**

13 “(a) DEFINITION OF SECURITY BACKGROUND
14 CHECK.—In this section, the term ‘security background
15 check’ means a review by a Federal Government agency
16 charged with screening Federal employees for security
17 clearances that shall not be conducted by a contractor, at
18 no cost to an individual subject to the review, under sub-
19 section (b)(1) to identify individuals who may pose a
20 threat to chemical facility security, to national security,
21 or of terrorism of—

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

24 “(2) relevant criminal history databases;

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

6 “(4) the consolidated terrorist watchlist; and

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

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

10 “(1) IN GENERAL.—

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

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

23 “(ii) measures designed to check
24 criminal history;

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

3 “(iv) measures designed to identify in-
4 dividuals with terrorist ties.

5 “(B) INDIVIDUALS DESCRIBED.—For pur-
6 poses of subparagraph (A), an individual de-
7 scribed in this subparagraph is—

8 “(i) a covered individual who—

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

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

14 “(ii) an individual associated with a
15 covered chemical facility, including any
16 designated employee representative, who is
17 provided with a copy of a security vulner-
18 ability assessment or site security plan; or

19 “(iii) an individual who is determined
20 by the Secretary to require a security
21 background check based on chemical facil-
22 ity security performance standards.

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

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

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

9 “(ii) the time period after which an
10 interim disqualifying offense is no longer a
11 disqualification, including applying the
12 time periods described in part 1572 of title
13 49, Code of Federal Regulations, or any
14 successor thereto, where applicable to the
15 offenses identified in clause (i); and

16 “(iii) the time period covered for each
17 person subject to a security background
18 check under paragraph (1);

19 “(B) the processes to conduct the security
20 background checks;

21 “(C) the necessary biographical informa-
22 tion and other data required in order to con-
23 duct the security background checks;

1 “(D) a redress process for an adversely af-
2 fected individual consistent with subsections (c)
3 and (d);

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

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

19 “(c) MISREPRESENTATION OF ADVERSE EMPLOY-
20 MENT DECISIONS.—The regulations required under sub-
21 section (b)(1) shall provide that it shall be a misrepresen-
22 tation under subsection (b)(2)(E) to attribute an adverse
23 employment decision, including removal or suspension of
24 an employee, to the regulations unless the owner or oper-
25 ator of a covered chemical facility determines, after oppor-

1 tunity for appropriate redress under the processes pro-
2 vided under subsection (d)(1), that the individual subject
3 to the adverse employment decision—

4 “(1)(A) meets the requirements for interim or
5 permanent disqualifying offenses reasonably related
6 to terrorism at a covered chemical facility promul-
7 gated under subsection (b)(1);

8 “(B) is on the consolidated terrorist watchlist;
9 or

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

13 “(2) has been informed of the basis for the de-
14 cision and the full rights of the individual to the
15 prompt appeals and reconsideration procedures
16 under subsection (d) before an adverse employment
17 action is taken.

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

20 “(1) provide an adequate and prompt redress
21 process for an individual subject to a security back-
22 ground check under subsection (b)(1) who is sub-
23 jected to an adverse employment decision, including
24 removal or suspension of the individual, due to a de-
25 termination by the employer under subsection (c),

1 that is consistent with the appeals process estab-
2 lished under section 70105(e) of title 46, United
3 States Code, including all rights to—

4 “(A) hearings before an administrative law
5 judge;

6 “(B) scope of review; and

7 “(C) a review of an unclassified summary
8 of classified evidence equivalent to the summary
9 provided in part 1515 of title 49, Code of Fed-
10 eral Regulations;

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

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

24 “(4) include the authority to order an appro-
25 priate remedy, including reinstatement of the indi-

1 vidual subject to a security background check under
2 subsection (b)(1), if the Secretary determines that
3 the adverse employment decision was made—

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

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

9 “(C) as a result of an erroneous deter-
10 mination by the owner or operator of a covered
11 chemical facility under subsection (e);

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

17 “(6) ensure that the individual subject to a se-
18 curity background check under subsection (b)(1) re-
19 ceives the full wages and benefits due to the indi-
20 vidual until all redress processes under this sub-
21 section are exhausted.

22 “(e) RECONSIDERATION PROCESS.—

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

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

9 “(B) include procedures consistent with
10 section 70105(c) of title 46, United States
11 Code, including all rights to—

12 “(i) hearings before an administrative
13 law judge;

14 “(ii) scope of review; and

15 “(iii) a review of an unclassified sum-
16 mary of classified evidence equivalent to
17 the summary provided in part 1515 of title
18 49, Code of Federal Regulations.

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

22 “(A) give consideration to the cir-
23 cumstance of any disqualifying act or offense,
24 restitution made by the individual, Federal and
25 State mitigation remedies, and other factors

1 from which it may be concluded that the indi-
2 vidual does not pose a security risk to the cov-
3 ered chemical facility; and

4 “(B) determine whether the individual
5 poses a security risk to the covered chemical fa-
6 cility to the petitioner and to the owner or oper-
7 ator of the covered chemical facility.

8 “(3) OWNER OR OPERATOR RECONSIDER-
9 ATION.—If the Secretary determines under para-
10 graph (1)(A) that the individual does not pose a se-
11 curity risk to the covered chemical facility, it shall
12 be a prohibited misrepresentation for the owner or
13 operator of the covered chemical facility to continue
14 to attribute the adverse employment decision to the
15 regulations under subsection (b)(1).

16 “(f) RESTRICTIONS ON USE AND MAINTENANCE OF
17 INFORMATION.—Information obtained under this section
18 by the Secretary or the owner or operator of a covered
19 chemical facility—

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

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

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

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

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

8 “(g) SAVINGS CLAUSE.—

9 “(1) RIGHTS AND RESPONSIBILITIES.—Nothing
10 in this section shall be construed to abridge any
11 right or responsibility of an individual subject to a
12 security background check under subsection (b)(1)
13 or an owner or operator of a covered chemical facil-
14 ity under any other Federal law, the law of a State
15 or local government, or a collective bargaining agree-
16 ment.

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

22 “(h) PREEMPTION.—Nothing in this section shall be
23 construed to preempt, alter, or affect a Federal law or the
24 law of a State local or local government that requires
25 criminal history background checks, checks on the author-

1 ization of an individual to work in the United States, or
2 other background checks of individuals subject to security
3 background checks under subsection (b)(1).

4 “(i) DEPARTMENT-CONDUCTED SECURITY BACK-
5 GROUND CHECK.—

6 “(1) IN GENERAL.—The regulations under sub-
7 section (b)(1) shall set forth a process by which the
8 Secretary, on an ongoing basis, shall determine
9 whether alternate security background checks con-
10 ducted by the Secretary are sufficient to meet the
11 requirements under this section such that no addi-
12 tional security background check under this section
13 is required for an individual for whom the qualifying
14 alternate security background check was conducted.

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

1 “(3) DETERMINATION OF EXEMPTION FROM
2 SECURITY BACKGROUND CHECK.—

3 “(A) IN GENERAL.—The Secretary shall
4 determine whether a security background check
5 under this section is required for an individual
6 holding a transportation security card issued
7 under section 70105 of title 46, United States
8 Code.

9 “(B) REGULATIONS.—If the Secretary de-
10 termines under subparagraph (A) that no back-
11 ground check is required for an individual hold-
12 ing a transportation security card issued under
13 section 70105 of title 46, United States Code,
14 the Secretary shall include the determination in
15 the regulations required under subsection
16 (b)(1).

17 “(j) TERMINATION OF EMPLOYMENT.—If, as the re-
18 sult of a security background check, an owner or operator
19 of a covered chemical facility finds that a covered indi-
20 vidual is not legally authorized to work in the United
21 States, the owner or operator shall cease to employ the
22 covered individual, subject to the appropriate redress proc-
23 esses available to the individual under this section.

1 **“SEC. 2216. CITIZEN ENFORCEMENT.**

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

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

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

14 “(b) COURT OF JURISDICTION.—

15 “(1) IN GENERAL.—Any action under sub-
16 section (a)(1) shall be brought in the district court
17 of the United States for the district in which the al-
18 leged violation occurred.

19 “(2) ACTION AGAINST THE SECRETARY.—Any
20 action brought under subsection (a)(2) may be
21 brought in the district court of the United States for
22 the district in which the alleged violation occurred or
23 in the United States District Court for the District
24 of Columbia.

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

4 “(A) enforce an order described in sub-
5 section (a)(1);

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

9 “(C) in a civil action brought under sub-
10 section (a)(2), order the Secretary to perform a
11 nondiscretionary act or duty under this title,
12 and impose civil penalties, as appropriate,
13 under section 2107.

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

18 “(1) the Secretary; and

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

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

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

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

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

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

16 **“SEC. 2217. CITIZEN PETITIONS.**

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

20 “(1) the format for the petitions;

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

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

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

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

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

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

19 “(2) describing the alleged violation of any
20 standard, regulation, condition, requirement, prohi-
21 bition, plan, or order that has become effective
22 under this title by the person described in paragraph
23 (1).

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

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

4 “(2) investigate all allegations contained in ac-
5 cepted petitions;

6 “(3) determine whether enforcement action will
7 be taken concerning the alleged violation or viola-
8 tions;

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

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

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

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

23 “(A) a review of the full record by the In-
24 spector General of the Department, including a
25 review of protected information; and

1 “(B) the formulation of recommendations
2 by the Inspector General and submittal of such
3 recommendations to the Secretary and, to the
4 extent permitted under section 2110, to the pe-
5 titioner; and

6 “(8) respond to a recommendation submitted by
7 the Inspector General under paragraph (7) by adopt-
8 ing or rejecting the recommendation.

9 **“SEC. 2218. NOTIFICATION SYSTEM TO ADDRESS PUBLIC**
10 **CONCERNS.**

11 “(a) ESTABLISHMENT.—The Secretary shall estab-
12 lish a notification system, which shall provide an indi-
13 vidual the ability to report, via telephonic and Internet-
14 based means, a suspected security deficiency or suspected
15 noncompliance with this title.

16 “(b) ACKNOWLEDGMENT.—When the Secretary re-
17 ceives a report through the notification system established
18 under subsection (a), the Secretary shall respond to the
19 report in a timely manner, but in no case shall the Sec-
20 retary respond to such a report later than 30 days after
21 receipt of the report.

22 “(c) STEPS TO ADDRESS PROBLEMS.—The Sec-
23 retary shall—

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

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

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

14 “(e) INSPECTOR GENERAL REPORT REQUIRED.—

15 “(1) IN GENERAL.—The Inspector General of
16 the Department shall submit to the Committee on
17 Homeland Security and Governmental Affairs and
18 the Committee on Environment and Public Works of
19 the Senate and the Committee on Homeland Secu-
20 rity and the Committee on Energy and Commerce of
21 the House of Representatives an annual report on
22 the reports received under the notification system es-
23 tablished under subsection (a) and the disposition of
24 the reports by the Secretary.

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

7 **“SEC. 2219. EMERGENCY RESPONSE CAPACITY STUDY.**

8 “(a) ASSESSMENT AND REPORT.—

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

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

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

19 “(B) the capacity of volunteer first re-
20 sponders to address incidents at chemical facili-
21 ties in their response areas;

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

24 “(D) the logistical feasibility of evacuation;

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

3 “(F) the protective capacity of structures;

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

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

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

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

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

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

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

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

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

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

16 **“SEC. 2220. ANNUAL REPORT TO CONGRESS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **“SEC. 2221. AUTHORIZATION OF APPROPRIATIONS.**

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

23 “(1) \$300,000,000 for each of fiscal years 2016
24 and 2017, of which \$150,000,000 shall be made
25 available for grants under section 2111(g) for meth-

1 (1) REPEAL.—The Department of Homeland
2 Security Appropriations Act, 2007 (Public Law
3 109–295) is amended by striking section 550 (6
4 U.S.C. 121 note).

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

8 (d) REGULATIONS.—

9 (1) DEADLINES.—

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

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

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

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

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

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

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

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

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

13 (3) SENSE OF CONGRESS REGARDING CFATS.—

14 It is the sense of Congress that—

15 (A) the Secretary of Homeland Security
16 was granted statutory authority under section
17 550 of the Department of Homeland Security
18 Appropriations Act, 2007 (6 U.S.C. 121 note)
19 to regulate security practices at chemical facili-
20 ties until October 1, 2009; and

21 (B) under section 550 of the Department
22 of Homeland Security Appropriations Act, 2007
23 (6 U.S.C. 121 note), the Secretary prescribed
24 regulations known as the Chemical Facility

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

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

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

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

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

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

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

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

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

1 **SEC. 4. LIMITATION ON USE OF FUNDS TO APPROVE NON-**
2 **CONFORMING SITE SECURITY PLANS.**

3 (a) **LIMITATION.**—No Federal funds may be used by
4 the Secretary of Homeland Security to approve a site secu-
5 rity plan for a chemical facility unless the facility meets
6 or exceeds security standards and requirements to protect
7 the facility against acts of terrorism established for such
8 a facility by the State or local government for the area
9 where the facility is located.

10 (b) **DEFINITIONS.**—In this subsection, each of the
11 terms “site security plan” and “chemical facility” has the
12 meaning that the term has in section 550 of the Depart-
13 ment of Homeland Security Appropriations Act, 2007
14 (Public Law 109–295; Stat. 1388), as in effect imme-
15 diately before the enactment of this Act.

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