

SUBSTITUTE FOR THE AMENDMENT TO H.R. 901
OFFERED BY MR. DANIEL E. LUNGREN OF
CALIFORNIA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Chemical Facility Anti-
3 Terrorism Security Authorization Act of 2011”.

4 SEC. 2. FINDINGS AND PURPOSE.

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

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

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

16 (3) The Secretary of Homeland Security has
17 statutory authority pursuant to section 550 of the
18 Department of Homeland Security Appropriations

1 Act, 2007 (Public Law 109–295) to regulate the se-
2 curity practices at chemical facilities that are at sig-
3 nificant risk of being terrorist targets.

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

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

12 **SEC. 3. CHEMICAL FACILITY ANTI-TERRORISM SECURITY**
13 **REGULATIONS.**

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

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

20 **“SEC. 2101. DEFINITIONS.**

21 “In this title, the following definitions apply:

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

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

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

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

12 “(A) Restricting the area perimeter.

13 “(B) Securing site assets.

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

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

1 “(ii) measures implementing a regu-
2 larly updated identification system that
3 checks the identification of chemical facil-
4 ity personnel and other persons seeking ac-
5 cess to the chemical facility and that dis-
6 courages abuse through established dis-
7 ciplinary measures.

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

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

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

1 “(iii) detect chemical facility terrorist
2 incidents at early stages through counter-
3 surveillance, frustration of opportunity to
4 observe potential targets, surveillance and
5 sensing systems, and barriers and barri-
6 cades; and

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

13 “(E) Securing and monitoring the ship-
14 ping, receipt, and storage of a substance of con-
15 cern for the chemical facility.

16 “(F) Deterring theft or diversion of a sub-
17 stance of concern.

18 “(G) Deterring insider sabotage.

19 “(H) Deterring cyber sabotage, including
20 by preventing unauthorized onsite or remote ac-
21 cess to critical process controls, including super-
22 visory control and data acquisition systems, dis-
23 tributed control systems, process control sys-
24 tems, industrial control systems, critical busi-

1 ness systems, and other sensitive computerized
2 systems.

3 “(I) Developing and exercising an internal
4 emergency plan for owners, operators, and cov-
5 ered individuals of a covered chemical facility
6 for responding to chemical facility terrorist inci-
7 dents at the facility, including the provision of
8 appropriate information to any local emergency
9 planning committee, local law enforcement offi-
10 cials, and emergency response providers to en-
11 sure an effective, collective response to terrorist
12 incidents.

13 “(J) Maintaining effective monitoring,
14 communications, and warning systems, includ-
15 ing—

16 “(i) measures designed to ensure that
17 security systems and equipment are in
18 good working order and inspected, tested,
19 calibrated, and otherwise maintained;

20 “(ii) measures designed to regularly
21 test security systems, note deficiencies,
22 correct for detected deficiencies, and record
23 results so that they are available for in-
24 spection by the Secretary; and

1 “(iii) measures to allow the chemical
2 facility to promptly identify and respond to
3 security system and equipment failures or
4 malfunctions.

5 “(K) Ensuring mandatory annual security
6 training, exercises, and drills of chemical facil-
7 ity personnel appropriate to their roles, respon-
8 sibilities, and access to a substance of concern,
9 including participation by local law enforce-
10 ment, and local emergency response providers,
11 and appropriate supervisory and non-super-
12 visory facility employees and their employee
13 representatives, if any.

14 “(L) Performing personnel surety for indi-
15 viduals with access to restricted areas or critical
16 assets by conducting appropriate background
17 checks and ensuring appropriate credentials for
18 unescorted visitors and chemical facility per-
19 sonnel, including permanent and part-time per-
20 sonnel, temporary personnel, and contract per-
21 sonnel, including—

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

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

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

3 “(iv) measures designed to identify
4 people with terrorist ties.

5 “(M) Escalating the level of protective
6 measures for periods of elevated threat.

7 “(N) Specific threats, vulnerabilities, or
8 risks identified by the Secretary for that chem-
9 ical facility.

10 “(O) Reporting of significant security inci-
11 dents to the Secretary and to appropriate local
12 law enforcement officials.

13 “(P) Identifying, investigating, reporting,
14 and maintaining records of significant security
15 incidents and suspicious activities at or near the
16 covered chemical facility.

17 “(Q) Establishing one or more officials and
18 an organization responsible for—

19 “(i) security;

20 “(ii) compliance with the standards
21 under this paragraph;

22 “(iii) serving as the point of contact
23 for incident management purposes with
24 Federal, State, local, and tribal agencies,

1 law enforcement, and emergency response
2 providers; and

3 “(iv) coordination with Federal, State,
4 local, and tribal agencies, law enforcement,
5 and emergency response providers regard-
6 ing plans and security measures for the
7 collective response to a chemical facility
8 terrorist incident.

9 “(R) Maintaining appropriate records re-
10 lating to the security of the facility, including a
11 copy of the most recent security vulnerability
12 assessment and site security plan, at the chem-
13 ical facility.

14 “(S) Assessing and, as appropriate, uti-
15 lizing methods to reduce the consequences of a
16 terrorist attack.

17 “(T) Methods to recover or mitigate the
18 release of a substance of concern in the event
19 of a chemical facility terrorist incident.

20 “(U) Any additional security performance
21 standards the Secretary may specify.

22 “(3) The term ‘chemical facility terrorist inci-
23 dent’ means any act or attempted act of terrorism
24 or terrorist activity committed at, near, or against a
25 chemical facility, including—

1 “(A) the release of a substance of concern
2 from a chemical facility;

3 “(B) the theft, misappropriation, or misuse
4 of a substance of concern from a chemical facil-
5 ity; or

6 “(C) the sabotage of a chemical facility or
7 a substance of concern at a chemical facility.

8 “(4) The term ‘employee representative’ means
9 the representative of the certified or recognized bar-
10 gaining agent engaged in a collective bargaining re-
11 lationship with a private or public owner or operator
12 of a chemical facility.

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

19 “(6) The term ‘covered chemical facility’ means
20 a chemical facility that meets the criteria of section
21 2102(b)(1).

22 “(7) The term ‘environment’ means—

23 “(A) the navigable waters, the waters of
24 the contiguous zone, and the ocean waters of
25 which the natural resources are under the ex-

1 exclusive management authority of the United
2 States under the Magnuson-Stevens Fishery
3 Conservation and Management Act (16 U.S.C.
4 1801 et seq.); and

5 “(B) any other surface water, ground
6 water, drinking water supply, land surface or
7 subsurface strata, or ambient air within the
8 United States or under the jurisdiction of the
9 United States.

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

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

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

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

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

23 “(10) The term ‘release’ means any spilling,
24 leaking, pumping, pouring, emitting, emptying, dis-
25 charging, injecting, escaping, leaching, dumping, or

1 disposing into the environment (including the aban-
2 donment or discarding of barrels, containers, and
3 other closed receptacles containing any hazardous
4 substance or pollutant or contaminant).

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

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

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

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

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

1 “(13) The term ‘academic laboratory’ means a
2 facility or area owned by an institution of higher
3 education (as defined under section 101 of the High-
4 er Education Act of 1965 (20 U.S.C. 1001)) or a
5 non-profit research institute or teaching hospital
6 that has a formal affiliation with an institution of
7 higher education, including photo laboratories, art
8 studios, field laboratories, research farms, chemical
9 stockrooms, and preparatory laboratories, where rel-
10 atively small quantities of chemicals and other sub-
11 stances, as determined by the Secretary, are used on
12 a non-production basis for teaching, research, or di-
13 agnostic purposes, and are stored and used in con-
14 tainers that are typically manipulated by one person.

15 **“SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF**
16 **CHEMICAL FACILITIES.**

17 “(a) SUBSTANCES OF CONCERN.—

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

22 “(2) MATTERS FOR CONSIDERATION.—In desig-
23 nating a chemical substance or establishing or ad-
24 justing the threshold quantity for a chemical sub-
25 stance under paragraph (1), the Secretary shall con-

1 sider the potential extent of death, injury, and seri-
2 ous adverse effects to human health, the environ-
3 ment, critical infrastructure, public health, homeland
4 security, national security, and the national economy
5 that could result from a chemical facility terrorist
6 incident.

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

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

13 “(A) The potential threat or likelihood that
14 the chemical facility will be the target of a
15 chemical facility terrorist incident.

16 “(B) The potential extent and likelihood of
17 death, injury, or serious adverse effects to
18 human health, the environment, critical infra-
19 structure, public health, homeland security, na-
20 tional security, and the national economy that
21 could result from a chemical facility terrorist
22 incident.

23 “(C) The proximity of the chemical facility
24 to large population centers.

1 “(2) SUBMISSION OF INFORMATION.—The Sec-
2 retary may require the submission of information
3 with respect to the quantities of substances of con-
4 cern that an owner or operator of a chemical facility
5 possesses or plans to possess in order to determine
6 whether to designate a chemical facility as a covered
7 chemical facility for purposes of this title.

8 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO
9 RISK-BASED TIERS.—

10 “(1) ASSIGNMENT.—The Secretary shall assign
11 each covered chemical facility to one of four risk-
12 based tiers established by the Secretary, with tier
13 one representing the highest degree of risk and tier
14 four the lowest degree of risk.

15 “(2) PROVISION OF INFORMATION.—The Sec-
16 retary may request, and the owner or operator of a
17 covered chemical facility shall provide, any additional
18 information beyond any information required to be
19 submitted under subsection (b)(2) that may be nec-
20 essary for the Secretary to assign the chemical facil-
21 ity to the appropriate tier under paragraph (1).

22 “(3) NOTIFICATION.—Not later than 60 days
23 after the date on which the Secretary determines
24 that a chemical facility is a covered chemical facility
25 or is no longer a covered chemical facility or changes

1 the tier assignment under paragraph (1) of a cov-
2 ered chemical facility, the Secretary shall notify the
3 owner or operator of that chemical facility of that
4 determination or change together with the reason for
5 the determination or change and, upon the request
6 of the owner or operator of a covered chemical facil-
7 ity, provide to the owner or operator of the covered
8 chemical facility the following information:

9 “(A) The number of individuals at risk of
10 death, injury, or severe adverse effects to
11 human health as a result of a worst case chem-
12 ical facility terrorist incident at the covered
13 chemical facility.

14 “(B) Information related to the criticality
15 of the covered chemical facility.

16 “(C) The proximity or interrelationship of
17 the covered chemical facility to other critical in-
18 frastructure.

19 “(d) REQUIREMENT FOR REVIEW.—The Secretary—
20 “(1) shall periodically review—

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

1 “(B) the criteria under subsection (b)(1);

2 and

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

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

14 **“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND**
15 **SITE SECURITY PLANS.**

16 “(a) IN GENERAL.—

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

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

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

24 “(i) conduct an assessment of the vul-
25 nerability of the covered chemical facility

1 to a range of chemical facility terrorist in-
2 cidents, including an incident that results
3 in a worst-case release of a substance of
4 concern, and submit such assessment to
5 the Secretary;

6 “(ii) prepare and implement a site se-
7 curity plan for that covered chemical facil-
8 ity that addresses the security vulnerability
9 assessment and meets the risk-based chem-
10 ical security performance standards under
11 subsection (c) and submit such plan to the
12 Secretary;

13 “(iii) include at least one supervisory
14 and at least one non-supervisory employee
15 of the covered chemical facility, and at
16 least one employee representative from
17 each bargaining agent at the covered
18 chemical facility, if any, in developing the
19 security vulnerability assessment and site
20 security plan required under this section;
21 and

22 “(iv) include, with the submission of a
23 security vulnerability assessment and the
24 site security plan of the covered chemical
25 facility under this section, a signed state-

1 ment by the owner or operator of the cov-
2 ered chemical facility that certifies that the
3 submission is provided to the Secretary
4 with knowledge of the penalty provisions
5 under section 2107;

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

9 “(D) upon request, as necessary, and to
10 the extent that resources permit, provide tech-
11 nical assistance to a covered chemical facility
12 conducting a vulnerability assessment or site se-
13 curity plan required under this section;

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

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

22 “(ii) any material modification to a
23 covered chemical facility’s operations or
24 site that may affect the security vulner-

1 ability assessment or site security plan
2 submitted by the covered chemical facility;

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

8 “(G) not later than 180 days after the
9 date on which the Secretary receives a security
10 vulnerability assessment or site security plan
11 under this title, review and approve or dis-
12 approve such assessment or plan and notify the
13 covered chemical facility of such approval or
14 disapproval; and

15 “(H) establish, as appropriate, modified or
16 separate standards, protocols, and procedures
17 for security vulnerability assessments and site
18 security plans for covered chemical facilities
19 that are also academic laboratories.

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

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

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

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

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

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

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

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

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

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

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

1 to the regulations promulgated pursuant to this
2 title; and

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

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

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

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

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

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

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

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

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

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

13 “(f) OTHER AUTHORITIES.—

14 “(1) REGULATION OF MARITIME FACILITIES.—

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

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

15 “(C) PERSONNEL SURETY.—

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

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

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

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

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

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

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

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

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

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

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

7 “(g) ROLE OF EMPLOYEES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(4) WORKER TRAINING GRANT PROGRAM.—

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

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

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

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

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

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

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

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

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

8 “(ii) REPORT TO CONGRESS.—If
9 grants are awarded under this paragraph
10 using procedures other than competitive
11 procedures, the Secretary shall submit to
12 Congress a report explaining why competi-
13 tive procedures were not used.

14 “(F) PROHIBITION ON EARMARKS.—None
15 of the funds appropriated to carry out this
16 paragraph may be used for a congressional ear-
17 mark as defined in clause 9d, of Rule XXI of
18 the rules of the House of Representatives of the
19 111th Congress.

20 “(h) STATE, REGIONAL, OR LOCAL GOVERNMENTAL
21 ENTITIES.—No covered chemical facility shall be required
22 under State, local, or tribal law to provide a vulnerability
23 assessment or site security plan described under this title
24 to any State, regional, local, or tribal government entity
25 solely by reason of the requirement under subsection (a)

1 that the covered chemical facility submit such an assess-
2 ment and plan to the Secretary.

3 **“SEC. 2104. SITE INSPECTIONS.**

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

10 “(b) INSPECTIONS AND VERIFICATIONS.—

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

15 “(2) REQUIREMENTS.—To ensure and evaluate
16 compliance with this title, including any regulations
17 or requirements adopted by the Secretary in further-
18 ance of the purposes of this title, in conducting an
19 inspection or verification under paragraph (1), the
20 Secretary shall have access to the owners, operators,
21 employees, and employee representatives, if any, of
22 a covered chemical facility.

23 “(c) UNANNOUNCED INSPECTIONS.—In addition to
24 any inspection conducted pursuant to subsection (b), the
25 Secretary shall require covered chemical facilities assigned

1 to tier 1 and tier 2 under section 2102(c)(1) to undergo
2 unannounced facility inspections. The inspections required
3 under this subsection shall be—

4 “(1) conducted without prior notice to the facil-
5 ity;

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

8 “(A) the ability of the chemical facility to
9 prevent a chemical facility terrorist incident
10 that the site security plan of the facility is in-
11 tended to prevent;

12 “(B) the ability of the chemical facility to
13 protect against security threats that are re-
14 quired to be addressed by the site security plan
15 of the facility; and

16 “(C) any weaknesses in the site security
17 plan of the chemical facility;

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

22 “(4) conducted—

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

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

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

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

1 **“SEC. 2105. RECORDS.**

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

7 “(1) reviewing or analyzing a security vulner-
8 ability assessment or site security plan submitted
9 under section 2103; or

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

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

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

17 “(a) RESPONSIBILITIES OF SECRETARY.—Upon the
18 receipt of information concerning a threat that is relevant
19 to a certain covered chemical facility, the Secretary shall
20 provide such information in a timely manner, to the max-
21 imum extent practicable under applicable authority and in
22 the interests of national security, to the owner, operator,
23 or security officer of that covered chemical facility, to a
24 representative of each recognized or certified bargaining
25 agent at the facility, if any, and to relevant State, local,

1 and tribal authorities, including the State Homeland Security
2 rity Advisor, if any.

3 “(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—

4 The Secretary shall require the owner or operator of a
5 covered chemical facility to provide to the Secretary in a
6 timely manner, information concerning a threat about any
7 significant security incident or threat to the covered chemical
8 facility or any intentional or unauthorized penetration
9 of the physical security or cyber security of the covered
10 chemical facility whether successful or unsuccessful.

11 **“SEC. 2107. ENFORCEMENT.**

12 “(a) REVIEW OF SECURITY VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN.—

13
14 “(1) DISAPPROVAL.—The Secretary shall disapprove a security vulnerability assessment or site
15 security plan submitted under this title if the Secretary determines, in his or her discretion, that—

16
17
18 “(A) the security vulnerability assessment
19 or site security plan does not comply with the
20 standards, protocols, or procedures under section 2103(a)(1)(A); or

21
22 “(B) in the case of a site security plan—

23 “(i) the plan or the implementation of
24 the plan is insufficient to address
25 vulnerabilities identified in a security vul-

1 nerability assessment, site inspection, or
2 unannounced inspection of the covered
3 chemical facility; or

4 “(ii) the plan fails to meet all applica-
5 ble chemical facility security performance
6 standards.

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

17 “(A) includes a clear explanation of defi-
18 ciencies in the assessment, plan, or implementa-
19 tion of the plan; and

20 “(B) requires the owner or operator of the
21 covered chemical facility to revise the assess-
22 ment or plan to address any deficiencies and,
23 by such date as the Secretary determines is ap-
24 propriate, to submit to the Secretary the re-
25 vised assessment or plan.

1 “(b) REMEDIES.—

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

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

21 “(B) in a civil action, obtain appropriate
22 equitable relief, a civil penalty of not more than
23 \$25,000 for each day on which a past or cur-
24 rent violation occurs or a failure to comply con-
25 tinues, or both.

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

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

13 **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

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

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

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

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

11 “(e) RETALIATION PROHIBITED.—

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

21 “(A) notified the Secretary, the owner or
22 operator of a covered chemical facility, or the
23 employee’s employer of an alleged violation of
24 this title, including notification of such an al-

1 leged violation through communications related
2 to carrying out the employee's job duties;

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

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

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

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

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

22 “(2) ENFORCEMENT ACTION.—Any employee
23 covered by this section who alleges discrimination by
24 an employer in violation of paragraph (1) may bring
25 an action governed by the rules and procedures,

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

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

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

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

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

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

24 “(B) RULE OF CONSTRUCTION.—Nothing
25 in this paragraph shall be construed to affect

1 any rights, apart from those referred to in sub-
2 paragraph (A), to which an individual described
3 in that subparagraph might otherwise be enti-
4 tled to under law.

5 **“SEC. 2109. FEDERAL PREEMPTION.**

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

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

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

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

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

24 “(b) INFORMATION SHARING.—

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

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

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

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

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

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

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

12 “(g) PROTECTED INFORMATION.—

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

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

19 “(B) Portions of the following documents,
20 records, orders, notices, or letters that the Sec-
21 retary has determined by regulation would be
22 detrimental to chemical facility security if dis-
23 closed and that are developed by the Secretary
24 or the owner or operator of a covered chemical
25 facility for the purposes of this title:

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

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

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

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

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

20 “(C) Other information, documents, or
21 records developed exclusively for the purposes of
22 this title that the Secretary has determined by
23 regulation would, if disclosed, be detrimental to
24 chemical facility security.

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

4 “(A) information, other than a security
5 vulnerability assessment or site security plan,
6 that the Secretary has determined by regulation
7 to be—

8 “(i) appropriate to describe facility
9 compliance with the requirements of this
10 title and the Secretary’s implementation of
11 such requirements; and

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

14 “(B) information, whether or not also con-
15 tained in a security vulnerability assessment,
16 site security plan, or in a document, record,
17 order, notice, or letter, or portion thereof, de-
18 scribed in subparagraph (B) or (C) of para-
19 graph (1), that is obtained from another source
20 with respect to which the Secretary has not
21 made a determination under either such sub-
22 paragraph, including—

23 “(i) information that is required to be
24 made publicly available under any other
25 provision of law; and

1 “(ii) information that a chemical facil-
2 ity has lawfully disclosed other than in a
3 submission to the Secretary pursuant to a
4 requirement of this title.

5 **“SEC. 2111. METHODS TO REDUCE THE CONSEQUENCES OF**
6 **A TERRORIST ATTACK.**

7 “(a) ASSESSMENT REQUIRED.—

8 “(1) ASSESSMENT.—The owner or operator of
9 a covered chemical facility shall include in the site
10 security plan conducted pursuant to section 2103,
11 an assessment of methods to reduce the con-
12 sequences of a terrorist attack on that chemical fa-
13 cility, including—

14 “(A) a description of the methods to re-
15 duce the consequences of a terrorist attack im-
16 plemented and considered for implementation
17 by the covered chemical facility;

18 “(B) the degree to which each method to
19 reduce the consequences of a terrorist attack, if
20 already implemented, has reduced, or, if imple-
21 mented, could reduce, the potential extent of
22 death, injury, or serious adverse effects to
23 human health resulting from a release of a sub-
24 stance of concern;

1 “(C) the technical feasibility, costs, avoided
2 costs (including liabilities), personnel implica-
3 tions, savings, and applicability of implementing
4 each method to reduce the consequences of a
5 terrorist attack; and

6 “(D) any other information that the owner
7 or operator of the covered chemical facility con-
8 sidered in conducting the assessment.

9 “(2) FEASIBLE.—For the purposes of this sec-
10 tion, the term ‘feasible’ means feasible with the use
11 of best technology, techniques, and other means that
12 the Secretary finds, after examination for efficacy
13 under field conditions and not solely under labora-
14 tory conditions, are available for use at the covered
15 chemical facility.

16 “(b) IMPLEMENTATION.—

17 “(1) IMPLEMENTATION.—

18 “(A) IN GENERAL.—The owner or operator
19 of a covered chemical facility that is assigned to
20 tier 1 or tier 2 because of the potential extent
21 and likelihood of death, injury, and serious ad-
22 verse effects to human health, the environment,
23 critical infrastructure, public health, homeland
24 security, national security, and the national
25 economy from a release of a substance of con-

1 cern at the covered chemical facility, shall im-
2 plement methods to reduce the consequences of
3 a terrorist attack on the chemical facility if the
4 Director of the Office of Chemical Facility Se-
5 curity determines, in his or her discretion, using
6 the assessment conducted pursuant to sub-
7 section (a), that the implementation of such
8 methods at the facility—

9 “(i) would significantly reduce the
10 risk of death, injury, or serious adverse ef-
11 fects to human health resulting from a
12 chemical facility terrorist incident but—

13 “(I) would not increase the in-
14 terim storage of a substance of con-
15 cern outside the facility;

16 “(II) would not directly result in
17 the creation of a new covered chemical
18 facility assigned to tier 1 or tier 2 be-
19 cause of the potential extent and like-
20 lihood of death, injury, and serious
21 adverse effects to human health, the
22 environment, critical infrastructure,
23 public health, homeland security, na-
24 tional security, and the national econ-
25 omy from a release of a substance of

1 concern at the covered chemical facil-
2 ity;

3 “(III) would not result in the re-
4 assignment of an existing covered
5 chemical facility from tier 3 or tier 4
6 to tier 1 or tier 2 because of the po-
7 tential extent and likelihood of death,
8 injury, and serious adverse effects to
9 human health, the environment, crit-
10 ical infrastructure, public health,
11 homeland security, national security,
12 and the national economy from a re-
13 lease of a substance of concern at the
14 covered chemical facility; and

15 “(IV) would not significantly in-
16 crease the potential extent and likeli-
17 hood of death, injury, and serious ad-
18 verse effects to human health, the en-
19 vironment, critical infrastructure,
20 public health, homeland security, na-
21 tional security, and the national econ-
22 omy from a release of a substance of
23 concern due to a terrorist attack on
24 the transportation infrastructure of
25 the United States;

1 “(ii) can feasibly be incorporated into
2 the operation of the covered chemical facil-
3 ity; and

4 “(iii) would not significantly and de-
5 monstrably impair the ability of the owner
6 or operator of the covered chemical facility
7 to continue the business of the facility at
8 its location.

9 “(B) WRITTEN DETERMINATION.—A de-
10 termination by the Director of the Office of
11 Chemical Facility Security pursuant to sub-
12 paragraph (A) shall be made in writing and in-
13 clude the basis and reasons for such determina-
14 tion, including the Director’s analysis of the
15 covered chemical facility’s assessment of the
16 technical feasibility, costs, avoided costs (includ-
17 ing liabilities), personnel implications, savings,
18 and applicability of implementing each method
19 to reduce the consequences of a terrorist attack.

20 “(C) MARITIME FACILITIES.—With respect
21 to a covered chemical facility for which a secu-
22 rity plan is required under section 70103(e) of
23 title 46, United States Code, a written deter-
24 mination pursuant to subparagraph (A) shall be
25 made only after consultation with the Captain

1 of the Port for the area in which the covered
2 chemical facility is located.

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

4 “(A) IN GENERAL.—An owner or operator
5 of a covered chemical facility who is unable to
6 comply with the Director’s determination under
7 paragraph (1) shall, within 120 days of receipt
8 of the Director’s determination, provide to the
9 Secretary a written explanation that includes
10 the reasons therefor. Such written explanation
11 shall specify whether the owner or operator’s in-
12 ability to comply arises under clause (ii) or (iii)
13 of paragraph (1)(A), or both.

14 “(B) REVIEW.—Not later than 120 days
15 after receipt of an explanation submitted under
16 subparagraph (A), the Secretary, after con-
17 sulting with the owner or operator of the cov-
18 ered chemical facility who submitted such expla-
19 nation, as well as experts in the subjects of en-
20 vironmental health and safety, security, chem-
21 istry, design and engineering, process controls
22 and implementation, maintenance, production
23 and operations, chemical process safety, and oc-
24 cupational health, as appropriate, shall provide
25 to the owner or operator a written determina-

1 tion, in his or her discretion, of whether imple-
2 mentation shall be required pursuant to para-
3 graph (1). If the Secretary determines that im-
4 plementation is required, the Secretary shall
5 issue an order that establishes the basis for
6 such determination, including the findings of
7 the relevant experts, the specific methods se-
8 lected for implementation, and a schedule for
9 implementation of the methods at the facility.

10 “(c) AGRICULTURAL SECTOR.—

11 “(1) GUIDANCE FOR FARM SUPPLIES MER-
12 CHANT WHOLESALERS.—The Secretary shall provide
13 guidance and, as appropriate, tools, methodologies or
14 computer software, to assist farm supplies merchant
15 wholesalers in complying with the requirements of
16 this section. The Secretary may award grants to
17 farm supplies merchant wholesalers to assist with
18 compliance with subsection (a), and in awarding
19 such grants, shall give priority to farm supplies mer-
20 chant wholesalers that have the greatest need for
21 such grants.

22 “(2) ASSESSMENT OF AGRICULTURAL IM-
23 PACTS.—Not later than 6 months after the date of
24 the enactment of this title, the Secretary shall trans-
25 mit an assessment of the potential impacts of com-

1 pliance with provisions of this section regarding the
2 assessment and, as appropriate, implementation, of
3 methods to reduce the consequences of a terrorist
4 attack on the agricultural sector to the Committee
5 on Energy and Commerce of the House of Rep-
6 resentatives, the Committee on Homeland Security
7 of the House of Representatives, the Committee on
8 Homeland Security and Governmental Affairs of the
9 Senate, the Committee on Agriculture of the House
10 of Representatives, and the Committee on Agri-
11 culture, Nutrition and Forestry of the Senate.
12 Such assessment shall be conducted by the Secretary
13 in consultation with other appropriate Federal agen-
14 cies and shall include the following:

15 “(A) Data on the scope of agricultural fa-
16 cilities covered by this title, including the num-
17 ber and type of manufacturers, retailers, aerial
18 commercial applicators and distributors of pes-
19 ticide and fertilizer required to assess methods
20 to reduce the consequences of a terrorist attack
21 under subsection (a) and the number and type
22 of manufacturers, retailers, aerial commercial
23 applicators and distributors of pesticide and
24 fertilizer assigned to tier 1 or tier 2 by the Sec-
25 retary because of the potential extent and

1 likelihood of death, injury, and serious adverse
2 effects to human health, the environment, crit-
3 ical infrastructure, public health, homeland se-
4 curity, national security, and the national econ-
5 omy from the release of a substance of concern
6 at the facility.

7 “(B) A survey of known methods, proc-
8 esses or practices, other than elimination of or
9 cessation of manufacture of the pesticide or fer-
10 tilizer, that manufacturers, retailers, aerial
11 commercial applicators, and distributors of pes-
12 ticide and fertilizer could use to reduce the con-
13 sequences of a terrorist attack, including an as-
14 sessment of the costs and technical feasibility of
15 each such method, process, or practice.

16 “(C) An analysis of how the assessment
17 of methods to reduce the consequences of a
18 terrorist attack under subsection (a) by manu-
19 facturers, retailers, aerial commercial applica-
20 tors, and distributors of pesticide and fertilizer,
21 and, as appropriate, the implementation of
22 methods to reduce the consequences of a ter-
23 rorist attack by such manufacturers, retailers,
24 aerial commercial applicators, and distributors
25 of pesticide and fertilizer subject to sub-

1 section (b), are likely to impact agricultural
2 endusers.

3 “(D) Recommendations for how to miti-
4 gate any adverse impacts identified pursuant to
5 subparagraph (C).

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

7 “(A) FARM SUPPLIES MERCHANT WHOLE-
8 SALER.—The term ‘farm supplies merchant
9 wholesaler’ means a covered chemical facility
10 that is primarily engaged in the merchant
11 wholesale distribution of farm supplies, such as
12 animal feeds, fertilizers, agricultural chemicals,
13 pesticides, plant seeds, and plant bulbs.

14 “(B) AGRICULTURAL END-USERS.—The
15 term ‘agricultural end-users’ means facilities
16 such as—

17 “(i) farms, including crop, fruit, nut,
18 and vegetable farms;

19 “(ii) ranches and rangeland;

20 “(iii) poultry, dairy, and equine facili-
21 ties;

22 “(iv) turfgrass growers;

23 “(v) golf courses;

24 “(vi) nurseries;

25 “(vii) floricultural operations; and

1 “(viii) public and private parks.

2 “(d) SMALL COVERED CHEMICAL FACILITIES.—

3 “(1) GUIDANCE FOR SMALL COVERED CHEM-
4 ICAL FACILITIES.—The Secretary may provide guid-
5 ance and, as appropriate, tools, methodologies, or
6 computer software, to assist small covered chemical
7 facilities in complying with the requirements of this
8 section.

9 “(2) ASSESSMENT OF IMPACTS ON SMALL COV-
10 ERED CHEMICAL FACILITIES.—Not later than 6
11 months after the date of the enactment of this title,
12 the Secretary shall transmit to the Committee on
13 Energy and Commerce of the House of Representa-
14 tives, the Committee on Homeland Security of the
15 House of Representatives, and the Committee on
16 Homeland Security and Governmental Affairs of the
17 Senate an assessment of the potential effects on
18 small covered chemical facilities of compliance with
19 provisions of this section regarding the assessment
20 and, as appropriate, implementation, of methods to
21 reduce the consequences of a terrorist attack. Such
22 assessment shall include—

23 “(A) data on the scope of facilities covered
24 by this title, including the number and type of
25 small covered chemical facilities that are re-

1 required to assess methods to reduce the con-
2 sequences of a terrorist attack under subsection
3 (a) and the number and type of small covered
4 chemical facilities assigned to tier 1 or tier 2
5 under section 2102(c)(1) by the Secretary be-
6 cause of the potential extent and likelihood of
7 death, injury, and serious adverse effects to
8 human health, the environment, critical infra-
9 structure, public health, homeland security, na-
10 tional security, and the national economy from
11 the release of a substance of concern at the fa-
12 cility; and

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

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

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

9 “(1) IN GENERAL.—The Secretary shall make
10 available information on the use and availability of
11 methods to reduce the consequences of a chemical
12 facility terrorist incident.

13 “(2) INFORMATION TO BE INCLUDED.—The in-
14 formation under paragraph (1) may include informa-
15 tion about—

16 “(A) general and specific types of such
17 methods;

18 “(B) combinations of chemical sources,
19 substances of concern, and hazardous processes
20 or conditions for which such methods could be
21 appropriate;

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

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

1 “(E) emerging technologies that could be
2 transferred from research models or prototypes
3 to practical applications;

4 “(F) the availability of technical assistance
5 and best practices; and

6 “(G) such other matters that the Secretary
7 determines are appropriate.

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

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

19 **“SEC. 2112. APPLICABILITY; DELEGATION.**

20 “(a) IN GENERAL.—This title shall not apply to—

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

23 “(2) the transportation in commerce, including
24 incidental storage, of any substance of concern regu-

1 lated as a hazardous material under chapter 51 of
2 title 49, United States Code;

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

5 “(A) is subject to regulation by the Nu-
6 clear Regulatory Commission (hereinafter in
7 this paragraph referred to as the ‘Commission’)
8 or a State that has entered into an agreement
9 with the Commission under section 274 b. of
10 the Atomic Energy Act of 1954 (42 U.S.C.
11 2021 b.);

12 “(B) has had security controls imposed by
13 the Commission or State, whichever has the
14 regulatory authority, on the entire facility or
15 the specified portion of the facility; and

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

20 “(b) DELEGATION OF AUTHORITY.—The President
21 shall delegate the authority to enforce this Act to—

22 “(1) the Nuclear Regulatory Commission, with
23 respect to any facility subject to regulation by the
24 Nuclear Regulatory Commission;

1 “(2) the Commandant of the Coast Guard, with
2 respect to any facility regulated under chapter 701
3 of title 46, United States Code; and

4 “(3) the Administrator of the Environmental
5 Protection Agency, with respect to a public water
6 system, as such term is defined by section 1401(4)
7 of the Safe Drinking Water Act (42 U.S.C.
8 300f(4)), or a treatment works, as such term is de-
9 fined by section 212(2) of the Federal Water Pollu-
10 tion Control Act (33 U.S.C. 1292(2)).

11 “(c) OTHER FEDERAL AGENCIES.—The Secretary
12 shall, as appropriate, provide any information, and make
13 available any determinations, requirements, or tools ob-
14 tained or developed for the purposes of carrying out the
15 requirements of this title, to the heads of the agencies des-
16 ignated in subsection (b).

17 **“SEC. 2113. SAVINGS CLAUSE.**

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

1 and Health Act (29 U.S.C. 651 et seq.), the National
2 Labor Relations Act (29 U.S.C. 151 et seq.), the Emer-
3 gency Planning and Community Right to Know Act of
4 1986 (42 U.S.C. 11001 et seq.), the Safe Drinking Water
5 Act (42 U.S.C. 300f et seq.), the Maritime Transportation
6 Security Act of 2002 (Public Law 107–295), the Com-
7 prehensive Environmental Response, Compensation, and
8 Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Toxic
9 Substances Control Act (15 U.S.C. 2601 et seq.), and the
10 Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

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

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

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

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

1 that title, and who shall be responsible for carrying out
2 the responsibilities of the Secretary under this title.

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

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

25 “(d) OUTREACH SUPPORT.—

1 “(1) POINT OF CONTACT.—The Secretary shall
2 designate a point of contact for the Administrator of
3 the Environmental Protection Agency, and the head
4 of any other agency designated by the Secretary,
5 with respect to the requirements of this title.

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

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

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

22 “(1) IN GENERAL.—

23 “(A) REQUIREMENT.—The Secretary shall
24 issue regulations to require covered chemical fa-
25 cilities to establish personnel surety for individ-

1 uals described in subparagraph (B) by con-
2 ducting appropriate security background checks
3 and ensuring appropriate credentials for
4 unescorted visitors and chemical facility per-
5 sonnel, including permanent and part-time per-
6 sonnel, temporary personnel, and contract per-
7 sonnel, including—

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

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

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

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

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

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

24 “(ii) a person associated with a cov-
25 ered chemical facility, including any des-

1 ignated employee representative, who is
2 provided with a copy of a security vulner-
3 ability assessment or site security plan; or
4 “(iii) a person who is determined by
5 the Secretary to require a security back-
6 ground check based on chemical facility se-
7 curity performance standards.

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

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

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

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

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

23 “(E) a prohibition on an owner or operator
24 of a covered chemical facility misrepresenting to
25 an employee or other relevant person, including

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

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

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

22 “(2) was convicted of, or found not guilty of by
23 reason of insanity, an interim disqualifying criminal
24 offense listed in part 1572 of title 49, Code of Fed-
25 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; delegation.
- “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 Act.

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 Act;

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 Act
21 and the amendments made by this Act; 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 Act or the amendments made
17 by this Act, 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 Act.

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

