

111TH CONGRESS
1ST SESSION

H. R. 2868

AN ACT

To amend the Homeland Security Act of 2002 to enhance security and protect against acts of terrorism against chemical facilities, to amend the Safe Drinking Water Act to enhance the security of public water systems, and to amend the Federal Water Pollution Control Act to enhance the security of wastewater treatment works, and for other purposes.

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; TABLE OF CONTENTS.**

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

6 (b) **TABLE OF CONTENTS.**—The table of contents for
 7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHEMICAL FACILITY SECURITY

Sec. 101. Short title.

Sec. 102. Findings and purpose.

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

TITLE II—DRINKING WATER SECURITY

Sec. 201. Short title.

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

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

TITLE III—WASTEWATER TREATMENT WORKS SECURITY

Sec. 301. Short title.

Sec. 302. Wastewater treatment works security.

8 **TITLE I—CHEMICAL FACILITY**
 9 **SECURITY**

10 **SEC. 101. SHORT TITLE.**

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

13 **SEC. 102. FINDINGS AND PURPOSE.**

14 (a) **FINDINGS.**—Congress makes the following find-
 15 ings:

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

7 (2) Chemical facilities that pose such potential
8 consequences and that are vulnerable to terrorist at-
9 tacks must be protected.

10 (3) The Secretary of Homeland Security has
11 statutory authority pursuant to section 550 of the
12 Department of Homeland Security Appropriations
13 Act, 2007 (Public Law 109–295) to regulate the se-
14 curity practices at chemical facilities that are at sig-
15 nificant risk of being terrorist targets.

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

20 (b) PURPOSE.—The purpose of this title is to modify
21 and make permanent the authority of the Secretary of
22 Homeland Security to regulate security practices at chem-
23 ical facilities.

1 **SEC. 103. EXTENSION, MODIFICATION, AND RECODIFICA-**
2 **TION OF AUTHORITY OF SECRETARY OF**
3 **HOMELAND SECURITY TO REGULATE SECU-**
4 **RITY PRACTICES AT CHEMICAL FACILITIES.**

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

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

11 **“SEC. 2101. DEFINITIONS.**

12 “In this title, the following definitions apply:

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

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

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

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

26 “(A) Restricting the area perimeter.

1 “(B) Securing site assets.

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

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

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

20 “(D) Methods to deter, detect, and delay a
21 chemical facility terrorist incident, creating suf-
22 ficient time between detection of a chemical fa-
23 cility terrorist incident and the point at which
24 the chemical facility terrorist incident becomes
25 successful, including measures to—

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

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

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

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

1 “(E) Securing and monitoring the ship-
2 ping, receipt, and storage of a substance of con-
3 cern for the chemical facility.

4 “(F) Deterring theft or diversion of a sub-
5 stance of concern.

6 “(G) Deterring insider sabotage.

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

15 “(I) Developing and exercising an internal
16 emergency plan for owners, operators, and cov-
17 ered individuals of a covered chemical facility
18 for responding to chemical facility terrorist inci-
19 dents at the facility, including the provision of
20 appropriate information to any local emergency
21 planning committee, local law enforcement offi-
22 cials, and emergency response providers to en-
23 sure an effective, collective response to terrorist
24 incidents.

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

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

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

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

17 “(K) Ensuring mandatory annual security
18 training, exercises, and drills of chemical facil-
19 ity personnel appropriate to their roles, respon-
20 sibilities, and access to a substance of concern,
21 including participation by local law enforce-
22 ment, and local emergency response providers,
23 and appropriate supervisory and non-super-
24 visory facility employees and their employee
25 representatives, if any.

1 “(L) Performing personnel surety for indi-
2 viduals with access to restricted areas or critical
3 assets by conducting appropriate background
4 checks and ensuring appropriate credentials for
5 unescorted visitors and chemical facility per-
6 sonnel, including permanent and part-time per-
7 sonnel, temporary personnel, and contract per-
8 sonnel, including—

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

11 “(ii) measures designed to check
12 criminal history;

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

15 “(iv) measures designed to identify
16 people with terrorist ties.

17 “(M) Escalating the level of protective
18 measures for periods of elevated threat.

19 “(N) Specific threats, vulnerabilities, or
20 risks identified by the Secretary for that chem-
21 ical facility.

22 “(O) Reporting of significant security inci-
23 dents to the Secretary and to appropriate local
24 law enforcement officials.

1 “(P) Identifying, investigating, reporting,
2 and maintaining records of significant security
3 incidents and suspicious activities at or near the
4 covered chemical facility.

5 “(Q) Establishing one or more officials and
6 an organization responsible for—

7 “(i) security;

8 “(ii) compliance with the standards
9 under this paragraph;

10 “(iii) serving as the point of contact
11 for incident management purposes with
12 Federal, State, local, and tribal agencies,
13 law enforcement, and emergency response
14 providers; and

15 “(iv) coordination with Federal, State,
16 local, and tribal agencies, law enforcement,
17 and emergency response providers regard-
18 ing plans and security measures for the
19 collective response to a chemical facility
20 terrorist incident.

21 “(R) Maintaining appropriate records re-
22 lating to the security of the facility, including a
23 copy of the most recent security vulnerability
24 assessment and site security plan, at the chem-
25 ical facility.

1 “(S) Assessing and, as appropriate, uti-
2 lizing methods to reduce the consequences of a
3 terrorist attack.

4 “(T) Methods to recover or mitigate the
5 release of a substance of concern in the event
6 of a chemical facility terrorist incident.

7 “(U) Any additional security performance
8 standards the Secretary may specify.

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

13 “(A) the release of a substance of concern
14 from a chemical facility;

15 “(B) the theft, misappropriation, or misuse
16 of a substance of concern from a chemical facil-
17 ity; or

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

20 “(4) The term ‘employee representative’ means
21 the representative of the certified or recognized bar-
22 gaining agent engaged in a collective bargaining re-
23 lationship with a private or public owner or operator
24 of a chemical facility.

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

7 “(6) The term ‘covered chemical facility’ means
8 a chemical facility that meets the criteria of section
9 2102(b)(1).

10 “(7) The term ‘environment’ means—

11 “(A) the navigable waters, the waters of
12 the contiguous zone, and the ocean waters of
13 which the natural resources are under the ex-
14 clusive management authority of the United
15 States under the Magnuson-Stevens Fishery
16 Conservation and Management Act (16 U.S.C.
17 1801 et seq.); and

18 “(B) any other surface water, ground
19 water, drinking water supply, land surface or
20 subsurface strata, or ambient air within the
21 United States or under the jurisdiction of the
22 United States.

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

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

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

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

4 “(9) The term ‘person’ means an individual,
5 trust, firm, joint stock company, corporation (includ-
6 ing a government corporation), partnership, associa-
7 tion, State, municipality, commission, political sub-
8 division of a State, or any interstate body and shall
9 include each department, agency, and instrumen-
10 tality of the United States.

11 “(10) The term ‘release’ means any spilling,
12 leaking, pumping, pouring, emitting, emptying, dis-
13 charging, injecting, escaping, leaching, dumping, or
14 disposing into the environment (including the aban-
15 donment or discarding of barrels, containers, and
16 other closed receptacles containing any hazardous
17 substance or pollutant or contaminant).

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

21 “(12) The term ‘method to reduce the con-
22 sequences of a terrorist attack’ means a measure
23 used at a chemical facility that reduces or eliminates
24 the potential consequences of a chemical facility ter-
25 rorist incident, including—

1 “(A) the elimination or reduction in the
2 amount of a substance of concern possessed or
3 planned to be possessed by an owner or oper-
4 ator of a covered chemical facility through the
5 use of alternate substances, formulations, or
6 processes;

7 “(B) the modification of pressures, tem-
8 peratures, or concentrations of a substance of
9 concern; and

10 “(C) the reduction or elimination of onsite
11 handling of a substance of concern through im-
12 provement of inventory control or chemical use
13 efficiency.

14 “(13) The term ‘academic laboratory’ means a
15 facility or area owned by an institution of higher
16 education (as defined under section 101 of the High-
17 er Education Act of 1965 (20 U.S.C. 1001)) or a
18 non-profit research institute or teaching hospital
19 that has a formal affiliation with an institution of
20 higher education, including photo laboratories, art
21 studios, field laboratories, research farms, chemical
22 stockrooms, and preparatory laboratories, where rel-
23 atively small quantities of chemicals and other sub-
24 stances, as determined by the Secretary, are used on
25 a non-production basis for teaching, research, or di-

1 agnostic purposes, and are stored and used in con-
2 tainers that are typically manipulated by one person.

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

5 “(a) SUBSTANCES OF CONCERN.—

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

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

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

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

1 “(A) The potential threat or likelihood that
2 the chemical facility will be the target of a
3 chemical 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, and the national economy that
9 could result from a chemical facility terrorist
10 incident.

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

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

20 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO
21 RISK-BASED TIERS.—

22 “(1) ASSIGNMENT.—The Secretary shall assign
23 each covered chemical facility to one of four risk-
24 based tiers established by the Secretary, with tier

1 one representing the highest degree of risk and tier
2 four the lowest degree of risk.

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

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

22 “(A) The number of individuals at risk of
23 death, injury, or severe adverse effects to
24 human health as a result of a worst case chem-

1 ical facility terrorist incident at the covered
2 chemical facility.

3 “(B) Information related to the criticality
4 of the covered chemical facility.

5 “(C) The proximity or interrelationship of
6 the covered chemical facility to other critical in-
7 frastructure.

8 “(d) REQUIREMENT FOR REVIEW.—The Secretary—
9 “(1) shall periodically review—

10 “(A) the designation of a chemical sub-
11 stance as a substance of concern and the
12 threshold quantity for the substance under sub-
13 section (a)(1); and

14 “(B) the criteria under subsection (b)(1);
15 and

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

20 “(e) PROVISION OF THREAT-RELATED INFORMA-
21 TION.—In order to effectively assess the vulnerabilities to
22 a covered chemical facility, the Secretary shall provide to
23 the owner, operator, or security officer of a covered chem-
24 ical facility threat information regarding probable threats

1 to the facility and methods that could be used in a chem-
2 ical facility terrorist incident.

3 **“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND**
4 **SITE SECURITY PLANS.**

5 “(a) IN GENERAL.—

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

7 “(A) establish standards, protocols, and
8 procedures for security vulnerability assess-
9 ments and site security plans to be required for
10 covered chemical facilities;

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

13 “(i) conduct an assessment of the vul-
14 nerability of the covered chemical facility
15 to a range of chemical facility terrorist in-
16 cidents, including an incident that results
17 in a worst-case release of a substance of
18 concern, and submit such assessment to
19 the Secretary;

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

1 subsection (c) and submit such plan to the
2 Secretary;

3 “(iii) include at least one supervisory
4 and at least one non-supervisory employee
5 of the covered chemical facility, and at
6 least one employee representative from
7 each bargaining agent at the covered
8 chemical facility, if any, in developing the
9 security vulnerability assessment and site
10 security plan required under this section;
11 and

12 “(iv) include, with the submission of a
13 security vulnerability assessment and the
14 site security plan of the covered chemical
15 facility under this section, a signed state-
16 ment by the owner or operator of the cov-
17 ered chemical facility that certifies that the
18 submission is provided to the Secretary
19 with knowledge of the penalty provisions
20 under section 2107;

21 “(C) set deadlines, by tier, for the comple-
22 tion of security vulnerability assessments and
23 site security plans;

24 “(D) upon request, as necessary, and to
25 the extent that resources permit, provide tech-

1 nical assistance to a covered chemical facility
2 conducting a vulnerability assessment or site se-
3 curity plan required under this section;

4 “(E) establish specific deadlines and re-
5 quirements for the submission by a covered
6 chemical facility of information describing—

7 “(i) any change in the use by the cov-
8 ered chemical facility of more than a
9 threshold amount of any substance of con-
10 cern that may affect the requirements of
11 the chemical facility under this title; or

12 “(ii) any material modification to a
13 covered chemical facility’s operations or
14 site that may affect the security vulner-
15 ability assessment or site security plan
16 submitted by the covered chemical facility;

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

22 “(G) not later than 180 days after the
23 date on which the Secretary receives a security
24 vulnerability assessment or site security plan
25 under this title, review and approve or dis-

1 approve such assessment or plan and notify the
2 covered chemical facility of such approval or
3 disapproval; and

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

9 “(2) INHERENTLY GOVERNMENTAL FUNC-
10 TION.—The approval or disapproval of a security
11 vulnerability assessment or site security plan under
12 this section is an inherently governmental function.

13 “(b) PARTICIPATION IN PREPARATION OF SECURITY
14 VULNERABILITY ASSESSMENTS OR SITE SECURITY
15 PLANS.—Any person selected by the owner or operator of
16 a covered chemical facility or by a certified or recognized
17 bargaining agent of a covered chemical facility to partici-
18 pate in the development of the security vulnerability as-
19 sessment or site security plan required under this section
20 for such covered chemical facility shall be permitted to
21 participate if the person possesses knowledge, experience,
22 training, or education relevant to the portion of the secu-
23 rity vulnerability assessment or site security plan on which
24 the person is participating.

1 “(c) RISK-BASED CHEMICAL SECURITY PERFORM-
2 ANCE STANDARDS.—The Secretary shall establish risk-
3 based chemical security performance standards for the site
4 security plans required to be prepared by covered chemical
5 facilities. In establishing such standards, the Secretary
6 shall—

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

11 “(2) permit each covered chemical facility sub-
12 mitting a site security plan to select a combination
13 of security measures that satisfy the risk-based
14 chemical security performance standards established
15 by the Secretary under this subsection.

16 “(d) CO-LOCATED CHEMICAL FACILITIES.—The Sec-
17 retary may allow an owner or operator of a covered chem-
18 ical facility that is located geographically close, as deter-
19 mined by the Secretary, to another covered chemical facil-
20 ity to develop and implement coordinated security vulner-
21 ability assessments and site security plans.

22 “(e) ALTERNATE SECURITY PROGRAMS SATISFYING
23 REQUIREMENTS FOR SECURITY VULNERABILITY ASSESS-
24 MENT AND SITE SECURITY PLAN.—

1 “(1) ACCEPTANCE OF PROGRAM.—In response
2 to a request by an owner or operator of a covered
3 chemical facility, the Secretary may accept an alter-
4 nate security program submitted by the owner or op-
5 erator of the facility as a component of the security
6 vulnerability assessment or site security plan re-
7 quired under this section, if the Secretary deter-
8 mines that such alternate security program, in com-
9 bination with other components of the security vul-
10 nerability assessment and site security plan sub-
11 mitted by the owner or operator of the facility—

12 “(A) meets the requirements of this title
13 and the regulations promulgated pursuant to
14 this title;

15 “(B) provides an equivalent level of secu-
16 rity to the level of security established pursuant
17 to the regulations promulgated pursuant to this
18 title; and

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

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

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

4 “(B) to approve or disapprove each such
5 assessment or plan on an individual basis ac-
6 cording to the deadlines established under sub-
7 section (a).

8 “(3) COVERED FACILITY’S OBLIGATIONS UNAF-
9 FECTED.—Nothing in this subsection shall relieve
10 any covered chemical facility of the obligation and
11 responsibility to comply with all of the requirements
12 of this title.

13 “(4) PERSONNEL SURETY ALTERNATE SECUR-
14 ITY PROGRAM.—In response to an application from
15 a non-profit, personnel surety accrediting organiza-
16 tion acting on behalf of, and with written authoriza-
17 tion from, the owner or operator of a covered chem-
18 ical facility, the Secretary may accept a personnel
19 surety alternate security program that meets the re-
20 quirements of section 2115 and provides for a back-
21 ground check process that is—

22 “(A) expedited, affordable, reliable, and ac-
23 curate;

24 “(B) fully protective of the rights of cov-
25 ered individuals through procedures that are

1 consistent with the privacy protections available
2 under the Fair Credit Reporting Act (15 U.S.C.
3 1681 et seq.); and

4 “(C) a single background check consistent
5 with a risk-based tiered program.

6 “(f) OTHER AUTHORITIES.—

7 “(1) REGULATION OF MARITIME FACILITIES.—

8 “(A) RISK-BASED TIERING.—Notwith-
9 standing any other provision of law, the owner
10 or operator of a chemical facility required to
11 submit a facility security plan under section
12 70103(c) of title 46, United States Code, shall
13 be required to submit information to the Sec-
14 retary necessary to determine whether to des-
15 ignate such a facility as a covered chemical fa-
16 cility and to assign the facility to a risk-based
17 tier under section 2102 of this title.

18 “(B) ADDITIONAL MEASURES.—In the case
19 of a facility designated as a covered chemical
20 facility under this title for which a facility secu-
21 rity plan is required to be submitted under sec-
22 tion 70103(c) of title 46, United States Code,
23 the Commandant of the Coast Guard, after con-
24 sultation with the Secretary, shall require the
25 owner or operator of such facility to update the

1 vulnerability assessments and facility security
2 plans required under that section, if necessary,
3 to ensure an equivalent level of security for sub-
4 stances of concern, including the requirements
5 under section 2111, in the same manner as
6 other covered chemical facilities in this title.

7 “(C) PERSONNEL SURETY.—

8 “(i) EXCEPTION.—A facility des-
9 ignated as a covered chemical facility
10 under this title that has had its facility se-
11 curity plan approved under section
12 70103(c) of title 46, United States Code,
13 shall not be required to update or amend
14 such plan in order to meet the require-
15 ments of section 2115 of this title.

16 “(ii) EQUIVALENT ACCESS.—An indi-
17 vidual described in section 2115(a)(1)(B)
18 who has been granted access to restricted
19 areas or critical assets by the owner or op-
20 erator of a facility for which a security
21 plan is required to be submitted under sec-
22 tion 70103(c) of title 46, United States
23 Code, may be considered by that owner or
24 operator to have satisfied the requirement
25 for passing a security background check

1 otherwise required under section 2115 for
2 purposes of granting the individual access
3 to restricted areas or critical assets of a
4 covered chemical facility that is owned or
5 operated by the same owner or operator.

6 “(D) INFORMATION SHARING AND PRO-
7 TECTION.—Notwithstanding section 70103(d)
8 of title 46, United States Code, the Com-
9 mandant of the Coast Guard, after consultation
10 with the Secretary, shall apply the information
11 sharing and protection requirements in section
12 2110 of this title to a facility described in sub-
13 paragraph (B).

14 “(E) ENFORCEMENT.—The Secretary shall
15 establish, by rulemaking, procedures to ensure
16 that an owner or operator of a covered chemical
17 facility required to update the vulnerability as-
18 sessment and facility security plan for the facil-
19 ity under subparagraph (B) is in compliance
20 with the requirements of this title.

21 “(F) FORMAL AGREEMENT.—The Sec-
22 retary shall—

23 “(i) require the Office of Infrastruc-
24 ture Protection and the Coast Guard to
25 enter into a formal agreement detailing

1 their respective roles and responsibilities in
2 carrying out the requirements of this title,
3 which shall ensure that the enforcement
4 and compliance requirements under this
5 title and section 70103 of title 46, United
6 States Code, are not conflicting or dupli-
7 cative; and

8 “(ii) designate the agency responsible
9 for enforcing the requirements of this title
10 with respect to covered chemical facilities
11 for which facility security plans are re-
12 quired to be submitted under section
13 70103(c) of title 46, United States Code,
14 consistent with the requirements of sub-
15 paragraphs (B) and (D).

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

24 “(g) ROLE OF EMPLOYEES.—

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

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

14 “(A) include an identification and discus-
15 sion of substances of concern;

16 “(B) include a discussion of possible con-
17 sequences of a chemical facility terrorist inci-
18 dent;

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

22 “(D) include a review of information pro-
23 tection requirements;

24 “(E) include a discussion of physical and
25 cyber security equipment, systems, and methods

1 used to achieve chemical security performance
2 standards;

3 “(F) allow training with other relevant
4 participants, including Federal, State, local,
5 and tribal authorities, and first responders,
6 where appropriate;

7 “(G) use existing national voluntary con-
8 sensus standards, chosen jointly with employee
9 representatives, if any;

10 “(H) allow instruction through government
11 training programs, chemical facilities, academic
12 institutions, nonprofit organizations, industry
13 and private organizations, employee organiza-
14 tions, and other relevant entities that provide
15 such training;

16 “(I) use multiple training media and meth-
17 ods; and

18 “(J) include a discussion of appropriate
19 emergency response procedures, including pro-
20 cedures to mitigate the effects of a chemical fa-
21 cility terrorist incident.

22 “(3) EQUIVALENT TRAINING.—During any
23 year, with respect to any covered individual with
24 roles or responsibilities under paragraph (1), an
25 owner or operator of a covered chemical facility may

1 satisfy any of the training requirements for such
2 covered individual under subparagraph (A), (B), (C),
3 (D), (E), or (J) of paragraph (2) through training
4 that such owner or operator certifies, in a manner
5 prescribed by the Secretary, is equivalent.

6 “(4) WORKER TRAINING GRANT PROGRAM.—

7 “(A) AUTHORITY.—The Secretary shall es-
8 tablish a grant program to award grants to or
9 enter into cooperative agreements with eligible
10 entities to provide for the training and edu-
11 cation of covered individuals with roles or re-
12 sponsibilities described in paragraph (1) and
13 first responders and emergency response pro-
14 viders who would respond to a chemical facility
15 terrorist incident.

16 “(B) ADMINISTRATION.—The Secretary
17 shall seek to enter into an agreement with the
18 Director of the National Institute for Environ-
19 mental Health Sciences, or with the head of an-
20 other Federal or State agency, to make and ad-
21 minister grants or cooperative agreements
22 under this paragraph.

23 “(C) USE OF FUNDS.—The recipient of
24 funds under this paragraph shall use such
25 funds to provide for the training and education

1 of covered individuals with roles or responsibil-
2 ities described in paragraph (1), first respond-
3 ers, and emergency response providers, includ-
4 ing—

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

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

12 “(D) ELIGIBLE ENTITIES.—For purposes
13 of this paragraph, an eligible entity is a non-
14 profit organization with demonstrated experi-
15 ence in implementing and operating successful
16 worker or first responder health and safety or
17 security training programs.

18 “(E) PRESUMPTION OF CONGRESS RELAT-
19 ING TO COMPETITIVE PROCEDURES.—

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

1 “(ii) REPORT TO CONGRESS.—If
2 grants are awarded under this paragraph
3 using procedures other than competitive
4 procedures, the Secretary shall submit to
5 Congress a report explaining why competi-
6 tive procedures were not used.

7 “(F) PROHIBITION ON EARMARKS.—None
8 of the funds appropriated to carry out this
9 paragraph may be used for a congressional ear-
10 mark as defined in clause 9d, of Rule XXI of
11 the rules of the House of Representatives of the
12 111th Congress.

13 “(h) STATE, REGIONAL, OR LOCAL GOVERNMENTAL
14 ENTITIES.—No covered chemical facility shall be required
15 under State, local, or tribal law to provide a vulnerability
16 assessment or site security plan described under this title
17 to any State, regional, local, or tribal government entity
18 solely by reason of the requirement under subsection (a)
19 that the covered chemical facility submit such an assess-
20 ment and plan to the Secretary.

21 **“SEC. 2104. SITE INSPECTIONS.**

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

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

3 “(b) INSPECTIONS AND VERIFICATIONS.—

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

8 “(2) REQUIREMENTS.—To ensure and evaluate
9 compliance with this title, including any regulations
10 or requirements adopted by the Secretary in further-
11 ance of the purposes of this title, in conducting an
12 inspection or verification under paragraph (1), the
13 Secretary shall have access to the owners, operators,
14 employees, and employee representatives, if any, of
15 a covered chemical facility.

16 “(c) UNANNOUNCED INSPECTIONS.—In addition to
17 any inspection conducted pursuant to subsection (b), the
18 Secretary shall require covered chemical facilities assigned
19 to tier 1 and tier 2 under section 2102(c)(1) to undergo
20 unannounced facility inspections. The inspections required
21 under this subsection shall be—

22 “(1) conducted without prior notice to the facil-
23 ity;

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

1 “(A) the ability of the chemical facility to
2 prevent a chemical facility terrorist incident
3 that the site security plan of the facility is in-
4 tended to prevent;

5 “(B) the ability of the chemical facility to
6 protect against security threats that are re-
7 quired to be addressed by the site security plan
8 of the facility; and

9 “(C) any weaknesses in the site security
10 plan of the chemical facility;

11 “(3) conducted so as not to affect the actual se-
12 curity, physical integrity, safety, or regular oper-
13 ations of the chemical facility or its employees while
14 the inspection is conducted; and

15 “(4) conducted—

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

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

20 “(d) CHEMICAL FACILITY INSPECTORS AUTHOR-
21 IZED.—During fiscal years 2011 and 2012, subject to the
22 availability of appropriations for such purpose, the Sec-
23 retary shall increase by not fewer than 100 the total num-
24 ber of chemical facility inspectors within the Department
25 to ensure compliance with this title.

1 “(e) CONFIDENTIAL COMMUNICATIONS.—The Sec-
2 retary shall offer non-supervisory employees the oppor-
3 tunity to confidentially communicate information relevant
4 to the employer’s compliance or non-compliance with this
5 title, including compliance or non-compliance with any
6 regulation or requirement adopted by the Secretary in fur-
7 therance of the purposes of this title. An employee rep-
8 resentative of each certified or recognized bargaining
9 agent at the covered chemical facility, if any, or, if none,
10 a non-supervisory employee, shall be given the opportunity
11 to accompany the Secretary during a physical inspection
12 of such covered chemical facility for the purpose of aiding
13 in such inspection, if representatives of the owner or oper-
14 ator of the covered chemical facility will also be accom-
15 panying the Secretary on such inspection.

16 **“SEC. 2105. RECORDS.**

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

22 “(1) reviewing or analyzing a security vulner-
23 ability assessment or site security plan submitted
24 under section 2103; or

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

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

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

8 “(a) RESPONSIBILITIES OF SECRETARY.—Upon the
9 receipt of information concerning a threat that is relevant
10 to a certain covered chemical facility, the Secretary shall
11 provide such information in a timely manner, to the max-
12 imum extent practicable under applicable authority and in
13 the interests of national security, to the owner, operator,
14 or security officer of that covered chemical facility, to a
15 representative of each recognized or certified bargaining
16 agent at the facility, if any, and to relevant State, local,
17 and tribal authorities, including the State Homeland Secu-
18 rity Advisor, if any.

19 “(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—
20 The Secretary shall require the owner or operator of a
21 covered chemical facility to provide to the Secretary in a
22 timely manner, information concerning a threat about any
23 significant security incident or threat to the covered chem-
24 ical facility or any intentional or unauthorized penetration

1 of the physical security or cyber security of the covered
2 chemical facility whether successful or unsuccessful.

3 **“SEC. 2107. ENFORCEMENT.**

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

6 “(1) DISAPPROVAL.—The Secretary shall dis-
7 approve a security vulnerability assessment or site
8 security plan submitted under this title if the Sec-
9 retary determines, in his or her discretion, that—

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

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

15 “(i) the plan or the implementation of
16 the plan is insufficient to address
17 vulnerabilities identified in a security vul-
18 nerability assessment, site inspection, or
19 unannounced inspection of the covered
20 chemical facility; or

21 “(ii) the plan fails to meet all applica-
22 ble chemical facility security performance
23 standards.

24 “(2) NOTIFICATION OF DISAPPROVAL.—If the
25 Secretary disapproves the security vulnerability as-

1 assessment or site security plan submitted by a cov-
2 ered chemical facility under this title or the imple-
3 mentation of a site security plan by such a chemical
4 facility, the Secretary shall provide the owner or op-
5 erator of the covered chemical facility a written noti-
6 fication of the disapproval not later than 14 days
7 after the date on which the Secretary disapproves
8 such assessment or plan, that—

9 “(A) includes a clear explanation of defi-
10 ciencies in the assessment, plan, or implementa-
11 tion of the plan; and

12 “(B) requires the owner or operator of the
13 covered chemical facility to revise the assess-
14 ment or plan to address any deficiencies and,
15 by such date as the Secretary determines is ap-
16 propriate, to submit to the Secretary the re-
17 vised assessment or plan.

18 “(b) REMEDIES.—

19 “(1) ORDER FOR COMPLIANCE.—Whenever the
20 Secretary determines that the owner or operator of
21 a covered chemical facility has violated or is in viola-
22 tion of any requirement of this title or has failed or
23 is failing to address any deficiencies in the assess-
24 ment, plan, or implementation of the plan by such

1 date as the Secretary determines to be appropriate,
2 the Secretary may—

3 “(A) after providing notice to the owner or
4 operator of the covered chemical facility and an
5 opportunity, pursuant to the regulations issued
6 under this title, for such owner or operator to
7 seek departmental review of the Secretary’s de-
8 termination, issue an order assessing an admin-
9 istrative penalty of not more than \$25,000 for
10 each day on which a past or current violation
11 occurs or a failure to comply continues, requir-
12 ing compliance immediately or within a speci-
13 fied time period, or both; or

14 “(B) in a civil action, obtain appropriate
15 equitable relief, a civil penalty of not more than
16 \$25,000 for each day on which a past or cur-
17 rent violation occurs or a failure to comply con-
18 tinues, or both.

19 “(2) ORDER TO CEASE OPERATIONS.—When-
20 ever the Secretary determines that the owner or op-
21 erator of a covered chemical facility continues to be
22 in noncompliance after an order for compliance is
23 issued under paragraph (1), the Secretary may issue
24 an order to the owner or operator to cease oper-

1 ations at the facility until compliance is achieved to
2 the satisfaction of the Secretary.

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

7 **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

8 “(a) ESTABLISHMENT.—The Secretary shall estab-
9 lish and provide information to the public regarding a
10 process by which any person may submit a report to the
11 Secretary regarding problems, deficiencies, or
12 vulnerabilities at a covered chemical facility associated
13 with the risk of a chemical facility terrorist incident.

14 “(b) CONFIDENTIALITY.—The Secretary shall keep
15 confidential the identity of a person who submits a report
16 under subsection (a), and any such report shall be treated
17 as protected information under section 2110 to the extent
18 that it does not consist of publicly available information.

19 “(c) ACKNOWLEDGMENT OF RECEIPT.—If a report
20 submitted under subsection (a) identifies the person sub-
21 mitting the report, the Secretary shall respond promptly
22 to such person to acknowledge receipt of the report.

23 “(d) STEPS TO ADDRESS PROBLEMS.—The Sec-
24 retary shall review and consider the information provided
25 in any report submitted under subsection (a) and shall,

1 as necessary, take appropriate steps under this title to ad-
2 dress any problem, deficiency, or vulnerability identified
3 in the report.

4 “(e) RETALIATION PROHIBITED.—

5 “(1) PROHIBITION.—No owner or operator of a
6 covered chemical facility, for-profit or not-for-profit
7 corporation, association, or any contractor, subcon-
8 tractor or agent thereof, may discharge any em-
9 ployee or otherwise discriminate against any em-
10 ployee with respect to the employee’s compensation,
11 terms, conditions, or other privileges of employment
12 because the employee (or any person acting pursu-
13 ant to a request of the employee)—

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

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

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

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

8 “(E) testified or is about to testify in any
9 such proceeding; or

10 “(F) assisted or participated or is about to
11 assist or participate in any manner in such a
12 proceeding or in any other manner in such a
13 proceeding or in any other action to carry out
14 the purposes of this title.

15 “(2) ENFORCEMENT ACTION.—Any employee
16 covered by this section who alleges discrimination by
17 an employer in violation of paragraph (1) may bring
18 an action governed by the rules and procedures,
19 legal burdens of proof, and remedies applicable
20 under subsections (d) through (h) of section 20109
21 of title 49, United States Code. A party may seek
22 district court review as set forth in subsection (d)(3)
23 of such section not later than 90 days after receiving
24 a written final determination by the Secretary of
25 Labor.

1 “(3) PROHIBITED PERSONNEL PRACTICES AF-
2 FECTING THE DEPARTMENT.—

3 “(A) IN GENERAL.—Notwithstanding any
4 other provision of law, any individual holding or
5 applying for a position within the Department
6 shall be covered by—

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

10 “(ii) any provision of law imple-
11 menting any of such paragraphs by pro-
12 viding any right or remedy available to an
13 employee or applicant for employment in
14 the civil service; and

15 “(iii) any rule or regulation prescribed
16 under any such paragraph.

17 “(B) RULE OF CONSTRUCTION.—Nothing
18 in this paragraph shall be construed to affect
19 any rights, apart from those referred to in sub-
20 paragraph (A), to which an individual described
21 in that subparagraph might otherwise be enti-
22 tled to under law.

23 **“SEC. 2109. FEDERAL PREEMPTION.**

24 “‘This title does not preclude or deny any right of any
25 State or political subdivision thereof to adopt or enforce

1 any regulation, requirement, or standard of performance
2 with respect to a covered chemical facility that is more
3 stringent than a regulation, requirement, or standard of
4 performance issued under this title, or otherwise impair
5 any right or jurisdiction of any State or political subdivi-
6 sion thereof with respect to covered chemical facilities
7 within that State or political subdivision thereof.

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

9 “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-
10 TECTED INFORMATION.—Protected information, as de-
11 scribed in subsection (g)—

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

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

17 “(b) INFORMATION SHARING.—

18 “(1) IN GENERAL.—The Secretary shall pre-
19 scribe such regulations, and may issue such orders,
20 as necessary to prohibit the unauthorized disclosure
21 of protected information, as described in subsection
22 (g).

23 “(2) SHARING OF PROTECTED INFORMATION.—
24 The regulations under paragraph (1) shall provide
25 standards for and facilitate the appropriate sharing

1 of protected information with and between Federal,
2 State, local, and tribal authorities, emergency re-
3 sponse providers, law enforcement officials, des-
4 ignated supervisory and nonsupervisory covered
5 chemical facility personnel with security, operational,
6 or fiduciary responsibility for the facility, and des-
7 ignated facility employee representatives, if any.
8 Such standards shall include procedures for the
9 sharing of all portions of a covered chemical facili-
10 ty's vulnerability assessment and site security plan
11 relating to the roles and responsibilities of covered
12 individuals under section 2103(g)(1) with a rep-
13 resentative of each certified or recognized bargaining
14 agent representing such covered individuals, if any,
15 or, if none, with at least one supervisory and at least
16 one non-supervisory employee with roles or respon-
17 sibilities under section 2103(g)(1).

18 “(3) PENALTIES.—Protected information, as
19 described in subsection (g), shall not be shared ex-
20 cept in accordance with the regulations under para-
21 graph (1). Whoever discloses protected information
22 in knowing violation of the regulations and orders
23 issued under paragraph (1) shall be fined under title
24 18, United States Code, imprisoned for not more
25 than one year, or both, and, in the case of a Federal

1 officeholder or employee, shall be removed from Fed-
2 eral office or employment.

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

10 “(d) OTHER OBLIGATIONS UNAFFECTED.—Except
11 as provided in section 2103(h), nothing in this section af-
12 fects any obligation of the owner or operator of a chemical
13 facility under any other law to submit or make available
14 information required by such other law to facility employ-
15 ees, employee organizations, or a Federal, State, tribal,
16 or local government.

17 “(e) SUBMISSION OF INFORMATION TO CONGRESS.—
18 Nothing in this title shall permit or authorize the with-
19 holding of information from Congress or any committee
20 or subcommittee thereof.

21 “(f) DISCLOSURE OF INDEPENDENTLY FURNISHED
22 INFORMATION.—Nothing in this title shall affect any au-
23 thority or obligation of a Federal, State, local, or tribal
24 government agency to protect or disclose any record or
25 information that the Federal, State, local, or tribal govern-

1 ment agency obtains from a chemical facility under any
2 other law.

3 “(g) PROTECTED INFORMATION.—

4 “(1) IN GENERAL.—For purposes of this title,
5 the term ‘protected information’ means any of the
6 following:

7 “(A) Security vulnerability assessments
8 and site security plans, including any assess-
9 ment required under section 2111.

10 “(B) Portions of the following documents,
11 records, orders, notices, or letters that the Sec-
12 retary has determined by regulation would be
13 detrimental to chemical facility security if dis-
14 closed and that are developed by the Secretary
15 or the owner or operator of a covered chemical
16 facility for the purposes of this title:

17 “(i) Documents directly related to the
18 Secretary’s review and approval or dis-
19 approval of vulnerability assessments and
20 site security plans under this title.

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

23 “(iii) Orders, notices, or letters re-
24 garding the compliance of a covered chem-

1 ical facility with the requirements of this
2 title.

3 “(iv) Information, documents, or
4 records required to be provided to or cre-
5 ated by the Secretary under subsection (b)
6 or (c) of section 2102.

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

12 “(C) Other information, documents, or
13 records developed exclusively for the purposes of
14 this title that the Secretary has determined by
15 regulation would, if disclosed, be detrimental to
16 chemical facility security.

17 “(2) EXCLUSIONS.—Notwithstanding para-
18 graph (1), the term ‘protected information’ does not
19 include—

20 “(A) information, other than a security
21 vulnerability assessment or site security plan,
22 that the Secretary has determined by regulation
23 to be—

24 “(i) appropriate to describe facility
25 compliance with the requirements of this

1 title and the Secretary's implementation of
2 such requirements; and

3 “(ii) not detrimental to chemical facil-
4 ity security if disclosed; or

5 “(B) information, whether or not also con-
6 tained in a security vulnerability assessment,
7 site security plan, or in a document, record,
8 order, notice, or letter, or portion thereof, de-
9 scribed in subparagraph (B) or (C) of para-
10 graph (1), that is obtained from another source
11 with respect to which the Secretary has not
12 made a determination under either such sub-
13 paragraph, including—

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

17 “(ii) information that a chemical facil-
18 ity has lawfully disclosed other than in a
19 submission to the Secretary pursuant to a
20 requirement of this title.

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

23 “(a) ASSESSMENT REQUIRED.—

24 “(1) ASSESSMENT.—The owner or operator of
25 a covered chemical facility shall include in the site

1 security plan conducted pursuant to section 2103,
2 an assessment of methods to reduce the con-
3 sequences of a terrorist attack on that chemical fa-
4 cility, including—

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

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

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

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

24 “(2) FEASIBLE.—For the purposes of this sec-
25 tion, the term ‘feasible’ means feasible with the use

1 of best technology, techniques, and other means that
2 the Secretary finds, after examination for efficacy
3 under field conditions and not solely under labora-
4 tory conditions, are available for use at the covered
5 chemical facility.

6 “(b) IMPLEMENTATION.—

7 “(1) IMPLEMENTATION.—

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

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

1 fects to human health resulting from a
2 chemical facility terrorist incident but—

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

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

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

1 homeland security, national security,
2 and the national economy from a re-
3 lease of a substance of concern at the
4 covered chemical facility; and

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

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

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

24 “(B) WRITTEN DETERMINATION.—A de-
25 termination by the Director of the Office of

1 Chemical Facility Security pursuant to sub-
2 paragraph (A) shall be made in writing and in-
3 clude the basis and reasons for such determina-
4 tion, including the Director’s analysis of the
5 covered chemical facility’s assessment of the
6 technical feasibility, costs, avoided costs (includ-
7 ing liabilities), personnel implications, savings,
8 and applicability of implementing each method
9 to reduce the consequences of a terrorist attack.

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

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

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

1 shall specify whether the owner or operator’s in-
2 ability to comply arises under clause (ii) or (iii)
3 of paragraph (1)(A), or both.

4 “(B) REVIEW.—Not later than 120 days
5 after receipt of an explanation submitted under
6 subparagraph (A), the Secretary, after con-
7 sulting with the owner or operator of the cov-
8 ered chemical facility who submitted such expla-
9 nation, as well as experts in the subjects of en-
10 vironmental health and safety, security, chem-
11 istry, design and engineering, process controls
12 and implementation, maintenance, production
13 and operations, chemical process safety, and oc-
14 cupational health, as appropriate, shall provide
15 to the owner or operator a written determina-
16 tion, in his or her discretion, of whether imple-
17 mentation shall be required pursuant to para-
18 graph (1). If the Secretary determines that im-
19 plementation is required, the Secretary shall
20 issue an order that establishes the basis for
21 such determination, including the findings of
22 the relevant experts, the specific methods se-
23 lected for implementation, and a schedule for
24 implementation of the methods at the facility.

25 “(c) AGRICULTURAL SECTOR.—

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

12 “(2) ASSESSMENT OF AGRICULTURAL IM-
13 PACTS.—Not later than 6 months after the date of
14 the enactment of this title, the Secretary shall trans-
15 mit an assessment of the potential impacts of com-
16 pliance with provisions of this section regarding the
17 assessment and, as appropriate, implementation, of
18 methods to reduce the consequences of a terrorist
19 attack on the agricultural sector to the Committee
20 on Energy and Commerce of the House of Rep-
21 resentatives, the Committee on Homeland Security
22 of the House of Representatives, the Committee on
23 Homeland Security and Governmental Affairs of the
24 Senate, the Committee on Agriculture of the House
25 of Representatives, and the Committee on Agri-

1 culture, Nutrition and Forestry of the Senate.
2 Such assessment shall be conducted by the Secretary
3 in consultation with other appropriate Federal agen-
4 cies and shall include the following:

5 “(A) Data on the scope of agricultural fa-
6 cilities covered by this title, including the num-
7 ber and type of manufacturers, retailers, aerial
8 commercial applicators and distributors of pes-
9 ticide and fertilizer required to assess methods
10 to reduce the consequences of a terrorist attack
11 under subsection (a) and the number and type
12 of manufacturers, retailers, aerial commercial
13 applicators and distributors of pesticide and
14 fertilizer assigned to tier 1 or tier 2 by the Sec-
15 retary because of the potential extent and
16 likelihood of death, injury, and serious adverse
17 effects to human health, the environment, crit-
18 ical infrastructure, public health, homeland se-
19 curity, national security, and the national econ-
20 omy from the release of a substance of concern
21 at the facility.

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

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

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

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

21 “(3) DEFINITIONS.—In this subsection:

22 “(A) FARM SUPPLIES MERCHANT WHOLE-
23 SALER.—The term ‘farm supplies merchant
24 wholesaler’ means a covered chemical facility
25 that is primarily engaged in the merchant

1 wholesale distribution of farm supplies, such as
2 animal feeds, fertilizers, agricultural chemicals,
3 pesticides, plant seeds, and plant bulbs.

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

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

9 “(ii) ranches and rangeland;

10 “(iii) poultry, dairy, and equine facili-
11 ties;

12 “(iv) turfgrass growers;

13 “(v) golf courses;

14 “(vi) nurseries;

15 “(vii) floricultural operations; and

16 “(viii) public and private parks.

17 “(d) SMALL COVERED CHEMICAL FACILITIES.—

18 “(1) GUIDANCE FOR SMALL COVERED CHEM-
19 ICAL FACILITIES.—The Secretary may provide guid-
20 ance and, as appropriate, tools, methodologies, or
21 computer software, to assist small covered chemical
22 facilities in complying with the requirements of this
23 section.

24 “(2) ASSESSMENT OF IMPACTS ON SMALL COV-
25 ERED CHEMICAL FACILITIES.—Not later than 6

1 months after the date of the enactment of this title,
2 the Secretary shall transmit to the Committee on
3 Energy and Commerce of the House of Representa-
4 tives, the Committee on Homeland Security of the
5 House of Representatives, and the Committee on
6 Homeland Security and Governmental Affairs of the
7 Senate an assessment of the potential effects on
8 small covered chemical facilities of compliance with
9 provisions of this section regarding the assessment
10 and, as appropriate, implementation, of methods to
11 reduce the consequences of a terrorist attack. Such
12 assessment shall include—

13 “(A) data on the scope of facilities covered
14 by this title, including the number and type of
15 small covered chemical facilities that are re-
16 quired to assess methods to reduce the con-
17 sequences of a terrorist attack under subsection
18 (a) and the number and type of small covered
19 chemical facilities assigned to tier 1 or tier 2
20 under section 2102(c)(1) by the Secretary be-
21 cause of the potential extent and likelihood of
22 death, injury, and serious adverse effects to
23 human health, the environment, critical infra-
24 structure, public health, homeland security, na-
25 tional security, and the national economy from

1 the release of a substance of concern at the fa-
2 cility; and

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

15 “(3) DEFINITION.—For purposes of this sub-
16 section, the term ‘small covered chemical facility’
17 means a covered chemical facility that has fewer
18 than 350 employees employed at the covered chem-
19 ical facility, and is not a branch or subsidiary of an-
20 other entity.

21 “(e) PROVISION OF INFORMATION ON ALTERNATIVE
22 APPROACHES.—

23 “(1) IN GENERAL.—The Secretary shall make
24 available information on the use and availability of

1 methods to reduce the consequences of a chemical
2 facility terrorist incident.

3 “(2) INFORMATION TO BE INCLUDED.—The in-
4 formation under paragraph (1) may include informa-
5 tion about—

6 “(A) general and specific types of such
7 methods;

8 “(B) combinations of chemical sources,
9 substances of concern, and hazardous processes
10 or conditions for which such methods could be
11 appropriate;

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

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

16 “(E) emerging technologies that could be
17 transferred from research models or prototypes
18 to practical applications;

19 “(F) the availability of technical assistance
20 and best practices; and

21 “(G) such other matters that the Secretary
22 determines are appropriate.

23 “(3) PUBLIC AVAILABILITY.—Information made
24 available under this subsection shall not identify any
25 specific chemical facility, violate the protection of in-

1 formation provisions under section 2110, or disclose
2 any proprietary information.

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

9 **“SEC. 2112. APPLICABILITY.**

10 “‘This title shall not apply to—

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

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

17 “(3) all or a specified portion of any chemical
18 facility that—

19 “(A) is subject to regulation by the Nu-
20 clear Regulatory Commission (hereinafter in
21 this paragraph referred to as the ‘Commission’)
22 or a State that has entered into an agreement
23 with the Commission under section 274 b. of
24 the Atomic Energy Act of 1954 (42 U.S.C.
25 2021 b.);

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

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

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

12 “(5) any treatment works, as defined in section
13 212 of the Federal Water Pollution Control Act (33
14 U.S.C. 1292).

15 **“SEC. 2113. SAVINGS CLAUSE.**

16 “(a) IN GENERAL.—Nothing in this title shall affect
17 or modify in any way any obligation or liability of any
18 person under any other Federal law, including section 112
19 of the Clean Air Act (42 U.S.C. 7412), the Federal Water
20 Pollution Control Act (33 U.S.C. 1251 et seq.), the Re-
21 source Conservation and Recovery Act of 1976 (42 U.S.C.
22 6901 et seq.), the National Environmental Policy Act of
23 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety
24 and Health Act (29 U.S.C. 651 et seq.), the National
25 Labor Relations Act (29 U.S.C. 151 et seq.), the Emer-

1 gency Planning and Community Right to Know Act of
2 1986 (42 U.S.C. 11001 et seq.), the Safe Drinking Water
3 Act (42 U.S.C. 300f et seq.), the Maritime Transportation
4 Security Act of 2002 (Public Law 107–295), the Com-
5 prehensive Environmental Response, Compensation, and
6 Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Toxic
7 Substances Control Act (15 U.S.C. 2601 et seq.), and the
8 Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

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

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

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

18 “(a) IN GENERAL.—There is established in the De-
19 partment an Office of Chemical Facility Security, headed
20 by a Director, who shall be a member of the Senior Execu-
21 tive Service in accordance with subchapter VI of chapter
22 53 of title 5, United States Code, under section 5382 of
23 that title, and who shall be responsible for carrying out
24 the responsibilities of the Secretary under this title.

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

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

23 “(d) OUTREACH SUPPORT.—

24 “(1) POINT OF CONTACT.—The Secretary shall
25 designate a point of contact for the Administrator of

1 the Environmental Protection Agency, and the head
2 of any other agency designated by the Secretary,
3 with respect to the requirements of this title.

4 “(2) OUTREACH.—The Secretary shall, as ap-
5 propriate, and in accordance with this title, inform
6 State emergency response commissions appointed
7 pursuant to section 301(a) of the Emergency Plan-
8 ning and Community Right-To-Know Act of 1986
9 (42 U.S.C. 11001) and local emergency planning
10 committees appointed pursuant to section 301(e) of
11 such Act, and any other entity designated by the
12 Secretary, of the findings of the Office of Chemical
13 Facility Security so that such commissions and com-
14 mittees may update emergency planning and train-
15 ing procedures.

16 **“SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED**
17 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
18 **TIES.**

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

20 “(1) IN GENERAL.—

21 “(A) REQUIREMENT.—The Secretary shall
22 issue regulations to require covered chemical fa-
23 cilities to establish personnel surety for individ-
24 uals described in subparagraph (B) by con-
25 ducting appropriate security background checks

1 and ensuring appropriate credentials for
2 unescorted visitors and chemical facility per-
3 sonnel, including permanent and part-time per-
4 sonnel, temporary personnel, and contract per-
5 sonnel, including—

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

8 “(ii) measures designed to check
9 criminal history;

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

12 “(iv) measures designed to identify
13 people with terrorist ties.

14 “(B) INDIVIDUALS DESCRIBED.—For pur-
15 poses of subparagraph (A), an individual de-
16 scribed in this subparagraph is—

17 “(i) a covered individual who has
18 unescorted access to restricted areas or
19 critical assets or who is provided with a
20 copy of a security vulnerability assessment
21 or site security plan;

22 “(ii) a person associated with a cov-
23 ered chemical facility, including any des-
24 ignated employee representative, who is

1 provided with a copy of a security vulner-
2 ability assessment or site security plan; or

3 “(iii) a person who is determined by
4 the Secretary to require a security back-
5 ground check based on chemical facility se-
6 curity performance standards.

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

9 “(A) the scope of the security background
10 checks, including the types of disqualifying of-
11 fenses and the time period covered for each per-
12 son subject to a security background check
13 under paragraph (1);

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

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

19 “(D) a redress process for an adversely-af-
20 fected person consistent with subsections (b)
21 and (c); and

22 “(E) a prohibition on an owner or operator
23 of a covered chemical facility misrepresenting to
24 an employee or other relevant person, including
25 an arbiter involved in a labor arbitration, the

1 scope, application, or meaning of any rules, reg-
2 ulations, directives, or guidance issued by the
3 Secretary related to security background check
4 requirements for covered individuals when con-
5 ducting a security background check.

6 “(b) MISREPRESENTATION OF ADVERSE EMPLOY-
7 MENT DECISIONS.—The regulations required by sub-
8 section (a)(1) shall set forth that it shall be a misrepresen-
9 tation under subsection (a)(2)(E) to attribute an adverse
10 employment decision, including removal or suspension of
11 the employee, to such regulations unless the owner or op-
12 erator finds, after opportunity for appropriate redress
13 under the processes provided under subsection (c)(1) and
14 (c)(2), that the person subject to such adverse employment
15 decision—

16 “(1) has been convicted of, has been found not
17 guilty of by reason of insanity, or is under want,
18 warrant, or indictment for, a permanent disquali-
19 fying criminal offense listed in part 1572 of title 49,
20 Code of Federal Regulations;

21 “(2) was convicted of, or found not guilty of by
22 reason of insanity, an interim disqualifying criminal
23 offense listed in part 1572 of title 49, Code of Fed-
24 eral Regulations, within 7 years of the date on which

1 the covered chemical facility performs the security
2 background check;

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

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

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

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

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

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

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

22 “(4) establish a reconsideration process de-
23 scribed in subsection (d) for a person subject to an
24 adverse employment decision that was attributed by

1 an owner or operator to the regulations required by
2 subsection (a)(1);

3 “(5) have the authority to order an appropriate
4 remedy, including reinstatement of the person sub-
5 ject to a security background check under subsection
6 (a)(1), if the Secretary determines that the adverse
7 employment decision was made in violation of the
8 regulations required under subsection (a)(1) or as a
9 result of an erroneous determination by the Sec-
10 retary under subsection (b)(4);

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

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

21 “(d) RECONSIDERATION PROCESS.—

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

24 “(A) require the Secretary to determine,
25 within 30 days after receiving a petition sub-

1 mitted by a person subject to an adverse em-
2 ployment decision that was attributed by an
3 owner or operator to the regulations required
4 by subsection (a)(1), whether such person poses
5 a security risk to the covered chemical facility;
6 and

7 “(B) include procedures consistent with
8 section 70105(e) of title 46, United States
9 Code, including all rights to hearings before an
10 administrative law judge, scope of review, and
11 a review of an unclassified summary of classi-
12 fied evidence equivalent to the summary pro-
13 vided in part 1515 of title 49, Code of Federal
14 Regulations.

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

18 “(A) give consideration to the cir-
19 cumstance of any disqualifying act or offense,
20 restitution made by the person, Federal and
21 State mitigation remedies, and other factors
22 from which it may be concluded that the person
23 does not pose a security risk to the covered
24 chemical facility; and

1 “(B) provide his or her determination as to
2 whether such person poses a security risk to the
3 covered chemical facility to the petitioner and to
4 the owner or operator of the covered chemical
5 facility.

6 “(3) OWNER OR OPERATOR RECONSIDER-
7 ATION.—If the Secretary determines pursuant to
8 paragraph (1)(A) that the person does not pose a se-
9 curity risk to the covered chemical facility, it shall
10 thereafter constitute a prohibited misrepresentation
11 for the owner or operator of the covered chemical fa-
12 cility to continue to attribute the adverse employ-
13 ment decision to the regulations under subsection
14 (a)(1).

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

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

21 “(2) Such information may not be accessed by
22 employees of the facility except for such employees
23 who are directly involved with collecting the informa-
24 tion or conducting or evaluating security background
25 checks.

1 “(3) Such information shall be maintained con-
2 fidentially by the facility and the Secretary and may
3 be used only for making determinations under this
4 section.

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

8 “(f) SAVINGS CLAUSE.—

9 “(1) RIGHTS AND RESPONSIBILITIES.—Nothing
10 in this section shall be construed to abridge any
11 right or responsibility of a person subject to a secu-
12 rity background check under subsection (a)(1) or an
13 owner or operator of a covered chemical facility
14 under any other Federal, State, local, or tribal law
15 or collective bargaining agreement.

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

21 “(g) PREEMPTION.—Nothing in this section shall be
22 construed to preempt, alter, or affect a Federal, State,
23 local, or tribal law that requires criminal history back-
24 ground checks, checks on the authorization of an indi-
25 vidual to work in the United States, or other background

1 checks of persons subject to security background checks
2 under subsection (a)(1).

3 “(h) DEFINITION OF SECURITY BACKGROUND
4 CHECK.—The term ‘security background check’ means a
5 review at no cost to any person subject to a security back-
6 ground check under subsection (a)(1) of the following for
7 the purpose of identifying individuals who may pose a
8 threat to chemical facility security, to national security,
9 or of terrorism:

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

12 “(2) Relevant criminal history databases.

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

18 “(4) The consolidated terrorist watchlist.

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

21 “(i) DEPARTMENT-CONDUCTED SECURITY BACK-
22 GROUND CHECK.—The regulations under subsection
23 (a)(1) shall set forth a process by which the Secretary,
24 on an ongoing basis, shall determine whether alternate se-
25 curity background checks conducted by the Secretary are

1 sufficient to meet the requirements of this section such
2 that no additional security background check under this
3 section is required for an individual for whom such a
4 qualifying alternate security background check was con-
5 ducted. The Secretary may require the owner or operator
6 of a covered chemical facility to which the individual will
7 have unescorted access to sensitive or restricted areas to
8 submit identifying information about the individual and
9 the alternate security background check conducted for
10 that individual to the Secretary in order to enable the Sec-
11 retary to verify the validity of the alternate security back-
12 ground check. Such regulations shall provide that no secu-
13 rity background check under this section is required for
14 an individual holding a transportation security card issued
15 under section 70105 of title 46, United States Code.

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

1 **“SEC. 2116. CITIZEN ENFORCEMENT.**

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

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

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

15 “(b) COURT OF JURISDICTION.—

16 “(1) IN GENERAL.—Any action under sub-
17 section (a)(1) shall be brought in the district court
18 for the district in which the alleged violation oc-
19 curred. Any action brought under subsection (a)(2)
20 may be brought in the district court for the district
21 in which the alleged violation occurred or in the
22 United States District Court for the District of Co-
23 lumbia.

24 “(2) RELIEF.—The district court shall have ju-
25 risdiction, without regard to the amount in con-
26 troversy or the citizenship of the parties to enforce

1 the order referred to in subsection (a)(1), to order
2 such governmental entity to take such action as may
3 be necessary, or both, or, in an action commenced
4 under subsection (a)(2), to order the Secretary to
5 perform the non-discretionary act or duty, and to
6 order any civil penalties, as appropriate, under sec-
7 tion 2107.

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

12 “(1) the Secretary; and

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

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

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

22 “(f) COSTS; BOND.—The court, in issuing any final
23 order in any action brought pursuant to this section, may
24 award costs of litigation (including reasonable attorney
25 and expert witness fees) to the prevailing or substantially

1 prevailing party, whenever the court determines such an
2 award is appropriate. The court may, if a temporary re-
3 straining order or preliminary injunction is sought, require
4 the filing of a bond or equivalent security in accordance
5 with the Federal Rules of Civil Procedure.

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

9 **“SEC. 2117. CITIZEN PETITIONS.**

10 “(a) REGULATIONS.—The Secretary shall issue regu-
11 lations to establish a citizen petition process for petitions
12 described in subsection (b). Such regulations shall in-
13 clude—

14 “(1) the format for such petitions;

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

16 “(3) the procedure for response to such peti-
17 tions, including timelines;

18 “(4) the procedure for referral to and review by
19 the Office of the Inspector General of the Depart-
20 ment without deference to the Secretary’s deter-
21 mination with respect to the petition; and

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

1 “(b) PETITIONS.—The regulations issued pursuant to
2 subsection (a) shall allow any person to file a petition with
3 the Secretary—

4 “(1) identifying any person (including the
5 United States and any other governmental instru-
6 mentality or agency, to the extent permitted by the
7 eleventh amendment to the Constitution) alleged to
8 be in violation of any standard, regulation, condi-
9 tion, requirement, prohibition, plan, or order that
10 has become effective under this title; and

11 “(2) describing the alleged violation of any
12 standard, regulation, condition, requirement, prohi-
13 bition, plan, or order that has become effective
14 under this title by that person.

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

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

20 “(2) investigate all allegations contained in ac-
21 cepted petitions;

22 “(3) determine whether enforcement action will
23 be taken concerning the alleged violation or viola-
24 tions;

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

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

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

10 “(7) with respect to any petition for which the
11 Secretary has not made a timely response or the
12 Secretary’s response is unsatisfactory to the peti-
13 tioner, provide the petitioner with the opportunity to
14 request—

15 “(A) a review of the full record by the In-
16 spector General of the Department, including a
17 review of protected information; and

18 “(B) the formulation of recommendations
19 by the Inspector General and submittal of such
20 recommendations to the Secretary and, to the
21 extent permitted under section 2110, to the pe-
22 titioner; and

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

1 **“SEC. 2118. NOTIFICATION SYSTEM TO ADDRESS PUBLIC**
2 **CONCERNS.**

3 “(a) **ESTABLISHMENT.**—The Secretary shall estab-
4 lish a notification system, which shall provide any indi-
5 vidual the ability to report a suspected security deficiency
6 or suspected non-compliance with this title. Such notifica-
7 tion system shall provide for the ability to report the sus-
8 pected security deficiency or non-compliance via telephonic
9 and Internet-based means.

10 “(b) **ACKNOWLEDGMENT.**—When the Secretary re-
11 ceives a report through the notification system established
12 under subsection (a), the Secretary shall respond to such
13 report in a timely manner, but in no case shall the Sec-
14 retary respond to such a report later than 30 days after
15 receipt of the report.

16 “(c) **STEPS TO ADDRESS PROBLEMS.**—The Secretary
17 shall review each report received through the notification
18 system established under subsection (a) and shall, as nec-
19 essary, take appropriate enforcement action under section
20 2107.

21 “(d) **FEEDBACK REQUIRED.**—Upon request, the Sec-
22 retary shall provide the individual who reported the sus-
23 pected security deficiency or non-compliance through the
24 notification system established under subsection (a) a
25 written response that includes the Secretary’s findings
26 with respect to the report submitted by the individual and

1 what, if any, compliance action was taken in response to
2 such report.

3 “(e) INSPECTOR GENERAL REPORT REQUIRED.—
4 The Inspector General of the Department shall submit to
5 the Committee on Homeland Security and the Committee
6 on Energy and Commerce of the House of Representatives
7 and the Committee on Homeland Security and Govern-
8 mental Affairs of the Senate an annual report on the re-
9 ports received under the notification system established
10 under subsection (a) and the Secretary’s disposition of
11 such reports.

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

13 “(a) ANNUAL REPORT.—Not later than one year
14 after the date of the enactment of this title, annually
15 thereafter for the next four years, and biennially there-
16 after, the Secretary shall submit to the Committee on
17 Homeland Security and the Committee on Energy and
18 Commerce of the House of Representatives and the Com-
19 mittee on Homeland Security and Governmental Affairs
20 of the Senate a report on progress in achieving compliance
21 with this title. Each such report shall include the fol-
22 lowing:

23 “(1) A qualitative discussion of how covered
24 chemical facilities, differentiated by tier, have re-

1 duced the risks of chemical facility terrorist inci-
2 dents at such facilities, including—

3 “(A) a generalized summary of measures
4 implemented by covered chemical facilities in
5 order to meet each risk-based chemical facility
6 performance standard established by this title,
7 and those that the facilities already had in
8 place—

9 “(i) in the case of the first report
10 under this section, before the issuance of
11 the final rule implementing the regulations
12 known as the ‘Chemical Facility Anti-Ter-
13 rorism Standards’, issued on April 9,
14 2007; and

15 “(ii) in the case of each subsequent
16 report, since the submittal of the most re-
17 cent report submitted under this section;
18 and

19 “(B) any other generalized summary the
20 Secretary deems appropriate to describe the
21 measures covered chemical facilities are imple-
22 menting to comply with the requirements of
23 this title.

24 “(2) A quantitative summary of how the cov-
25 ered chemical facilities, differentiated by tier, are

1 complying with the requirements of this title during
2 the period covered by the report and how the Sec-
3 retary is implementing and enforcing such require-
4 ments during such period, including—

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

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

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

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

17 “(E) the number of covered chemical facili-
18 ties without approved security vulnerability as-
19 sessments or site security plans;

20 “(F) the number of chemical facilities that
21 have been assigned to a different tier or are no
22 longer regulated by the Secretary due to imple-
23 mentation of a method to reduce the con-
24 sequences of a terrorist attack and a descrip-
25 tion of such implemented methods;

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

3 “(H) the administrative penalties assessed
4 by the Secretary for non-compliance with the
5 requirements of this title;

6 “(I) the civil penalties assessed by the
7 court for non-compliance with the requirements
8 of this title;

9 “(J) the number of terrorist watchlist
10 checks conducted by the Secretary in order to
11 comply with the requirements of this title, the
12 number of appeals conducted by the Secretary
13 pursuant to the processes described under para-
14 graphs (2), (3) and (4) of section 2115(c), ag-
15 gregate information regarding the time taken
16 for such appeals, aggregate information regard-
17 ing the manner in which such appeals were re-
18 solved, and, based on information provided to
19 the Secretary annually by each owner or oper-
20 ator of a covered chemical facility, the number
21 of persons subjected to adverse employment de-
22 cisions that were attributed by the owner or op-
23 erator to the regulations required by section
24 2115; and

1 “(K) any other regulatory data the Sec-
2 retary deems appropriate to describe facility
3 compliance with the requirements of this title
4 and the Secretary’s implementation of such re-
5 quirements.

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

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

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

11 “(1) \$325,000,000 for fiscal year 2011, of
12 which \$100,000,000 shall be made available to pro-
13 vide funding for methods to reduce the consequences
14 of a terrorist attack, of which up to \$3,000,000 shall
15 be made available for grants authorized under sec-
16 tion 2111(c)(1);

17 “(2) \$300,000,000 for fiscal year 2012, of
18 which \$75,000,000 shall be made available to pro-
19 vide funding for methods to reduce the consequences
20 of a terrorist attack, of which up to \$3,000,000 shall
21 be made available for grants authorized under sec-
22 tion 2111(c)(1); and

23 “(3) \$275,000,000 for fiscal year 2013, of
24 which \$50,000,000 shall be made available to pro-
25 vide funding for methods to reduce the consequences

1 of a terrorist attack, of which up to \$3,000,000 shall
 2 be made available for grants authorized under sec-
 3 tion 2111(c)(1).”.

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

“TITLE XXI—REGULATION OF SECURITY PRACTICES AT
 CHEMICAL FACILITIES

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

7 (c) CONFORMING REPEAL.—

8 (1) REPEAL.—The Department of Homeland
 9 Security Appropriations Act, 2007 (Public Law
 10 109–295) is amended by striking section 550.

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

14 (d) REGULATIONS.—

1 (1) DEADLINE.—The Secretary shall issue pro-
2 posed rules to carry out title XXI of the Homeland
3 Security Act of 2002, as added by subsection (a), by
4 not later than 6 months after the date of the enact-
5 ment of this Act, and shall issue final rules to carry
6 out such title by not later than 18 months after the
7 date of the enactment of this Act.

8 (2) CONSULTATION.—In developing and imple-
9 menting the rules required under paragraph (1), the
10 Secretary shall consult with the Administrator of the
11 Environmental Protection Agency, and other per-
12 sons, as appropriate, regarding—

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

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

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

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

21 (E) such other matters as the Secretary
22 determines necessary.

23 (3) SENSE OF CONGRESS REGARDING CFATS.—
24 It is the sense of Congress that the Secretary of
25 Homeland Security was granted statutory authority

1 under section 550 of the Department of Homeland
2 Security Appropriations Act (Public Law 109–295)
3 to regulate security practices at chemical facilities
4 until October 1, 2009. Pursuant to that section the
5 Secretary prescribed regulations known as the
6 Chemical Facility Anti-Terrorism Standards, or
7 “CFATS” (referred to in this section as “CFATS
8 regulations”).

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

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

18 (B) amend any of such regulations as may
19 be necessary to ensure that such regulations are
20 consistent with the requirements of this title
21 and the amendments made by this title; and

22 (C) continue using any tools developed for
23 purposes of such regulations, including the list
24 of substances of concern, usually referred to as
25 “Appendix A”, and the chemical security as-

1 assessment tool (which includes facility registra-
2 tion, a top-screen questionnaire, a security vul-
3 nerability assessment tool, a site security plan
4 template, and a chemical vulnerability informa-
5 tion repository).

6 (5) UPDATE OF FACILITY PLANS ASSESSMENTS
7 AND PLANS PREPARED UNDER CFATS.—The owner
8 or operator of a covered chemical facility, who, be-
9 fore the effective date of the final regulations issued
10 under title XXI of the Homeland Security Act of
11 2002, as added by subsection (a), submits a security
12 vulnerability assessment or site security plan under
13 the CFATS regulations, shall be required to update
14 or amend the facility’s security vulnerability assess-
15 ment and site security plan to reflect any additional
16 requirements of this title or the amendments made
17 by this title, according to a timeline established by
18 the Secretary.

19 (e) REVIEW OF DESIGNATION OF SODIUM
20 FLUOROACETATE AS A SUBSTANCE OF CONCERN.—The
21 Secretary of Homeland Security shall review the designa-
22 tion of sodium fluoroacetate as a substance of concern
23 pursuant to subsection (d) of section 2102 of the Home-
24 land Security Act of 2002, as added by subsection (a),
25 by the earlier of the following dates:

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

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

6 **TITLE II—DRINKING WATER** 7 **SECURITY**

8 **SEC. 201. SHORT TITLE.**

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

11 **SEC. 202. INTENTIONAL ACTS AFFECTING THE SECURITY** 12 **OF COVERED WATER SYSTEMS.**

13 (a) AMENDMENT OF SAFE DRINKING WATER ACT.—
14 Section 1433 of the Safe Drinking Water Act (42 U.S.C.
15 300i–2) is amended to read as follows:

16 **“SEC. 1433. INTENTIONAL ACTS.**

17 “(a) RISK-BASED PERFORMANCE STANDARDS; VUL-
18 NERABILITY ASSESSMENTS; SITE SECURITY PLANS;
19 EMERGENCY RESPONSE PLANS.—

20 “(1) IN GENERAL.—The Administrator shall
21 issue regulations—

22 “(A) establishing risk-based performance
23 standards for the security of covered water sys-
24 tems; and

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

3 “(i) to conduct a vulnerability assess-
4 ment or, if the system already has a vul-
5 nerability assessment, to revise the assess-
6 ment to be in accordance with this section,
7 and submit such assessment to the Admin-
8 istrator;

9 “(ii) to update and resubmit the vul-
10 nerability assessment not less than every 5
11 years and promptly after any change at
12 the system that could cause the reassign-
13 ment of the system to a different risk-
14 based tier under subsection (d);

15 “(iii) to develop, implement, and, as
16 appropriate, revise a site security plan not
17 less than every 5 years and promptly after
18 a revision to the vulnerability assessment
19 and submit such plan to the Adminis-
20 trator;

21 “(iv) to develop an emergency re-
22 sponse plan or, if the system has already
23 developed an emergency response plan, to
24 revise the plan to be in accordance with

1 this section, and revise the plan not less
2 than every 5 years thereafter; and

3 “(v) to provide annual training to em-
4 ployees and contractor employees of cov-
5 ered water systems on implementing site
6 security plans and emergency response
7 plans.

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

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

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

16 “(3) CONSULTATION WITH STATE AUTHORI-
17 TIES.—In developing and carrying out the regula-
18 tions under paragraph (1), the Administrator shall
19 consult with States exercising primary enforcement
20 responsibility for public water systems.

21 “(4) CONSULTATION WITH OTHER PERSONS.—
22 In developing and carrying out the regulations under
23 paragraph (1), the Administrator shall consult with
24 the Secretary of Homeland Security, and, as appro-
25 priate, other persons regarding—

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

3 “(B) designation of substances of concern;

4 “(C) development of risk-based perform-
5 ance standards;

6 “(D) establishment of risk-based tiers and
7 process for the assignment of covered water
8 systems to risk-based tiers;

9 “(E) process for the development and eval-
10 uation of vulnerability assessments, site security
11 plans, and emergency response plans;

12 “(F) treatment of protected information;
13 and

14 “(G) such other matters as the Adminis-
15 trator determines necessary.

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

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

21 “(B) at the time any substance is des-
22 ignated pursuant to subparagraph (A), shall es-
23 tablish by rule a threshold quantity for the re-
24 lease or theft of the substance, taking into ac-
25 count the toxicity, reactivity, volatility,

1 dispersability, combustibility, and flammability
2 of the substance and the amount of the sub-
3 stance that, as a result of a release, is known
4 to cause or may be reasonably anticipated to
5 cause death, injury, or serious adverse effects to
6 human health or the environment; and

7 “(C) in making such a designation, shall
8 take into account appendix A to part 27 of title
9 6, Code of Federal Regulations (or any suc-
10 cessor regulations).

11 “(6) BASELINE INFORMATION.—The Adminis-
12 trator, after consultation with appropriate depart-
13 ments and agencies of the Federal Government and
14 with State, local, and tribal governments, shall, for
15 purposes of facilitating compliance with the require-
16 ments of this section, promptly after the effective
17 date of the regulations under subsection (a)(1) and
18 as appropriate thereafter, provide baseline informa-
19 tion to covered water systems regarding which kinds
20 of intentional acts are the probable threats to—

21 “(A) substantially disrupt the ability of the
22 system to provide a safe and reliable supply of
23 drinking water;

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

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

3 “(b) RISK-BASED PERFORMANCE STANDARDS.—The
4 regulations under subsection (a)(1) shall set forth risk-
5 based performance standards for site security plans re-
6 quired by this section. The standards shall be separate
7 and, as appropriate, increasingly stringent based on the
8 level of risk associated with the covered water system’s
9 risk-based tier assignment under subsection (d). In devel-
10 oping such standards, the Administrator shall take into
11 account section 27.230 of title 6, Code of Federal Regula-
12 tions (or any successor regulations).

13 “(c) VULNERABILITY ASSESSMENT.—The regula-
14 tions under subsection (a)(1) shall require each covered
15 water system to assess the system’s vulnerability to a
16 range of intentional acts, including an intentional act that
17 results in a release of a substance of concern that is known
18 to cause or may be reasonably anticipated to cause death,
19 injury, or serious adverse effects to human health or the
20 environment. At a minimum, the vulnerability assessment
21 shall include a review of—

22 “(1) pipes and constructed conveyances;

23 “(2) physical barriers;

1 “(3) water collection, pretreatment, treatment,
2 storage, and distribution facilities, including fire hy-
3 drants;

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

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

8 “(6) the operation and maintenance of the cov-
9 ered water system; and

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

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

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

18 “(A) SUBMISSION OF INFORMATION.—The
19 Administrator may require a covered water sys-
20 tem to submit information in order to deter-
21 mine the appropriate risk-based tier for the cov-
22 ered water system.

23 “(B) FACTORS TO CONSIDER.—The Ad-
24 ministrators shall assign (and reassign when ap-
25 propriate) each covered water system to one of

1 the risk-based tiers established pursuant to this
2 subsection. In assigning a covered water system
3 to a risk-based tier, the Administrator shall
4 consider the potential consequences (such as
5 death, injury, or serious adverse effects to
6 human health, the environment, critical infra-
7 structure, national security, and the national
8 economy) from—

9 “(i) an intentional act to cause a re-
10 lease, including a worst-case release, of a
11 substance of concern at the covered water
12 system;

13 “(ii) an intentional act to introduce a
14 contaminant into the drinking water sup-
15 ply or disrupt the safe and reliable supply
16 of drinking water; and

17 “(iii) an intentional act to steal, mis-
18 appropriate, or misuse substances of con-
19 cern.

20 “(2) EXPLANATION FOR RISK-BASED TIER AS-
21 SIGNMENT.—The Administrator shall provide each
22 covered water system assigned to a risk-based tier
23 with the reasons for the tier assignment and whether
24 such system is required to submit an assessment
25 under subsection (g)(2).

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

7 “(1) address the security risks identified in its
8 vulnerability assessment; and

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

11 “(f) ROLE OF EMPLOYEES.—

12 “(1) DESCRIPTION OF ROLE.—Site security
13 plans and emergency response plans required under
14 this section shall describe the appropriate roles or
15 responsibilities that employees and contractor em-
16 ployees are expected to perform to deter or respond
17 to the intentional acts described in subsection
18 (d)(1)(B).

19 “(2) TRAINING FOR EMPLOYEES.—Each cov-
20 ered water system shall annually provide employees
21 and contractor employees with roles or responsibil-
22 ities described in paragraph (1) with a minimum of
23 8 hours of training on carrying out those roles or re-
24 sponsibilities.

1 “(3) EMPLOYEE PARTICIPATION.—In devel-
2 oping, revising, or updating a vulnerability assess-
3 ment, site security plan, and emergency response
4 plan required under this section, a covered water
5 system shall include—

6 “(A) at least one supervisory and at least
7 one non-supervisory employee of the covered
8 water system; and

9 “(B) at least one representative of each
10 certified or recognized bargaining agent rep-
11 resenting facility employees or contractor em-
12 ployees with roles or responsibilities described
13 in paragraph (1), if any, in a collective bar-
14 gaining relationship with the private or public
15 owner or operator of the system or with a con-
16 tractor to that system.

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

19 “(1) DEFINITION.—In this section, the term
20 ‘method to reduce the consequences of a chemical re-
21 lease from an intentional act’ means a measure at
22 a covered water system that reduces or eliminates
23 the potential consequences of a release of a sub-
24 stance of concern from an intentional act such as—

1 “(A) the elimination or reduction in the
2 amount of a substance of concern possessed or
3 planned to be possessed by a covered water sys-
4 tem through the use of alternate substances,
5 formulations, or processes;

6 “(B) the modification of pressures, tem-
7 peratures, or concentrations of a substance of
8 concern; and

9 “(C) the reduction or elimination of onsite
10 handling of a substance of concern through im-
11 provement of inventory control or chemical use
12 efficiency.

13 “(2) ASSESSMENT.—For each covered water
14 system that possesses or plans to possess a sub-
15 stance of concern in excess of the release threshold
16 quantity set by the Administrator under subsection
17 (a)(5), the regulations under subsection (a)(1) shall
18 require the covered water system to include in its
19 site security plan an assessment of methods to re-
20 duce the consequences of a chemical release from an
21 intentional act at the covered water system. The cov-
22 ered water system shall provide such assessment to
23 the Administrator and the State exercising primary
24 enforcement responsibility for the covered water sys-
25 tem, if any. The regulations under subsection (a)(1)

1 shall require the system, in preparing the assess-
2 ment, to consider factors appropriate to the system’s
3 security, public health, or environmental mission,
4 and include—

5 “(A) a description of the methods to re-
6 duce the consequences of a chemical release
7 from an intentional act;

8 “(B) how each described method to reduce
9 the consequences of a chemical release from an
10 intentional act could, if applied, reduce the po-
11 tential extent of death, injury, or serious ad-
12 verse effects to human health resulting from a
13 chemical release;

14 “(C) how each described method to reduce
15 the consequences of a chemical release from an
16 intentional act could, if applied, affect the pres-
17 ence of contaminants in treated water, human
18 health, or the environment;

19 “(D) whether each described method to re-
20 duce the consequences of a chemical release
21 from an intentional act at the covered water
22 system is feasible, as defined in section
23 1412(b)(4)(D), but not including cost calcula-
24 tions under subparagraph (E);

1 “(E) the costs (including capital and oper-
2 ational costs) and avoided costs (including sav-
3 ings and liabilities) associated with applying
4 each described method to reduce the con-
5 sequences of a chemical release from an inten-
6 tional act at the covered water system;

7 “(F) any other relevant information that
8 the covered water system relied on in con-
9 ducting the assessment; and

10 “(G) a statement of whether the covered
11 water system has implemented or plans to im-
12 plement one or more methods to reduce the
13 consequences of a chemical release from an in-
14 tentional act, a description of any such meth-
15 ods, and, in the case of a covered water system
16 described in paragraph (3)(A), an explanation
17 of the reasons for any decision not to imple-
18 ment any such methods.

19 “(3) REQUIRED METHODS.—

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

22 “(i) that is assigned to one of the two
23 highest risk-based tiers under subsection
24 (d); and

1 “(ii) that possesses or plans to possess
2 a substance of concern in excess of the re-
3 lease threshold quantity set by the Admin-
4 istrator under subsection (a)(5).

5 “(B) HIGHEST-RISK SYSTEMS.—If, on the
6 basis of its assessment under paragraph (2), a
7 covered water system described in subparagraph
8 (A) decides not to implement methods to reduce
9 the consequences of a chemical release from an
10 intentional act, the State exercising primary en-
11 forcement responsibility for the covered water
12 system, if the system is located in such a State,
13 or the Administrator, if the covered water sys-
14 tem is not located in such a State, shall, in ac-
15 cordance with a timeline set by the Adminis-
16 trator—

17 “(i) determine whether to require the
18 covered water system to implement the
19 methods; and

20 “(ii) for States exercising primary en-
21 forcement responsibility, report such deter-
22 mination to the Administrator.

23 “(C) STATE OR ADMINISTRATOR’S CONSID-
24 ERATIONS.—Before requiring, pursuant to sub-
25 paragraph (B), the implementation of a method

1 to reduce the consequences of a chemical re-
2 lease from an intentional act, the State exer-
3 cising primary enforcement responsibility for
4 the covered water system, if the system is lo-
5 cated in such a State, or the Administrator, if
6 the covered water system is not located in such
7 a State, shall consider factors appropriate to
8 the security, public health, and environmental
9 missions of covered water systems, including an
10 examination of whether the method—

11 “(i) would significantly reduce the
12 risk of death, injury, or serious adverse ef-
13 fects to human health resulting directly
14 from a chemical release from an inten-
15 tional act at the covered water system;

16 “(ii) would not increase the interim
17 storage of a substance of concern by the
18 covered water system;

19 “(iii) would not render the covered
20 water system unable to comply with other
21 requirements of this Act or drinking water
22 standards established by the State or polit-
23 ical subdivision in which the system is lo-
24 cated; and

1 “(iv) is feasible, as defined in section
2 1412(b)(4)(D), to be incorporated into the
3 operation of the covered water system.

4 “(D) APPEAL.—Before requiring, pursuant
5 to subparagraph (B), the implementation of a
6 method to reduce the consequences of a chem-
7 ical release from an intentional act, the State
8 exercising primary enforcement responsibility
9 for the covered water system, if the system is
10 located in such a State, or the Administrator,
11 if the covered water system is not located in
12 such a State, shall provide such covered water
13 system an opportunity to appeal the determina-
14 tion to require such implementation made pur-
15 suant to subparagraph (B) by such State or the
16 Administrator.

17 “(4) INCOMPLETE OR LATE ASSESSMENTS.—

18 “(A) INCOMPLETE ASSESSMENTS.—If the
19 Administrator finds that the covered water sys-
20 tem, in conducting its assessment under para-
21 graph (2), did not meet the requirements of
22 paragraph (2) and the applicable regulations,
23 the Administrator shall, after notifying the cov-
24 ered water system and the State exercising pri-
25 mary enforcement responsibility for that sys-

1 tem, if any, require the covered water system to
2 submit a revised assessment not later than 60
3 days after the Administrator notifies such sys-
4 tem. The Administrator may require such addi-
5 tional revisions as are necessary to ensure that
6 the system meets the requirements of para-
7 graph (2) and the applicable regulations.

8 “(B) LATE ASSESSMENTS.—If the Admin-
9 istrator finds that a covered water system, in
10 conducting its assessment pursuant to para-
11 graph (2), did not complete such assessment in
12 accordance with the deadline set by the Admin-
13 istrator, the Administrator may, after notifying
14 the covered water system and the State exer-
15 cising primary enforcement responsibility for
16 that system, if any, take appropriate enforce-
17 ment action under subsection (o).

18 “(C) REVIEW.—The State exercising pri-
19 mary enforcement responsibility for the covered
20 water system, if the system is located in such
21 a State, or the Administrator, if the system is
22 not located in such a State, shall review a re-
23 vised assessment that meets the requirements
24 of paragraph (2) and applicable regulations to
25 determine whether the covered water system

1 will be required to implement methods to reduce
2 the consequences of an intentional act pursuant
3 to paragraph (3).

4 “(5) ENFORCEMENT.—

5 “(A) FAILURE BY STATE TO MAKE DETER-
6 MINATION.—Whenever the Administrator finds
7 that a State exercising primary enforcement re-
8 sponsibility for a covered water system has
9 failed to determine whether to require the cov-
10 ered water system to implement methods to re-
11 duce the consequences of a chemical release
12 from an intentional act, as required by para-
13 graph (3)(B), the Administrator shall so notify
14 the State and covered water system. If, beyond
15 the thirtieth day after the Administrator’s noti-
16 fication under the preceding sentence, the State
17 has failed to make the determination described
18 in such sentence, the Administrator shall so no-
19 tify the State and covered water system and
20 shall determine whether to require the covered
21 water system to implement methods to reduce
22 the consequences of a chemical release from an
23 intentional act based on the factors described in
24 paragraph (3)(C).

1 “(B) FAILURE BY STATE TO BRING EN-
2 FORCEMENT ACTION.—If the Administrator
3 finds, with respect to a period in which a State
4 has primary enforcement responsibility for a
5 covered water system, that the system has
6 failed to implement methods to reduce the con-
7 sequences of a chemical release from an inten-
8 tional act (as required by the State or the Ad-
9 ministrator under paragraph (3)(B) or the Ad-
10 ministrator under subparagraph (A)), the Ad-
11 ministrator shall so notify the State and the
12 covered water system. If, beyond the thirtieth
13 day after the Administrator’s notification under
14 the preceding sentence, the State has not com-
15 menced appropriate enforcement action, the Ad-
16 ministrator shall so notify the State and may
17 take appropriate enforcement action under sub-
18 section (o), to require implementation of such
19 methods.

20 “(C) CONSIDERATION OF CONTINUED PRI-
21 MARY ENFORCEMENT RESPONSIBILITY.—For a
22 State with primary enforcement responsibility
23 for a covered water system, the Administrator
24 may consider the failure of such State to make
25 a determination as described under subpara-

1 graph (A) or to bring enforcement action as de-
2 scribed under subparagraph (B) when deter-
3 mining whether a State may retain primary en-
4 forcement responsibility under this Act.

5 “(6) GUIDANCE FOR COVERED WATER SYSTEMS
6 ASSIGNED TO TIER 3 AND TIER 4.—For covered
7 water systems required to conduct an assessment
8 under paragraph (2) and assigned by the Adminis-
9 trator to tier 3 or tier 4 under subsection (d), the
10 Administrator shall issue guidance and, as appro-
11 priate, provide or recommend tools, methodologies,
12 or computer software, to assist such covered water
13 systems in complying with the requirements of this
14 section.

15 “(h) REVIEW BY ADMINISTRATOR.—

16 “(1) IN GENERAL.—The regulations under sub-
17 section (a)(1) shall require each covered water sys-
18 tem to submit its vulnerability assessment and site
19 security plan to the Administrator for review accord-
20 ing to deadlines set by the Administrator. The Ad-
21 ministrator shall review each vulnerability assess-
22 ment and site security plan submitted under this
23 section and—

24 “(A) if the assessment or plan has any sig-
25 nificant deficiency described in paragraph (2),

1 require the covered water system to correct the
2 deficiency; or

3 “(B) approve such assessment or plan.

4 “(2) SIGNIFICANT DEFICIENCIES.—A vulner-
5 ability assessment or site security plan of a covered
6 water system has a significant deficiency under this
7 subsection if the Administrator, in consultation, as
8 appropriate, with the State exercising primary en-
9 forcement responsibility for such system, if any, de-
10 termines that—

11 “(A) such assessment does not comply with
12 the regulations established under section (a)(1);

13 or

14 “(B) such plan—

15 “(i) fails to address vulnerabilities
16 identified in a vulnerability assessment; or

17 “(ii) fails to meet applicable risk-
18 based performance standards.

19 “(3) STATE, REGIONAL, OR LOCAL GOVERN-
20 MENTAL ENTITIES.—No covered water system shall
21 be required under State, local, or tribal law to pro-
22 vide a vulnerability assessment or site security plan
23 described in this section to any State, regional, local,
24 or tribal governmental entity solely by reason of the
25 requirement set forth in paragraph (1) that the sys-

1 tem submit such an assessment and plan to the Ad-
2 ministrator.

3 “(i) EMERGENCY RESPONSE PLAN.—

4 “(1) IN GENERAL.—Each covered water system
5 shall prepare or revise, as appropriate, an emergency
6 response plan that incorporates the results of the
7 system’s most current vulnerability assessment and
8 site security plan.

9 “(2) CERTIFICATION.—Each covered water sys-
10 tem shall certify to the Administrator that the sys-
11 tem has completed an emergency response plan. The
12 system shall submit such certification to the Admin-
13 istrator not later than 6 months after the system’s
14 first completion or revision of a vulnerability assess-
15 ment under this section and shall submit an addi-
16 tional certification following any update of the emer-
17 gency response plan.

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

20 “(A) plans, procedures, and identification
21 of equipment that can be implemented or used
22 in the event of an intentional act at the covered
23 water system; and

24 “(B) actions, procedures, and identification
25 of equipment that can obviate or significantly

1 lessen the impact of intentional acts on public
2 health and the safety and supply of drinking
3 water provided to communities and individuals.

4 “(4) COORDINATION.—As part of its emergency
5 response plan, each covered water system shall pro-
6 vide appropriate information to any local emergency
7 planning committee, local law enforcement officials,
8 and local emergency response providers to ensure an
9 effective, collective response.

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

14 “(k) AUDIT; INSPECTION.—

15 “(1) IN GENERAL.—Notwithstanding section
16 1445(b)(2), the Administrator, or duly designated
17 representatives of the Administrator, shall audit and
18 inspect covered water systems, as necessary, for pur-
19 poses of determining compliance with this section.

20 “(2) ACCESS.—In conducting an audit or in-
21 spection of a covered water system, the Adminis-
22 trator or duly designated representatives of the Ad-
23 ministrator, as appropriate, shall have access to the
24 owners, operators, employees and contractor employ-

1 ees, and employee representatives, if any, of such
2 covered water system.

3 “(3) CONFIDENTIAL COMMUNICATION OF IN-
4 FORMATION; AIDING INSPECTIONS.—The Adminis-
5 trator, or a duly designated representative of the
6 Administrator, shall offer non-supervisory employees
7 of a covered water system the opportunity confiden-
8 tially to communicate information relevant to the
9 employer’s compliance or noncompliance with this
10 section, including compliance or noncompliance with
11 any regulation or requirement adopted by the Ad-
12 ministrator in furtherance of the purposes of this
13 section. A representative of each certified or recog-
14 nized bargaining agent described in subsection
15 (f)(3)(B), if any, or, if none, a non-supervisory em-
16 ployee, shall be given an opportunity to accompany
17 the Administrator, or the duly designated represent-
18 ative of the Administrator, during the physical in-
19 spection of any covered water system for the purpose
20 of aiding such inspection, if representatives of the
21 covered water system will also be accompanying the
22 Administrator or the duly designated representative
23 of the Administrator on such inspection.

24 “(l) PROTECTION OF INFORMATION.—

1 “(1) PROHIBITION OF PUBLIC DISCLOSURE OF
2 PROTECTED INFORMATION.—Protected information
3 shall—

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

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

9 “(2) INFORMATION SHARING.—

10 “(A) IN GENERAL.—The Administrator
11 shall prescribe such regulations, and may issue
12 such orders, as necessary to prohibit the unau-
13 thorized disclosure of protected information.

14 “(B) SHARING OF PROTECTED INFORMA-
15 TION.—The regulations under subparagraph
16 (A) shall provide standards for and facilitate
17 the appropriate sharing of protected informa-
18 tion with and between Federal, State, local, and
19 tribal authorities, first responders, law enforce-
20 ment officials, designated supervisory and non-
21 supervisory covered water system personnel
22 with security, operational, or fiduciary responsi-
23 bility for the system, and designated facility
24 employee representatives, if any. Such stand-
25 ards shall include procedures for the sharing of

1 all portions of a covered water system’s vulner-
2 ability assessment and site security plan relat-
3 ing to the roles and responsibilities of system
4 employees or contractor employees under sub-
5 section (f)(1) with a representative of each cer-
6 tified or recognized bargaining agent rep-
7 resenting such employees, if any, or, if none,
8 with at least one supervisory and at least one
9 non-supervisory employee with roles and re-
10 sponsibilities under subsection (f)(1).

11 “(C) PENALTIES.—Protected information
12 shall not be shared except in accordance with
13 the standards provided by the regulations under
14 subparagraph (A). Whoever discloses protected
15 information in knowing violation of the regula-
16 tions and orders issued under subparagraph (A)
17 shall be fined under title 18, United States
18 Code, imprisoned for not more than one year,
19 or both, and, in the case of a Federal office-
20 holder or employee, shall be removed from Fed-
21 eral office or employment.

22 “(3) TREATMENT OF INFORMATION IN ADJU-
23 DICATIVE PROCEEDINGS.—In any judicial or admin-
24 istrative proceeding, protected information shall be
25 treated in a manner consistent with the treatment of

1 Sensitive Security Information under section 525 of
2 the Department of Homeland Security Appropria-
3 tions Act, 2007 (Public Law 109–295; 120 Stat.
4 1381).

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

9 “(A) to submit or make available informa-
10 tion to system employees, employee organiza-
11 tions, or a Federal, State, tribal, or local gov-
12 ernment agency under any other provision of
13 law; or

14 “(B) to comply with any other provision of
15 law.

16 “(5) CONGRESSIONAL OVERSIGHT.—Nothing in
17 this section permits or authorizes the withholding of
18 information from Congress or any committee or sub-
19 committee thereof.

20 “(6) DISCLOSURE OF INDEPENDENTLY FUR-
21 NISHED INFORMATION.—Nothing in this section
22 amends or affects any authority or obligation of a
23 Federal, State, local, or tribal agency to protect or
24 disclose any record or information that the Federal,
25 State, local, or tribal agency obtains from a covered

1 water system or the Administrator under any other
2 provision of law.

3 “(7) PROTECTED INFORMATION.—

4 “(A) IN GENERAL.—For purposes of this
5 section, the term ‘protected information’ means
6 any of the following:

7 “(i) Vulnerability assessments and
8 site security plans under this section, in-
9 cluding any assessment developed pursuant
10 to subsection (g)(2).

11 “(ii) Documents directly related to the
12 Administrator’s review of assessments and
13 plans described in clause (i) and, as appli-
14 cable, the State’s review of an assessment
15 prepared under subsection (g)(2).

16 “(iii) Documents directly related to
17 inspections and audits under this section.

18 “(iv) Orders, notices, or letters re-
19 garding the compliance of a covered water
20 system with the requirements of this sec-
21 tion.

22 “(v) Information, documents, or
23 records required to be provided to or cre-
24 ated by, the Administrator under sub-
25 section (d).

1 “(vi) Documents directly related to se-
2 curity drills and training exercises, security
3 threats and breaches of security, and
4 maintenance, calibration, and testing of se-
5 curity equipment.

6 “(vii) Other information, documents,
7 and records developed exclusively for the
8 purposes of this section that the Adminis-
9 trator has determined by regulation would
10 be detrimental to the security of one or
11 more covered water systems if disclosed.

12 “(B) DETRIMENT REQUIREMENT.—For
13 purposes of clauses (ii), (iii), (iv), (v), and (vi)
14 of subparagraph (A), the only portions of docu-
15 ments, records, orders, notices, and letters that
16 shall be considered protected information are
17 those portions that—

18 “(i) the Secretary has determined by
19 regulation would be detrimental to the se-
20 curity of one or more covered water sys-
21 tems if disclosed; and

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

1 “(C) EXCLUSIONS.—Notwithstanding sub-
2 paragraphs (A) and (B), the term ‘protected in-
3 formation’ does not include—

4 “(i) information, other than a security
5 vulnerability assessment or site security
6 plan, that the Administrator has deter-
7 mined by regulation to be—

8 “(I) appropriate to describe sys-
9 tem compliance with the requirements
10 of this title and the Administrator’s
11 implementation of such requirements;
12 and

13 “(II) not detrimental to the secu-
14 rity of one or more covered water sys-
15 tems if disclosed; or

16 “(ii) information, whether or not also
17 contained in a security vulnerability assess-
18 ment, site security plan, or in a document,
19 record, order, notice, or letter, or portion
20 thereof, described in any of clauses (ii)
21 through (vii) of subparagraph (A) that is
22 obtained from another source with respect
23 to which the Administrator has not made
24 a determination under either subparagraph
25 (A)(vii) or (B), including—

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

4 “(II) information that a covered
5 water system has lawfully disclosed
6 other than in a submission to the Ad-
7 ministrator pursuant to a requirement
8 of this title.

9 “(m) RELATION TO CHEMICAL FACILITY SECURITY
10 REQUIREMENTS.—Title XXI of the Homeland Security
11 Act of 2002 and title I of the Chemical and Water Secu-
12 rity Act of 2009 shall not apply to any public water system
13 subject to this Act.

14 “(n) PREEMPTION.—This section does not preclude
15 or deny the right of any State or political subdivision
16 thereof to adopt or enforce any regulation, requirement,
17 or standard of performance with respect to a covered
18 water system that is more stringent than a regulation, re-
19 quirement, or standard of performance under this section.

20 “(o) VIOLATIONS.—

21 “(1) IN GENERAL.—A covered water system
22 that violates any requirement of this section, includ-
23 ing by not implementing all or part of its site secu-
24 rity plan by such date as the Administrator requires,
25 shall be liable for a civil penalty of not more than

1 \$25,000 for each day on which the violation oc-
2 curs.

3 “(2) PROCEDURE.—When the Administrator
4 determines that a covered water system is subject to
5 a civil penalty under paragraph (1), the Adminis-
6 trator, after consultation with the State, for covered
7 water systems located in a State exercising primary
8 responsibility for the covered water system, and,
9 after considering the severity of the violation or defi-
10 ciency and the record of the covered water system in
11 carrying out the requirements of this section, may—

12 “(A) after notice and an opportunity for
13 the covered water system to be heard, issue an
14 order assessing a penalty under such paragraph
15 for any past or current violation, requiring com-
16 pliance immediately or within a specified time
17 period; or

18 “(B) commence a civil action in the United
19 States district court in the district in which the
20 violation occurred for appropriate relief, includ-
21 ing temporary or permanent injunction.

22 “(3) METHODS TO REDUCE THE CON-
23 SEQUENCES OF A CHEMICAL RELEASE FROM AN IN-
24 TENTIONAL ACT.—Except as provided in subsections
25 (g)(4) and (g)(5), if a covered water system is lo-

1 cated in a State exercising primary enforcement re-
2 sponsibility for the system, the Administrator may
3 not issue an order or commence a civil action under
4 this section for any deficiency in the content or im-
5 plementation of the portion of the system's site secu-
6 rity plan relating to methods to reduce the con-
7 sequences of a chemical release from an intentional
8 act (as defined in subsection (g)(1)).

9 “(p) REPORT TO CONGRESS.—

10 “(1) PERIODIC REPORT.—Not later than 3
11 years after the effective date of the regulations
12 under subsection (a)(1), and every 3 years there-
13 after, the Administrator shall transmit to the Com-
14 mittee on Energy and Commerce of the House of
15 Representatives and the Committee on Environment
16 and Public Works of the Senate a report on progress
17 in achieving compliance with this section. Each such
18 report shall include, at a minimum, the following:

19 “(A) A generalized summary of measures
20 implemented by covered water systems in order
21 to meet each risk-based performance standard
22 established by this section.

23 “(B) A summary of how the covered water
24 systems, differentiated by risk-based tier as-
25 signment, are complying with the requirements

1 of this section during the period covered by the
2 report and how the Administrator is imple-
3 menting and enforcing such requirements dur-
4 ing such period including—

5 “(i) the number of public water sys-
6 tems that provided the Administrator with
7 information pursuant to subsection (d)(1);

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

10 “(iii) the number of vulnerability as-
11 sessments and site security plans sub-
12 mitted by covered water systems;

13 “(iv) the number of vulnerability as-
14 sessments and site security plans approved
15 and disapproved by the Administrator;

16 “(v) the number of covered water sys-
17 tems without approved vulnerability assess-
18 ments or site security plans;

19 “(vi) the number of covered water sys-
20 tems that have been assigned to a different
21 risk-based tier due to implementation of a
22 method to reduce the consequences of a
23 chemical release from an intentional act
24 and a description of the types of such im-
25 plemented methods;

1 “(vii) the number of audits and in-
2 spections conducted by the Administrator
3 or duly designated representatives of the
4 Administrator;

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

7 “(ix) the administrative penalties as-
8 sessed by the Administrator for non-com-
9 pliance with the requirements of this sec-
10 tion;

11 “(x) the civil penalties assessed by
12 courts for non-compliance with the require-
13 ments of this section; and

14 “(xi) any other regulatory data the
15 Administrator determines appropriate to
16 describe covered water system compliance
17 with the requirements of this section and
18 the Administrator’s implementation of
19 such requirements.

20 “(2) PUBLIC AVAILABILITY.—A report sub-
21 mitted under this section shall be made publicly
22 available.

23 “(q) GRANT PROGRAMS.—

24 “(1) IMPLEMENTATION GRANTS TO STATES.—

25 The Administrator may award grants to, or enter

1 into cooperative agreements with, States, based on
2 an allocation formula established by the Adminis-
3 trator, to assist the States in implementing this sec-
4 tion.

5 “(2) RESEARCH, TRAINING, AND TECHNICAL
6 ASSISTANCE GRANTS.—The Administrator may
7 award grants to, or enter into cooperative agree-
8 ments with, non-profit organizations to provide re-
9 search, training, and technical assistance to covered
10 water systems to assist them in carrying out their
11 responsibilities under this section.

12 “(3) PREPARATION GRANTS.—

13 “(A) GRANTS.—The Administrator may
14 award grants to, or enter into cooperative
15 agreements with, covered water systems to as-
16 sist such systems in—

17 “(i) preparing and updating vulner-
18 ability assessments, site security plans, and
19 emergency response plans;

20 “(ii) assessing and implementing
21 methods to reduce the consequences of a
22 release of a substance of concern from an
23 intentional act; and

1 “(iii) implementing any other security
2 reviews and enhancements necessary to
3 comply with this section.

4 “(B) PRIORITY.—

5 “(i) NEED.—The Administrator, in
6 awarding grants or entering into coopera-
7 tive agreements for purposes described in
8 subparagraph (A)(i), shall give priority to
9 covered water systems that have the great-
10 est need.

11 “(ii) SECURITY RISK.—The Adminis-
12 trator, in awarding grants or entering into
13 cooperative agreements for purposes de-
14 scribed in subparagraph (A)(ii), shall give
15 priority to covered water systems that pose
16 the greatest security risk.

17 “(4) WORKER TRAINING GRANTS PROGRAM AU-
18 THORITY.—

19 “(A) IN GENERAL.—The Administrator
20 shall establish a grant program to award grants
21 to eligible entities to provide for training and
22 education of employees and contractor employ-
23 ees with roles or responsibilities described in
24 subsection (f)(1) and first responders and emer-

1 agency response providers who would respond to
2 an intentional act at a covered water system.

3 “(B) ADMINISTRATION.—The Adminis-
4 trator shall enter into an agreement with the
5 National Institute of Environmental Health
6 Sciences to make and administer grants under
7 this paragraph.

8 “(C) USE OF FUNDS.—The recipient of a
9 grant under this paragraph shall use the grant
10 to provide for—

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

23 “(ii) appropriate training for first re-
24 sponders and emergency response pro-

1 viders who would respond to an intentional
2 act at a covered water system.

3 “(D) ELIGIBLE ENTITIES.—For purposes
4 of this paragraph, an eligible entity is a non-
5 profit organization with demonstrated experi-
6 ence in implementing and operating successful
7 worker or first responder health and safety or
8 security training programs.

9 “(r) AUTHORIZATION OF APPROPRIATIONS.—

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

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

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

17 “(ii) \$125,000,000 may be used to
18 implement methods to reduce the con-
19 sequences of a chemical release from an in-
20 tentional act at covered water systems with
21 priority given to covered water systems as-
22 signed to tier one or tier two under sub-
23 section (d); and

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

1 “(2) SECURITY ENHANCEMENTS.—Funding
2 under this subsection for basic security enhance-
3 ments shall not include expenditures for personnel
4 costs or monitoring, operation, or maintenance of fa-
5 cilities, equipment, or systems.”.

6 (b) REGULATIONS; TRANSITION.—

7 (1) REGULATIONS.—Not later than 2 years
8 after the date of the enactment of this title, the Ad-
9 ministrator of the Environmental Protection Agency
10 shall promulgate final regulations to carry out sec-
11 tion 1433 of the Safe Drinking Water Act, as
12 amended by subsection (a).

13 (2) EFFECTIVE DATE.—Until the effective date
14 of the regulations promulgated under paragraph (1),
15 section 1433 of the Safe Drinking Water Act, as in
16 effect on the day before the date of the enactment
17 of this title, shall continue to apply.

18 (3) SAVINGS PROVISION.—Nothing in this sec-
19 tion or the amendment made by this section shall af-
20 fect the application of section 1433 of the Safe
21 Drinking Water Act, as in effect before the effective
22 date of the regulations promulgated under para-
23 graph (1), to any violation of such section 1433 oc-
24 ccurring before such effective date, and the require-
25 ments of such section 1433 shall remain in force and

1 effect with respect to such violation until the viola-
2 tion has been corrected or enforcement proceedings
3 completed, whichever is later.

4 **SEC. 203. STUDY TO ASSESS THE THREAT OF CONTAMINA-**
5 **TION OF DRINKING WATER DISTRIBUTION**
6 **SYSTEMS.**

7 Not later than 180 days after the date of the enact-
8 ment of this title, the Administrator of the Environmental
9 Protection Agency, in consultation with the Secretary of
10 Homeland Security, shall—

11 (1) conduct a study to assess the threat to
12 drinking water posed by an intentional act of con-
13 tamination, and the vulnerability of public water sys-
14 tems, including fire hydrants, to such a threat; and

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

17 **TITLE III—WASTEWATER**
18 **TREATMENT WORKS SECURITY**

19 **SEC. 301. SHORT TITLE.**

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

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

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

1 **“SEC. 222. WASTEWATER TREATMENT WORKS SECURITY.**

2 “(a) ASSESSMENT OF TREATMENT WORKS VULNER-
3 ABILITY AND IMPLEMENTATION OF SITE SECURITY AND
4 EMERGENCY RESPONSE PLANS.—

5 “(1) IN GENERAL.—Each owner or operator of
6 a treatment works with either a treatment capacity
7 of at least 2,500,000 gallons per day or, in the dis-
8 cretion of the Administrator, that presents a secu-
9 rity risk making coverage under this section appro-
10 priate shall, consistent with regulations developed
11 under subsection (b)—

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

14 “(B) develop, periodically update, and im-
15 plement a site security plan for the treatment
16 works; and

17 “(C) develop and, as required, revise an
18 emergency response plan for the treatment
19 works.

20 “(2) VULNERABILITY ASSESSMENT.—

21 “(A) DEFINITION.—In this section, the
22 term ‘vulnerability assessment’ means an as-
23 sessment of the vulnerability of a treatment
24 works to intentional acts that may—

1 “(i) substantially disrupt the ability of
2 the treatment works to safely and reliably
3 operate; or

4 “(ii) have a substantial adverse effect
5 on critical infrastructure, public health or
6 safety, or the environment.

7 “(B) REVIEW.—A vulnerability assessment
8 shall include an identification of the vulner-
9 ability of the treatment works’—

10 “(i) facilities, systems, and devices
11 used in the storage, treatment, recycling,
12 or reclamation of municipal sewage or in-
13 dustrial wastes;

14 “(ii) intercepting sewers, outfall sew-
15 ers, sewage collection systems, and other
16 constructed conveyances under the control
17 of the owner or operator of the treatment
18 works;

19 “(iii) electronic, computer, and other
20 automated systems;

21 “(iv) pumping, power, and other
22 equipment;

23 “(v) use, storage, and handling of var-
24 ious chemicals, including substances of

1 concern, as identified by the Adminis-
2 trator;

3 “(vi) operation and maintenance pro-
4 cedures; and

5 “(vii) ability to ensure continuity of
6 operations.

7 “(3) SITE SECURITY PLAN.—

8 “(A) DEFINITION.—In this section, the
9 term ‘site security plan’ means a process devel-
10 oped by the owner or operator of a treatment
11 works to address security risks identified in a
12 vulnerability assessment developed for the treat-
13 ment works.

14 “(B) IDENTIFICATION OF SECURITY EN-
15 HANCEMENTS.—A site security plan carried out
16 under paragraph (1)(B) shall identify specific
17 security enhancements, including procedures,
18 countermeasures, or equipment, that, when im-
19 plemented or utilized, will reduce the
20 vulnerabilities identified in a vulnerability as-
21 sessment (including the identification of the ex-
22 tent to which implementation or utilization of
23 such security enhancements may impact the op-
24 erations of the treatment works in meeting the
25 goals and requirements of this Act).

1 “(b) RULEMAKING AND GUIDANCE DOCUMENTS.—

2 “(1) IN GENERAL.—Not later than December
3 31, 2010, the Administrator, after providing notice
4 and an opportunity for public comment, shall issue
5 regulations—

6 “(A) establishing risk-based performance
7 standards for the security of a treatment works
8 identified under subsection (a)(1); and

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

12 “(i) to conduct and submit to the Ad-
13 ministrator a vulnerability assessment or,
14 if the owner or operator of a treatment
15 works already has conducted a vulner-
16 ability assessment, to revise and submit to
17 the Administrator such assessment in ac-
18 cordance with this section;

19 “(ii) to update and submit to the Ad-
20 ministrator the vulnerability assessment
21 not less than every 5 years and promptly
22 after any change at the treatment works
23 that could cause the reassignment of the
24 treatment works to a different risk-based
25 tier under paragraph (2)(B);

1 “(iii) to develop and implement a site
2 security plan and to update such plan not
3 less than every 5 years and promptly after
4 an update to the vulnerability assessment;

5 “(iv) to develop an emergency re-
6 sponse plan (or, if the owner or operator of
7 a treatment works has already developed
8 an emergency response plan, to revise the
9 plan to be in accordance with this section)
10 and to revise the plan not less than every
11 5 years and promptly after an update to
12 the vulnerability assessment; and

13 “(v) to provide annual training to em-
14 ployees of the treatment works on imple-
15 menting site security plans and emergency
16 response plans.

17 “(2) RISK-BASED TIERS AND PERFORMANCE
18 STANDARDS.—

19 “(A) IN GENERAL.—In developing regula-
20 tions under this subsection, the Administrator
21 shall—

22 “(i) provide for 4 risk-based tiers ap-
23 plicable to treatment works identified
24 under subsection (a)(1), with tier one rep-

1 resenting the highest degree of security
2 risk; and

3 “(ii) establish risk-based performance
4 standards for site security plans and emer-
5 gency response plans required under this
6 section.

7 “(B) RISK-BASED TIERS.—

8 “(i) ASSIGNMENT OF RISK-BASED
9 TIERS.—The Administrator shall assign
10 (and reassign when appropriate) each
11 treatment works identified under sub-
12 section (a)(1) to one of the risk-based tiers
13 established pursuant to this paragraph.

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

17 “(I) the size of the treatment
18 works;

19 “(II) the proximity of the treat-
20 ment works to large population cen-
21 ters;

22 “(III) the adverse impacts of an
23 intentional act, including a worst-case
24 release of a substance of concern des-
25 ignated under subsection (c), on the

1 operation of the treatment works or
2 on critical infrastructure, public
3 health or safety, or the environment;
4 and

5 “(IV) any other factor that the
6 Administrator determines to be appro-
7 priate.

8 “(iii) INFORMATION REQUEST FOR
9 TREATMENT WORKS.—The Administrator
10 may require the owner or operator of a
11 treatment works identified under sub-
12 section (a)(1) to submit information in
13 order to determine the appropriate risk-
14 based tier for the treatment works.

15 “(iv) EXPLANATION FOR RISK-BASED
16 TIER ASSIGNMENT.—The Administrator
17 shall provide the owner or operator of each
18 treatment works assigned to a risk-based
19 tier with the reasons for the tier assign-
20 ment and whether such owner or operator
21 of a treatment works is required to submit
22 an assessment under paragraph (3)(B).

23 “(C) RISK-BASED PERFORMANCE STAND-
24 ARDS.—

1 “(i) CLASSIFICATION.—In establishing
2 risk-based performance standards under
3 subparagraph (A)(ii), the Administrator
4 shall ensure that the standards are sepa-
5 rate and, as appropriate, increasingly more
6 stringent based on the level of risk associ-
7 ated with the risk-based tier assignment
8 under subparagraph (B) for the treatment
9 works.

10 “(ii) CONSIDERATION.—In carrying
11 out this subparagraph, the Administrator
12 shall take into account section 27.230 of
13 title 6, Code of Federal Regulations (or
14 any successor regulation).

15 “(D) SITE SECURITY PLANS.—

16 “(i) IN GENERAL.—In developing reg-
17 ulations under this subsection, the Admin-
18 istrator shall permit the owner or operator
19 of a treatment works identified under sub-
20 section (a)(1), in developing and imple-
21 menting a site security plan, to select lay-
22 ered security and preparedness measures
23 that, in combination—

1 “(I) address the security risks
2 identified in its vulnerability assess-
3 ment; and

4 “(II) comply with the applicable
5 risk-based performance standards re-
6 quired by this subsection.

7 “(3) METHODS TO REDUCE THE CON-
8 SEQUENCES OF A CHEMICAL RELEASE FROM AN IN-
9 TENTIONAL ACT.—

10 “(A) DEFINITION.—In this section, the
11 term ‘method to reduce the consequences of a
12 chemical release from an intentional act’ means
13 a measure at a treatment works identified
14 under subsection (a)(1) that reduces or elimi-
15 nates the potential consequences of a release of
16 a substance of concern designated under sub-
17 section (c) from an intentional act, such as—

18 “(i) the elimination of or a reduction
19 in the amount of a substance of concern
20 possessed or planned to be possessed by a
21 treatment works through the use of alter-
22 nate substances, formulations, or proc-
23 esses;

1 “(ii) the modification of pressures,
2 temperatures, or concentrations of a sub-
3 stance of concern; and

4 “(iii) the reduction or elimination of
5 onsite handling of a substance of concern
6 through the improvement of inventory con-
7 trol or chemical use efficiency.

8 “(B) ASSESSMENT.—

9 “(i) IN GENERAL.—In developing the
10 regulations under this subsection, for each
11 treatment works identified under sub-
12 section (a)(1) that possesses or plans to
13 possess a substance of concern in excess of
14 the release threshold quantity set by the
15 Administrator under subsection (c)(2), the
16 Administrator shall require the treatment
17 works to include in its site security plan an
18 assessment of methods to reduce the con-
19 sequences of a chemical release from an in-
20 tentional act at the treatment works.

21 “(ii) CONSIDERATIONS FOR ASSESS-
22 MENT.—In developing the regulations
23 under this subsection, the Administrator
24 shall require the owner or operator of each
25 treatment works, in preparing the assess-

1 ment, to consider factors appropriate to
2 address the responsibilities of the treat-
3 ment works to meet the goals and require-
4 ments of this Act and to include—

5 “(I) a description of the methods
6 to reduce the consequences of a chem-
7 ical release from an intentional act;

8 “(II) a description of how each
9 described method to reduce the con-
10 sequences of a chemical release from
11 an intentional act could, if applied—

12 “(aa) reduce the extent of
13 death, injury, or serious adverse
14 effects to human health or the
15 environment as a result of a re-
16 lease, theft, or misappropriation
17 of a substance of concern des-
18 ignated under subsection (c); and

19 “(bb) impact the operations
20 of the treatment works in meet-
21 ing the goals and requirements of
22 this Act;

23 “(III) whether each described
24 method to reduce the consequences of
25 a chemical release from an intentional

1 act at the treatment works is feasible,
2 as determined by the Administrator;

3 “(IV) the costs (including capital
4 and operational costs) and avoided
5 costs (including potential savings) as-
6 sociated with applying each described
7 method to reduce the consequences of
8 a chemical release from an intentional
9 act at the treatment works;

10 “(V) any other relevant informa-
11 tion that the owner or operator of a
12 treatment works relied on in con-
13 ducting the assessment; and

14 “(VI) a statement of whether the
15 owner or operator of a treatment
16 works has implemented or plans to
17 implement a method to reduce the
18 consequences of a chemical release
19 from an intentional act, a description
20 of any such method, and, in the case
21 of a treatment works described in sub-
22 paragraph (C)(i), an explanation of
23 the reasons for any decision not to
24 implement any such method.

25 “(C) REQUIRED METHODS.—

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

4 “(I) is assigned to one of the two
5 highest risk-based tiers established
6 under paragraph (2)(A); and

7 “(II) possesses or plans to pos-
8 sess a substance of concern in excess
9 of the threshold quantity set by the
10 Administrator under subsection (c)(2).

11 “(ii) HIGHEST-RISK SYSTEMS.—If, on
12 the basis of its assessment developed pur-
13 suant to subparagraph (B), the owner or
14 operator of a treatment works described in
15 clause (i) decides not to implement a meth-
16 od to reduce the consequences of a chem-
17 ical release from an intentional act, in ac-
18 cordance with a timeline set by the Admin-
19 istrator—

20 “(I) the Administrator or, where
21 applicable, a State with an approved
22 program under section 402, shall de-
23 termine whether to require the owner
24 or operator of a treatment works to
25 implement such method; and

1 “(II) in the case of a State with
2 such approved program, the State
3 shall report such determination to the
4 Administrator.

5 “(iii) CONSIDERATIONS.—Before re-
6 quiring the implementation of a method to
7 reduce the consequences of a chemical re-
8 lease from an intentional act under clause
9 (ii), the Administrator or a State, as the
10 case may be, shall consider factors appro-
11 priate to address the responsibilities of the
12 treatment works to meet the goals and re-
13 quirements of this Act, including an exam-
14 ination of whether the method—

15 “(I) would significantly reduce
16 the risk of death, injury, or serious
17 adverse effects to human health re-
18 sulting from a chemical release from
19 an intentional act at the treatment
20 works;

21 “(II) would not increase the in-
22 terim storage by the treatment works
23 of a substance of concern designated
24 under subsection (c);

1 “(III) could impact the oper-
2 ations of the treatment works in meet-
3 ing the goals and requirements of this
4 Act or any more stringent standards
5 established by the State or munici-
6 pality in which the treatment works is
7 located; and

8 “(IV) is feasible, as determined
9 by the Administrator, to be incor-
10 porated into the operations of the
11 treatment works.

12 “(D) APPEAL.—Before requiring the im-
13 plementation of a method to reduce the con-
14 sequences of a chemical release from an inten-
15 tional act under clause (ii), the Administrator
16 or a State, as the case may be, shall provide the
17 owner or operator of the treatment works an
18 opportunity to appeal the determination to re-
19 quire such implementation.

20 “(E) INCOMPLETE OR LATE ASSESS-
21 MENTS.—

22 “(i) INCOMPLETE ASSESSMENTS.—If
23 the Administrator determines that a treat-
24 ment works fails to meet the requirements
25 of subparagraph (B) and the applicable

1 regulations, the Administrator shall, after
2 notifying the owner or operator of a treat-
3 ment works and the State in which the
4 treatment works is located, require the
5 owner or operator of the treatment works
6 to submit a revised assessment not later
7 than 60 days after the Administrator noti-
8 fies the owner or operator. The Adminis-
9 trator may require such additional revi-
10 sions as are necessary to ensure that the
11 treatment works meets the requirements of
12 subparagraph (B) and the applicable regu-
13 lations.

14 “(ii) LATE ASSESSMENTS.—If the Ad-
15 ministrator finds that the owner or oper-
16 ator of a treatment works, in conducting
17 an assessment pursuant to subparagraph
18 (B), did not complete such assessment in
19 accordance with the deadline set by the
20 Administrator, the Administrator may,
21 after notifying the owner or operator of the
22 treatment works and the State in which
23 the treatment works is located, take appro-
24 priate enforcement action under subsection
25 (j).

1 “(iii) REVIEW.—A State with an ap-
2 proved program under section 402 or the
3 Administrator, as the case may be, shall
4 review a revised assessment that meets the
5 requirements of subparagraph (B) and ap-
6 plicable regulations to determine whether
7 the treatment works will be required to im-
8 plement methods to reduce the con-
9 sequences of a chemical release from an in-
10 tentional act pursuant to subparagraph
11 (C).

12 “(F) ENFORCEMENT.—

13 “(i) FAILURE BY STATE TO MAKE DE-
14 TERMINATION.—

15 “(I) IN GENERAL.—If the Ad-
16 ministrator determines that a State
17 with an approved program under sec-
18 tion 402 failed to determine whether
19 to require a treatment works to imple-
20 ment a method to reduce the con-
21 sequences of a chemical release from
22 an intentional act, as required by sub-
23 paragraph (C)(ii), the Administrator
24 shall notify the State and the owner
25 or operator of the treatment works.

1 “(II) ADMINISTRATIVE AC-
2 TION.—If, after 30 days after the no-
3 tification described in subclause (I), a
4 State fails to make the determination
5 described in that subclause, the Ad-
6 ministrator shall notify the State and
7 the owner or operator of the treat-
8 ment works and shall determine
9 whether to require the owner or oper-
10 ator to implement a method to reduce
11 the consequences of a chemical release
12 from an intentional act based on the
13 factors described in subparagraph
14 (C)(iii).

15 “(ii) FAILURE BY STATE TO BRING
16 ENFORCEMENT ACTION.—

17 “(I) IN GENERAL.—If, in a State
18 with an approved program under sec-
19 tion 402, the Administrator deter-
20 mines that the owner or operator of a
21 treatment works fails to implement a
22 method to reduce the consequences of
23 a chemical release from an intentional
24 act (as required by the State or the
25 Administrator under subparagraph

1 (C)(ii) or the Administrator under
2 clause (i)(II)), the Administrator shall
3 notify the State and the owner or op-
4 erator of the treatment works.

5 “(II) ADMINISTRATIVE ENFORCE-
6 MENT ACTION.—If, after 30 days
7 after the notification described in sub-
8 clause (I), the State has not com-
9 menced appropriate enforcement ac-
10 tion, the Administrator shall notify
11 the State and may commence an en-
12 forcement action against the owner or
13 operator of the treatment works, in-
14 cluding by seeking or imposing civil
15 penalties under subsection (j), to re-
16 quire implementation of such method.

17 “(4) CONSULTATION WITH STATE AUTHORI-
18 TIES.—In developing the regulations under this sub-
19 section, the Administrator shall consult with States
20 with approved programs under section 402.

21 “(5) CONSULTATION WITH OTHER PERSONS.—
22 In developing the regulations under this subsection,
23 the Administrator shall consult with the Secretary of
24 Homeland Security, and, as appropriate, other per-
25 sons regarding—

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

4 “(B) the designation of substances of con-
5 cern under subsection (c);

6 “(C) the development of risk-based per-
7 formance standards;

8 “(D) the establishment of risk-based tiers
9 and the process for the assignment of treatment
10 works identified under subsection (a)(1) to such
11 tiers;

12 “(E) the process for the development and
13 evaluation of vulnerability assessments, site se-
14 curity plans, and emergency response plans;

15 “(F) the treatment of protected informa-
16 tion; and

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

19 “(6) CONSIDERATION.—In developing the regu-
20 lations under this subsection, the Administrator
21 shall ensure that such regulations are consistent
22 with the goals and requirements of this Act.

23 “(c) SUBSTANCES OF CONCERN.—For purposes of
24 this section, the Administrator, in consultation with the
25 Secretary of Homeland Security—

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

3 “(2) at the time any chemical substance is des-
4 igned pursuant to paragraph (1), shall establish by
5 rulemaking a threshold quantity for the release or
6 theft of a substance, taking into account the toxicity,
7 reactivity, volatility, dispersability, combustability,
8 and flammability of the substance and the amount
9 of the substance, that, as a result of the release or
10 theft, is known to cause, or may be reasonably an-
11 ticipated to cause, death, injury, or serious adverse
12 impacts to human health or the environment; and

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

16 “(d) REVIEW OF VULNERABILITY ASSESSMENT AND
17 SITE SECURITY PLAN.—

18 “(1) IN GENERAL.—Each owner or operator of
19 a treatment works identified under subsection (a)(1)
20 shall submit its vulnerability assessment and site se-
21 curity plan to the Administrator for review in ac-
22 cordance with deadlines established by the Adminis-
23 trator.

24 “(2) STANDARD OF REVIEW.—The Adminis-
25 trator shall review each vulnerability assessment and

1 site security plan submitted under this subsection
2 and—

3 “(A) if the assessment or plan has a sig-
4 nificant deficiency described in paragraph (3),
5 require the owner or operator of the treatment
6 works to correct the deficiency; or

7 “(B) approve such assessment or plan.

8 “(3) SIGNIFICANT DEFICIENCY.—A vulner-
9 ability assessment or site security plan of a treat-
10 ment works has a significant deficiency under this
11 subsection if the Administrator, in consultation, as
12 appropriate, with a State with an approved program
13 under section 402, determines that—

14 “(A) such assessment does not comply with
15 the regulations promulgated under subsection
16 (b); or

17 “(B) such plan—

18 “(i) fails to address vulnerabilities
19 identified in a vulnerability assessment; or

20 “(ii) fails to meet applicable risk-
21 based performance standards.

22 “(4) IDENTIFICATION OF DEFICIENCIES.—If
23 the Administrator identifies a significant deficiency
24 in the vulnerability assessment or site security plan
25 of an owner or operator of a treatment works under

1 paragraph (3), the Administrator shall provide the
2 owner or operator with a written notification of the
3 deficiency that—

4 “(A) includes a clear explanation of the de-
5 ficiency in the vulnerability assessment or site
6 security plan;

7 “(B) provides guidance to assist the owner
8 or operator in addressing the deficiency; and

9 “(C) requires the owner or operator to cor-
10 rect the deficiency and, by such date as the Ad-
11 ministrator determines appropriate, to submit
12 to the Administrator a revised vulnerability as-
13 sessment or site security plan.

14 “(5) STATE, LOCAL, OR TRIBAL GOVERN-
15 MENTAL ENTITIES.—No owner or operator of a
16 treatment works identified under subsection (a)(1)
17 shall be required under State, local, or tribal law to
18 provide a vulnerability assessment or site security
19 plan described in this section to any State, local, or
20 tribal governmental entity solely by reason of the re-
21 quirement set forth in paragraph (1) that the owner
22 or operator of a treatment works submit such an as-
23 sessment and plan to the Administrator.

24 “(e) EMERGENCY RESPONSE PLAN.—

1 “(1) IN GENERAL.—The owner or operator of a
2 treatment works identified under subsection (a)(1)
3 shall develop or revise, as appropriate, an emergency
4 response plan that incorporates the results of the
5 current vulnerability assessment and site security
6 plan for the treatment works.

7 “(2) CERTIFICATION.—The owner or operator
8 of a treatment works identified under subsection
9 (a)(1) shall certify to the Administrator that the
10 owner or operator has completed an emergency re-
11 sponse plan, shall submit such certification to the
12 Administrator not later than 6 months after the first
13 completion or revision of a vulnerability assessment
14 under this section, and shall submit an additional
15 certification following any update of the emergency
16 response plan.

17 “(3) CONTENTS.—An emergency response plan
18 shall include a description of—

19 “(A) plans, procedures, and identification
20 of equipment that can be implemented or used
21 in the event of an intentional act at the treat-
22 ment works; and

23 “(B) actions, procedures, and identification
24 of equipment that can obviate or significantly
25 reduce the impact of intentional acts to—

1 “(i) substantially disrupt the ability of
2 the treatment works to safely and reliably
3 operate; or

4 “(ii) have a substantial adverse effect
5 on critical infrastructure, public health or
6 safety, or the environment.

7 “(4) COORDINATION.—As part of its emergency
8 response plan, the owner or operator of a treatment
9 works shall provide appropriate information to any
10 local emergency planning committee, local law en-
11 forcement officials, and local emergency response
12 providers to ensure an effective, collective response.

13 “(f) ROLE OF EMPLOYEES.—

14 “(1) DESCRIPTION OF ROLE.—Site security
15 plans and emergency response plans required under
16 this section shall describe the appropriate roles or
17 responsibilities that employees and contractor em-
18 ployees of treatment works are expected to perform
19 to deter or respond to the intentional acts identified
20 in a current vulnerability assessment.

21 “(2) TRAINING FOR EMPLOYEES.—The owner
22 or operator of a treatment works identified under
23 subsection (a)(1) shall annually provide employees
24 and contractor employees with the roles or respon-
25 sibilities described in paragraph (1) with sufficient

1 training, as determined by the Administrator, on
2 carrying out those roles or responsibilities.

3 “(3) EMPLOYEE PARTICIPATION.—In devel-
4 oping, revising, or updating a vulnerability assess-
5 ment, site security plan, and emergency response
6 plan required under this section, the owner or oper-
7 ator of a treatment works shall include—

8 “(A) at least one supervisory and at least
9 one nonsupervisory employee of the treatment
10 works; and

11 “(B) at least one representative of each
12 certified or recognized bargaining agent rep-
13 resenting facility employees or contractor em-
14 ployees with roles or responsibilities described
15 in paragraph (1), if any, in a collective bar-
16 gaining relationship with the owner or operator
17 of the treatment works or with a contractor to
18 the treatment works.

19 “(g) MAINTENANCE OF RECORDS.—The owner or op-
20 erator of a treatment works identified under subsection
21 (a)(1) shall maintain an updated copy of its vulnerability
22 assessment, site security plan, and emergency response
23 plan on the premises of the treatment works.

24 “(h) AUDIT; INSPECTION.—

1 “(1) IN GENERAL.—The Administrator shall
2 audit and inspect a treatment works identified under
3 subsection (a)(1), as necessary, for purposes of de-
4 termining compliance with this section.

5 “(2) ACCESS.—In conducting an audit or in-
6 spection of a treatment works under paragraph (1),
7 the Administrator shall have access to the owners,
8 operators, employees and contractor employees, and
9 employee representatives, if any, of such treatment
10 works.

11 “(3) CONFIDENTIAL COMMUNICATION OF IN-
12 FORMATION; AIDING INSPECTIONS.—The Adminis-
13 trator shall offer nonsupervisory employees of a
14 treatment works the opportunity confidentially to
15 communicate information relevant to the compliance
16 or noncompliance of the owner or operator of the
17 treatment works with this section, including compli-
18 ance or noncompliance with any regulation or re-
19 quirement adopted by the Administrator in further-
20 ance of the purposes of this section. A representative
21 of each certified or recognized bargaining agent de-
22 scribed in subsection (f)(3)(B), if any, or, if none, a
23 nonsupervisory employee, shall be given an oppor-
24 tunity to accompany the Administrator during the
25 physical inspection of any treatment works for the

1 purpose of aiding such inspection, if representatives
2 of the treatment works will also be accompanying
3 the Administrator on such inspection.

4 “(i) PROTECTION OF INFORMATION.—

5 “(1) PROHIBITION OF PUBLIC DISCLOSURE OF
6 PROTECTED INFORMATION.—Protected information
7 shall—

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

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

13 “(2) INFORMATION SHARING.—

14 “(A) IN GENERAL.—The Administrator
15 shall prescribe such regulations, and may issue
16 such orders, as necessary to prohibit the unau-
17 thorized disclosure of protected information, as
18 described in paragraph (7).

19 “(B) SHARING OF PROTECTED INFORMA-
20 TION.—The regulations under subparagraph
21 (A) shall provide standards for and facilitate
22 the appropriate sharing of protected informa-
23 tion with and among Federal, State, local, and
24 tribal authorities, first responders, law enforce-
25 ment officials, supervisory and nonsupervisory

1 treatment works personnel with security, oper-
2 ational, or fiduciary responsibility for the sys-
3 tem designated by the owner or operator of the
4 treatment works, and facility employee rep-
5 resentatives designated by the owner or oper-
6 ator of the treatment works, if any.

7 “(C) INFORMATION SHARING PROCE-
8 DURES.—Such standards shall include proce-
9 dures for the sharing of all portions of the vul-
10 nerability assessment and site security plan of
11 a treatment works relating to the roles and re-
12 sponsibilities of the employees or contractor em-
13 ployees of a treatment works under subsection
14 (f)(1) with a representative of each certified or
15 recognized bargaining agent representing such
16 employees, if any, or, if none, with at least one
17 supervisory and at least one non-supervisory
18 employee with roles and responsibilities under
19 subsection (f)(1).

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

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

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

14 “(4) OTHER OBLIGATIONS UNAFFECTED.—
15 Nothing in this section amends or affects an obliga-
16 tion of the owner or operator of a treatment works
17 to—

18 “(A) submit or make available information
19 to employees of the treatment works, employee
20 organizations, or a Federal, State, local, or trib-
21 al government agency under any other provision
22 of law; or

23 “(B) comply with any other provision of
24 law.

1 “(5) CONGRESSIONAL OVERSIGHT.—Nothing in
2 this section permits or authorizes the withholding of
3 information from Congress or any committee or sub-
4 committee thereof.

5 “(6) DISCLOSURE OF INDEPENDENTLY FUR-
6 NISHED INFORMATION.—Nothing in this section
7 amends or affects any authority or obligation of a
8 Federal, State, local, or tribal agency to protect or
9 disclose any record or information that the Federal,
10 State, local, or tribal agency obtains from a treat-
11 ment works or the Administrator under any other
12 provision of law except as provided in subsection
13 (d)(5).

14 “(7) PROTECTED INFORMATION.—

15 “(A) IN GENERAL.—For purposes of this
16 section, the term ‘protected information’ means
17 any of the following:

18 “(i) Vulnerability assessments and
19 site security plans under this section, in-
20 cluding any assessment developed under
21 subsection (b)(3)(B).

22 “(ii) Documents directly related to the
23 Administrator’s review of assessments and
24 plans described in clause (i) and, as appli-

1 cable, the State’s review of an assessment
2 developed under subsection (b)(3)(B).

3 “(iii) Documents directly related to
4 inspections and audits under this section.

5 “(iv) Orders, notices, or letters re-
6 garding the compliance of a treatment
7 works described in subsection (a)(1) with
8 the requirements of this section.

9 “(v) Information required to be pro-
10 vided to, or documents and records created
11 by, the Administrator under subsection
12 (b)(2).

13 “(vi) Documents directly related to se-
14 curity drills and training exercises, security
15 threats and breaches of security, and
16 maintenance, calibration, and testing of se-
17 curity equipment.

18 “(vii) Other information, documents,
19 and records developed for the purposes of
20 this section that the Administrator has de-
21 termined by regulation would be detri-
22 mental to the security of a treatment
23 works if disclosed.

24 “(B) DETRIMENT REQUIREMENT.—For
25 purposes of clauses (ii), (iii), (iv), (v), and (vi)

1 of subparagraph (A), the only portions of docu-
2 ments, records, orders, notices, and letters that
3 shall be considered protected information are
4 those portions that—

5 “(i) the Secretary has determined by
6 regulation would be detrimental to the se-
7 curity of a treatment works if disclosed;
8 and

9 “(ii) are developed by the Adminis-
10 trator, the State, or the treatment works
11 for the purposes of this section.

12 “(C) EXCLUSIONS.—Notwithstanding sub-
13 paragraphs (A) and (B), the term ‘protected in-
14 formation’ does not include—

15 “(i) information, other than a security
16 vulnerability assessment or site security
17 plan, that the Administrator has deter-
18 mined by regulation to be—

19 “(I) appropriate to describe
20 treatment works compliance with the
21 requirements of this title and the Ad-
22 ministrator’s implementation of such
23 requirements; and

1 “(II) not detrimental to the secu-
2 rity of one or more treatment works if
3 disclosed; or

4 “(ii) information, whether or not also
5 contained in a security vulnerability assess-
6 ment, site security plan, or in a document,
7 record, order, notice, or letter, or portion
8 thereof, described in any of clauses (ii)
9 through (vii) of subparagraph (A) that is
10 obtained from another source with respect
11 to which the Administrator has not made
12 a determination under either subparagraph
13 (A)(vii) or (B), including—

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

17 “(II) information that a treat-
18 ment works has lawfully disclosed
19 other than in a submission to the Ad-
20 ministrator pursuant to a requirement
21 of this title.

22 “(j) VIOLATIONS.—For the purposes of section 309
23 of this Act, any violation of any requirement of this sec-
24 tion, including any regulations promulgated pursuant to
25 this section, by an owner or operator of a treatment works

1 described in subsection (a)(1) shall be treated in the same
2 manner as a violation of a permit condition under section
3 402 of this Act.

4 “(k) REPORT TO CONGRESS.—

5 “(1) PERIODIC REPORT.—Not later than 3
6 years after the effective date of the regulations
7 issued under subsection (b) and every 3 years there-
8 after, the Administrator shall transmit to the Com-
9 mittee on Transportation and Infrastructure of the
10 House of Representatives and the Committee on En-
11 vironment and Public Works of the Senate a report
12 on progress in achieving compliance with this sec-
13 tion.

14 “(2) CONTENTS OF THE REPORT.—Each such
15 report shall include, at a minimum, the following:

16 “(A) A generalized summary of measures
17 implemented by the owner or operator of a
18 treatment works identified under subsection
19 (a)(1) in order to meet each risk-based per-
20 formance standard established by this section.

21 “(B) A summary of how the treatment
22 works, differentiated by risk-based tier assign-
23 ment, are complying with the requirements of
24 this section during the period covered by the re-
25 port and how the Administrator is imple-

1 menting and enforcing such requirements dur-
2 ing such period, including—

3 “(i) the number of treatment works
4 that provided the Administrator with infor-
5 mation pursuant to subsection
6 (b)(2)(B)(iii);

7 “(ii) the number of treatment works
8 assigned to each risk-based tier;

9 “(iii) the number of vulnerability as-
10 sessments and site security plans sub-
11 mitted by treatment works;

12 “(iv) the number of vulnerability as-
13 sessments and site security plans approved
14 or found to have a significant deficiency
15 under subsection (d)(2) by the Adminis-
16 trator;

17 “(v) the number of treatment works
18 without approved vulnerability assessments
19 or site security plans;

20 “(vi) the number of treatment works
21 that have been assigned to a different risk-
22 based tier due to implementation of a
23 method to reduce the consequences of a
24 chemical release from an intentional act

1 and a description of the types of such im-
2 plemented methods;

3 “(vii) the number of audits and in-
4 spections conducted by the Administrator;
5 and

6 “(viii) any other regulatory data the
7 Administrator determines appropriate to
8 describe the compliance of owners or oper-
9 ators of treatment works with the require-
10 ments of this section and the Administra-
11 tor’s implementation of such requirements.

12 “(3) PUBLIC AVAILABILITY.—A report sub-
13 mitted under this section shall be made publicly
14 available.

15 “(1) GRANTS FOR VULNERABILITY ASSESSMENTS,
16 SECURITY ENHANCEMENTS, AND WORKER TRAINING
17 PROGRAMS.—

18 “(1) IN GENERAL.—The Administrator may
19 make a grant to a State, municipality, or inter-
20 municipal or interstate agency—

21 “(A) to conduct or update a vulnerability
22 assessment, site security plan, or emergency re-
23 sponse plan for a publicly owned treatment
24 works identified under subsection (a)(1);

1 “(B) to implement a security enhancement
2 at a publicly owned treatment works identified
3 under subsection (a)(1), including a method to
4 reduce the consequences of a chemical release
5 from an intentional act, identified in an ap-
6 proved site security plan and listed in para-
7 graph (2);

8 “(C) to implement an additional security
9 enhancement at a publicly owned treatment
10 works identified under subsection (a)(1), includ-
11 ing a method to reduce the consequences of a
12 chemical release from an intentional act, identi-
13 fied in an approved site security plan; and

14 “(D) to provide for security-related train-
15 ing of employees or contractor employees of the
16 treatment works and training for first respond-
17 ers and emergency response providers.

18 “(2) GRANTS FOR SECURITY ENHANCE-
19 MENTS.—

20 “(A) PREAPPROVED SECURITY ENHANCE-
21 MENTS.—The Administrator may make a grant
22 under paragraph (1)(B) to implement a secu-
23 rity enhancement of a treatment works for one
24 or more of the following:

1 “(i) Purchase and installation of
2 equipment for access control, intrusion
3 prevention and delay, and detection of in-
4 truders and hazardous or dangerous sub-
5 stances, including—

6 “(I) barriers, fencing, and gates;

7 “(II) security lighting and cam-
8 eras;

9 “(III) metal grates, wire mesh,
10 and outfall entry barriers;

11 “(IV) securing of manhole covers
12 and fill and vent pipes;

13 “(V) installation and re-keying of
14 doors and locks; and

15 “(VI) smoke, chemical, and ex-
16 plosive mixture detection systems.

17 “(ii) Security improvements to elec-
18 tronic, computer, or other automated sys-
19 tems and remote security systems, includ-
20 ing controlling access to such systems, in-
21 trusion detection and prevention, and sys-
22 tem backup.

23 “(iii) Participation in training pro-
24 grams and the purchase of training manu-

1 als and guidance materials relating to se-
2 curity.

3 “(iv) Security screening of employees
4 or contractor support services.

5 “(B) ADDITIONAL SECURITY ENHANCE-
6 MENTS.—The Administrator may make a grant
7 under paragraph (1)(C) for additional security
8 enhancements not listed in subparagraph (A)
9 that are identified in an approved site security
10 plan. The additional security enhancements
11 may include the implementation of a method to
12 reduce the consequences of a chemical release
13 from an intentional act.

14 “(C) LIMITATION ON USE OF FUNDS.—
15 Grants under this subsection may not be used
16 for personnel costs or operation or maintenance
17 of facilities, equipment, or systems.

18 “(D) FEDERAL SHARE.—The Federal
19 share of the cost of activities funded by a grant
20 under paragraph (1) may not exceed 75 per-
21 cent.

22 “(3) ELIGIBILITY.—To be eligible for a grant
23 under this subsection, a State, municipality, or
24 intermunicipal or interstate agency shall submit in-
25 formation to the Administrator at such time, in such

1 form, and with such assurances as the Administrator
2 may require.

3 “(m) PREEMPTION.—This section does not preclude
4 or deny the right of any State or political subdivision
5 thereof to adopt or enforce any regulation, requirement,
6 or standard of performance with respect to a treatment
7 works that is more stringent than a regulation, require-
8 ment, or standard of performance under this section.

9 “(n) AUTHORIZATION OF APPROPRIATIONS.—There
10 is authorized to be appropriated to the Administrator
11 \$200,000,000 for each of fiscal years 2010 through 2014
12 for making grants under subsection (l). Such sums shall
13 remain available until expended.

14 “(o) RELATION TO CHEMICAL FACILITY SECURITY
15 REQUIREMENTS.—Title XXI of the Homeland Security
16 Act of 2002 and title I of the Chemical and Water Secu-
17 rity Act of 2009 shall not apply to any treatment works.”.

Passed the House of Representatives November 6,
2009.

Attest:

Clerk.

111TH CONGRESS
1ST SESSION

H. R. 2868

AN ACT

To amend the Homeland Security Act of 2002 to enhance security and protect against acts of terrorism against chemical facilities, to amend the Safe Drinking Water Act to enhance the security of public water systems, and to amend the Federal Water Pollution Control Act to enhance the security of wastewater treatment works, and for other purposes.