

Committee Print

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) The Nation's chemical sector represents a
5 target that terrorists could exploit to cause death,
6 injury, or serious adverse effects to human health,
7 the environment, critical infrastructure, national se-
8 curity, the national economy, and public welfare.

9 (2) Facilities that are vulnerable to such at-
10 tacks, and whose consequences are listed above must
11 be protected.

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

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

22 (5) Under current law, the statutory authority
23 of the Secretary of Homeland Security to regulate
24 security practices at chemical facilities and the
25 CFATS regulations will sunset in October of 2009.

1 (b) PURPOSE.—The purpose of this Act is to give
2 permanent status to the CFATS regulations and to pro-
3 vide further Congressional guidance for the future imple-
4 mentation of such regulations.

5 **SEC. 3. EXTENSION, MODIFICATION, AND RECODIFICATION**
6 **OF AUTHORITY OF SECRETARY OF HOME-**
7 **LAND SECURITY TO REGULATE SECURITY**
8 **PRACTICES AT CHEMICAL FACILITIES.**

9 (a) IN GENERAL.—The Homeland Security Act of
10 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
11 end the following new title:

12 **“TITLE XXI—REGULATION OF SE-**
13 **CURITY PRACTICES AT CHEM-**
14 **ICAL FACILITIES**

15 **“SEC. 2101. DEFINITIONS.**

16 “In this title, the following definitions apply:

17 “(1) The term ‘environment’ has the meaning
18 given the term in section 101 of the Comprehensive
19 Environmental Response Compensation and Liability
20 Act of 1980 (42 U.S.C. 9601).

21 “(2) The term ‘chemical facility’ means any fa-
22 cility at which a chemical is stored or located.

23 “(3) The term ‘owner or operator of a chemical
24 facility’ means any of the following:

1 “(A) The person who owns a chemical fa-
2 cility.

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

4 “(C) The person who operates such a facil-
5 ity.

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

10 “(5) The term ‘chemical facility security meas-
11 ure’ means any action taken to ensure or enhance
12 the security of a chemical facility against a chemical
13 facility terrorist incident, including—

14 “(A) employee background checks;

15 “(B) employee training;

16 “(C) personnel security measures;

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

19 “(E) protection of the perimeter of the
20 chemical facility or the portion or sector within
21 the facility in which a substance of concern is
22 stored, used, or handled, by utilizing fences,
23 barriers, guards, or other means;

24 “(F) installation and operation of cameras
25 or other intrusion detection sensors;

1 “(G) the implementation of measures to
2 increase computer or computer network secu-
3 rity, including supervisory control and data ac-
4 quisition systems, process control systems, and
5 other automated systems used by the facility;

6 “(H) contingency and evacuation plans;

7 “(I) early warning system;

8 “(J) the relocation or hardening of storage
9 or containment equipment;

10 “(K) methods to reduce the consequences
11 of a terrorist attack, as defined in section
12 2110(a);

13 “(L) coordination and communications
14 with State, local, and tribal emergency response
15 providers; and

16 “(M) other security measures to prevent,
17 protect against, mitigate or reduce the con-
18 sequences of a chemical facility terrorist inci-
19 dent.

20 “(6) The term ‘substance of concern’ means a
21 chemical substance in quantity and form that is des-
22 ignated by the Secretary by regulation under section
23 2102(a) as a chemical substance to be considered for
24 regulation under this title.

1 “(7) The term ‘chemical facility terrorist inci-
2 dent’ means—

3 “(A) an act of terrorism committed at,
4 near, or against a chemical facility;

5 “(B) the release of a substance of concern
6 from a chemical facility into the surrounding
7 area as a consequence of an act of terrorism; or

8 “(C) the obtaining of a substance of con-
9 cern by any person for the purposes of releasing
10 the substance off-site in furtherance of an act
11 of terrorism.

12 **“SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF**
13 **CHEMICAL FACILITIES.**

14 “(a) SUBSTANCES OF CONCERN.—

15 “(1) DESIGNATION BY THE SECRETARY.—The
16 Secretary may—

17 “(A) designate any chemical substance as
18 a substance of concern;

19 “(B) establish and revise, for purposes of
20 making determinations under subsection (b),
21 the threshold quantity for a substance of con-
22 cern; or

23 “(C) require the submission of information
24 with respect to the quantities of substances of
25 concern that are used, stored, manufactured,

1 processed, or distributed by any chemical facil-
2 ity.

3 “(2) MATTERS FOR CONSIDERATION.—In desig-
4 nating a chemical substance or establishing or ad-
5 justing the threshold quantity for a chemical sub-
6 stance under paragraph (1), the Secretary shall con-
7 sider the potential extent of death, injury, and seri-
8 ous adverse effects to human health, the environ-
9 ment, critical infrastructure, national security, the
10 national economy, and public welfare that would re-
11 sult from a chemical facility terrorist incident.

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

13 “(1) LIST REQUIRED.—The Secretary shall
14 maintain a list of covered chemical facilities in ac-
15 cordance with this subsection.

16 “(2) COVERED CHEMICAL FACILITIES.—For
17 purposes of this title, a covered chemical facility is
18 a chemical facility that has more than the threshold
19 quantity established by the Secretary of any sub-
20 stance of concern, or that the Secretary designates
21 as a covered chemical facility based on the following
22 criteria:

23 “(A) The potential threat or likelihood that
24 the chemical facility will be the target of ter-
25 rorism.

1 “(B) The potential extent and likelihood of
2 death, injury, or serious adverse effects to
3 human health and safety or to the environment
4 that could result from a chemical facility ter-
5 rorist incident.

6 “(C) The proximity of the chemical facility
7 to population centers.

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

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

15 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO
16 RISK-BASED TIERS.—

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

21 “(2) PROVISION OF INFORMATION.—The Sec-
22 retary may request, and the owner or operator of a
23 chemical facility shall provide, information necessary
24 for the Secretary to assign a chemical facility to the
25 appropriate tier under paragraph (1).

1 “(3) NOTIFICATION.—Not later than 60 days
2 after assigning a chemical facility to a tier under
3 this subsection, the Secretary shall notify the owner
4 or operator of the chemical facility of the tier to
5 which the facility is assigned and shall provide the
6 facility with the reasons for assignment of the facil-
7 ity to such tier.

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

13 “(d) PERIODIC REVIEW OF LIST OF COVERED CHEM-
14 ICAL FACILITIES.—

15 “(1) REQUIREMENT.—Not later than 2 years
16 after the date of the enactment of the Chemical Fa-
17 cility Anti-Terrorism Act of 2008, and annually
18 thereafter, the Secretary shall—

19 “(A) consider the criteria under subsection
20 (b)(2); and

21 “(B) determine whether to add a chemical
22 facility to the list of covered chemical facilities
23 maintained under subsection (b)(1) or to re-
24 move or change the tier assignment of any
25 chemical facility on such list.

1 “(2) **AUTHORITY TO REVIEW.**—The Secretary
2 may, at any time, after considering the criteria
3 under subsection (b)(2), add a chemical facility to
4 the list of covered chemical facilities maintained
5 under subsection (b)(1) or remove or change the tier
6 assignment of any chemical facility on such list.

7 “(3) **NOTIFICATION.**—Not later than 30 days
8 after the date on which the Secretary adds a facility
9 to the list of covered chemical facilities maintained
10 by the Secretary under subsection (b)(1), removes a
11 facility from such list, or changes the tier assign-
12 ment of any facility on such list, the Secretary shall
13 notify the owner of that facility of that addition, re-
14 moval, or change.

15 **“SEC. 2103. VULNERABILITY ASSESSMENTS AND FACILITY**
16 **SECURITY PLANS.**

17 “(a) **VULNERABILITY ASSESSMENT AND FACILITY**
18 **SECURITY PLAN REQUIRED FOR CHEMICAL FACILI-**
19 **TIES.**—

20 “(1) **REQUIREMENT FOR VULNERABILITY AS-**
21 **SESSMENT AND SECURITY PLAN.**—

22 “(A) **REGULATIONS REQUIRED.**—The Sec-
23 retary shall prescribe regulations to—

24 “(i) establish standards, protocols,
25 and procedures for vulnerability assess-

1 ments and facility security plans to be re-
2 quired for covered chemical facilities on the
3 list maintained by the Secretary under sec-
4 tion 2102(b)(1);

5 “(ii) require the owner or operator of
6 each such facility to—

7 “(I) conduct an assessment of
8 the vulnerability of the chemical facil-
9 ity to a chemical facility terrorist inci-
10 dent, including an assessment of the
11 consequences if the identified
12 vulnerabilities are exploited;

13 “(II) prepare and implement a
14 facility security plan for that facility
15 that addresses the results of the vul-
16 nerability assessment; and

17 “(III) consult with the appro-
18 priate employees of the facility in de-
19 veloping the vulnerability assessment
20 and security plan required under this
21 clause; and

22 “(iii) set deadlines for the completion
23 of vulnerability assessments and facility se-
24 curity plans, such that all such plans and
25 assessments are completed and submitted

1 to the Secretary for approval no later than
2 1 year after final regulations are issued
3 under this paragraph.

4 “(B) DEADLINE FOR HIGH-RISK CHEMICAL
5 FACILITIES.—The owner or operator of a facil-
6 ity assigned to a high-risk tier under section
7 2102(c)(4) shall submit to the Secretary the
8 vulnerability assessment and facility security
9 plan required under this subsection not later
10 than 6 months after the date on which the Sec-
11 retary prescribes regulations under this sub-
12 section.

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

15 “(A) be risk-based;

16 “(B) be performance-based; and

17 “(C) take into consideration—

18 “(i) the cost and technical feasibility
19 of compliance by a chemical facility with
20 the requirements under this title;

21 “(ii) the different quantities and
22 forms of substances of concern stored,
23 used, and handled at chemical facilities;
24 and

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

3 “(b) MINIMUM REQUIREMENTS FOR HIGH-RISK
4 CHEMICAL FACILITIES.—

5 “(1) REQUIREMENTS FOR VULNERABILITY AS-
6 SESSMENTS.—In the case of a facility assigned to a
7 high-risk tier under section 2102(c)(4), the Sec-
8 retary shall require that the vulnerability assessment
9 required under this section for that facility include
10 each of the following:

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

14 “(B) The number of individuals at risk of
15 death, injury, or severe adverse effects to
16 human health as a result of a worst case chem-
17 ical facility terrorist incident at the facility.

18 “(C) Information related to the criticality
19 of the facility for purposes of assessing the de-
20 gree to which the facility is critical to the econ-
21 omy or national security of the United States.

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

24 “(E) Any vulnerability of the facility with
25 respect to—

1 “(i) physical security;

2 “(ii) programmable electronic devices,
3 computers, computer or communications
4 networks, Supervisory Control and Data
5 Acquisition systems, Process Control Sys-
6 tems, or other automated systems used by
7 the facility;

8 “(iii) alarms, cameras, and other pro-
9 tection systems;

10 “(iv) communication systems;

11 “(v) insider threats;

12 “(vi) any utility or infrastructure (in-
13 cluding transportation) upon which the fa-
14 cility relies to operate safely and securely;
15 and

16 “(vii) the structural integrity of equip-
17 ment for storage, handling, and other pur-
18 poses.

19 “(F) Any information relating to threats
20 relevant to the facility that is provided by the
21 Secretary in accordance with paragraph (3).

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

24 “(2) REQUIREMENTS FOR FACILITY SECURITY
25 PLANS.—In the case of a facility assigned to a high-

1 risk tier under section 2102(c)(4), the Secretary
2 shall require that the facility security plan required
3 under this section for that facility include each of
4 the following:

5 “(A) Chemical facility security measures to
6 address the vulnerabilities of the facility to a
7 chemical facility terrorist incident.

8 “(B) A plan and schedule for periodic
9 drills and exercises to be conducted at the facil-
10 ity that include participation by appropriate fa-
11 cility employees, local law enforcement agencies,
12 and emergency response providers.

13 “(C) Equipment, plans, and procedures to
14 be implemented or used by or at the chemical
15 facility in the event of a chemical facility ter-
16 rorist incident that affects the facility, including
17 site evacuation, release mitigation, and contain-
18 ment plans.

19 “(D) An identification of any steps taken
20 to coordinate with State, local, and tribal law
21 enforcement agencies, first responders, and
22 Federal officials on security measures and plans
23 for response to a chemical facility terrorist inci-
24 dent.

1 “(E) A specification of the security officer
2 who will be the point of contact for the Na-
3 tional Incident Management System and for
4 Federal, State, local, and tribal law enforce-
5 ment and emergency response providers.

6 “(F) A description of enhanced security
7 measures to be used during periods of time
8 when the Secretary determines that heightened
9 threat conditions exist.

10 “(G) A review and, as appropriate, a plan
11 to implement methods to reduce the con-
12 sequences of a terrorist attack, as that term is
13 defined in section 2110(a).

14 “(3) PROVISION OF THREAT-RELATED INFOR-
15 MATION.—The Secretary shall provide in a timely
16 manner, to the maximum extent practicable under
17 applicable authority and in the interests of national
18 security, to an owner, operator, or security officer of
19 a facility assigned to the high-risk tier under section
20 2102(c)(4), or another appropriate person, threat in-
21 formation that is relevant to the facility, including
22 an assessment of the most likely method that could
23 be used by terrorists to exploit any vulnerabilities of
24 the facility and the likelihood of the success of such
25 method.

1 “(4) RED TEAM EXERCISES.—The Secretary
2 shall conduct red team exercises at facilities selected
3 by the Secretary that have been assigned to a high-
4 risk tier under section 2102(c)(4). The Secretary
5 shall ensure that each such facility shall undergo a
6 red team exercise during the six-year period that be-
7 gins on the date of the enactment of the Chemical
8 Facility Anti-Terrorism Act of 2008. The exercises
9 required under this paragraph shall be—

10 “(A) conducted after informing the owner
11 or operator of the selected facility; and

12 “(B) designed to identify at the selected
13 facility—

14 “(i) any vulnerabilities of the facility;

15 “(ii) possible modes by which the fa-
16 cility could be attacked; and

17 “(iii) any weaknesses in the security
18 plan of the facility.

19 “(5) PROVISION OF TECHNICAL GUIDANCE.—
20 The Secretary shall provide assistance and guidance
21 to a chemical facility conducting a vulnerability as-
22 sessment or facility security plan required under this
23 section.

24 “(e) SECURITY PERFORMANCE REQUIREMENTS.—

1 “(1) IN GENERAL.—The Secretary shall estab-
2 lish security performance requirements for the facil-
3 ity security plans required to be prepared by chem-
4 ical facilities assigned to each risk-based tier estab-
5 lished under section 2102(c). The requirements
6 shall—

7 “(A) require separate and increasingly
8 stringent security performance requirements for
9 facility security plans as the level of risk associ-
10 ated with the tier increases; and

11 “(B) permit each chemical facility submit-
12 ting a facility security plan to select a combina-
13 tion of chemical facility security measures that
14 satisfy the security performance requirements
15 established by the Secretary under this sub-
16 section.

17 “(2) CRITERIA.—In establishing the security
18 performance requirements under paragraph (1), the
19 Secretary shall consider the criteria under subsection
20 (a)(2).

21 “(3) GUIDANCE.—The Secretary shall provide
22 guidance to each chemical facility on the list main-
23 tained by the Secretary under section 2102(b)(1) re-
24 garding the types of chemical facility security meas-

1 ures that, if applied, could satisfy the requirements
2 under this section.

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

10 “(e) PROCEDURES, PROTOCOLS, AND STANDARDS
11 SATISFYING REQUIREMENTS FOR VULNERABILITY AS-
12 SESSMENT AND SECURITY PLAN.—

13 “(1) DETERMINATION BY THE SECRETARY.—In
14 response to a request by an owner or operator of a
15 covered chemical facility, or at the discretion of the
16 Secretary, the Secretary may endorse or recognize
17 procedures, protocols, and standards that the Sec-
18 retary determines meet all or part of the require-
19 ments of this section.

20 “(2) USE OF PROCEDURES, PROTOCOLS, AND
21 STANDARDS.—

22 “(A) USE BY INDIVIDUAL FACILITIES.—

23 Upon review and written determination by the
24 Secretary under paragraph (1) that the proce-
25 dures, protocols, or standards of a chemical fa-

1 cility subject to the requirements of this section
2 satisfy some or all of the requirements of this
3 section, the chemical facility may elect to com-
4 ply with those procedures, protocols, or stand-
5 ards.

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

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

24 “(4) NOTIFICATION.—If the Secretary does not
25 endorse or recognize a procedure, protocol, or stand-

1 ard for which a petition is submitted under para-
2 graph (1), the Secretary shall provide to the person
3 submitting a petition under paragraph (1) written
4 notification that includes an explanation of the rea-
5 sons why the endorsement or recognition was not
6 made.

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

9 “(A) to review a vulnerability assessment
10 and facility security plan submitted by a chem-
11 ical facility under this section; and

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

14 “(f) OTHER AUTHORITIES.—

15 “(1) OTHER PROVISIONS OF LAW.—A chemical
16 facility on the list maintained by the Secretary
17 under section 2102(b)(1) that is required to prepare
18 a vulnerability assessment or facility security plan or
19 to submit other relevant documents under chapter
20 701 of title 46, United States Code, or section 1433
21 of the Safe Drinking Water Act (42 U.S.C. 300i-2)
22 shall submit such plan or documents to the Sec-
23 retary. The Secretary shall determine the extent to
24 which actions taken by such a facility pursuant to
25 another provision of law fulfill the requirements of

1 this section and require such a facility to complete
2 any additional action required by this section. The
3 Secretary shall work with the heads of the other
4 Federal departments and agencies with authority
5 with respect to such a facility to ensure that require-
6 ments under other provisions of law and the require-
7 ments under this title are non-duplicative and non-
8 contradictory.

9 “(2) COORDINATION OF STORAGE LICENSING
10 REQUIREMENT.—In the case of any storage required
11 to be licensed or permitted under chapter 40 of title
12 18, United States Code, the Secretary shall pre-
13 scribe the rules and regulations for the implementa-
14 tion of this section with the concurrence of the At-
15 torney General and avoid unnecessary duplication of
16 regulatory requirements.

17 “(g) PERIODIC REVIEW BY CHEMICAL FACILITY RE-
18 QUIRED.—

19 “(1) SUBMISSION OF REVIEW.—Not later than
20 3 years after the date on which a vulnerability as-
21 sessment or facility security plan required under this
22 section is submitted, and at least once every 5 years
23 thereafter (or on such a schedule as the Secretary
24 may establish by regulation), the owner or operator
25 of the chemical facility covered by the vulnerability

1 assessment or facility security plan shall submit to
2 the Secretary a review of the adequacy of the vulner-
3 ability assessment or facility security plan that in-
4 cludes a description of any changes made to the vul-
5 nerability assessment or facility security plan.

6 “(2) REVIEW OF REVIEW.—The Secretary
7 shall—

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

11 “(B) not later than 6 months after the
12 date on which a review is submitted under
13 paragraph (1), review the review and notify the
14 facility submitting the review of the Secretary’s
15 approval or disapproval of the review.

16 “(h) ROLE OF EMPLOYEES.—As appropriate, vulner-
17 ability assessments or facility security plans required
18 under this section should describe the roles or responsibil-
19 ities that facility employees are expected to perform to
20 prevent or respond to a chemical facility terrorist incident.

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

22 “(a) RECORD KEEPING.—The Secretary shall require
23 each chemical facility required to submit a vulnerability
24 assessment or facility security plan under section 2103 to

1 maintain a current copy of the assessment and the plan
2 at the facility.

3 “(b) RIGHT OF ENTRY.—For purposes of carrying
4 out this title, the Secretary (or a designee of the Sec-
5 retary) shall have, at a reasonable time and on presen-
6 tation of credentials, a right of entry to, on, or through
7 any property of a chemical facility on the list maintained
8 by the Secretary under section 2102(a)(1) or any property
9 on which any record required to be maintained under this
10 section is located.

11 “(c) INSPECTIONS AND VERIFICATIONS.—The Sec-
12 retary shall, at such time and place as the Secretary deter-
13 mines to be reasonable and appropriate, conduct or re-
14 quire the conduct of facility security inspections and
15 verifications and may, by regulation, authorize third-party
16 inspections and verifications by persons trained and cer-
17 tified by the Secretary for that purpose. Such an inspec-
18 tion or verification shall include a consultation with own-
19 ers, operators, and employees of the facility, as appro-
20 priate, and ensure and evaluate compliance with—

21 “(1) this title and any regulations prescribed to
22 carry out this title; and

23 “(2) any security standards or requirements
24 adopted by the Secretary in furtherance of the pur-
25 poses of this title.

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

6 “(1) reviewing or analyzing a vulnerability as-
7 sessment or facility security plan submitted under
8 section 2103; or

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

10 “(e) COMPLIANCE.—If the Secretary determines that
11 an owner or operator of a chemical facility required to sub-
12 mit a vulnerability assessment or facility security plan
13 under section 2103 fails to maintain, produce, or allow
14 access to records or to the property of the chemical facility
15 as required by this section, the Secretary shall issue an
16 order requiring compliance with this section.

17 **“SEC. 2105. ENFORCEMENT.**

18 “(a) SUBMISSION OF INFORMATION.—

19 “(1) INITIAL SUBMISSION.—The Secretary shall
20 specify in the regulations prescribed under section
21 2103(a), specific deadlines for the submission to the
22 Secretary of the vulnerability assessments and facil-
23 ity security plans required under this title. The Sec-
24 retary may establish different submission require-

1 ments for the different tiers of chemical facilities
2 under section 2102(c).

3 “(2) MAJOR CHANGES REQUIREMENT.—The
4 Secretary shall specify in the regulations prescribed
5 under section 2103(a) specific deadlines and require-
6 ments for the submission by a facility required to
7 submit a vulnerability assessment or facility security
8 plan under that section of information describing—

9 “(A) any change in the use by the facility
10 of more than a threshold amount of any sub-
11 stance of concern; and

12 “(B) any significant change in a vulner-
13 ability assessment or facility security plan sub-
14 mitted by the facility.

15 “(3) FAILURE TO COMPLY.—If an owner or op-
16 erator of a chemical facility fails to submit or imple-
17 ment a vulnerability assessment or facility security
18 plan in accordance with this title, the Secretary shall
19 issue an order requiring the submission or imple-
20 mentation of a vulnerability assessment or facility
21 security plan in accordance with section 2104(e).

22 “(4) ORDER TO CEASE OPERATIONS.—The Sec-
23 retary may issue an order to a high risk chemical fa-
24 cility to cease operations if the Secretary determines
25 that the owner or operator continues to be in non-

1 compliance after an order for compliance is issued
2 under paragraph (3), until the owner or operator
3 complies with the previous order.

4 “(b) REVIEW OF SECURITY PLAN.—

5 “(1) DEADLINE FOR REVIEW.—Not later than
6 180 days after the date on which the Secretary re-
7 ceives a vulnerability assessment or facility security
8 plan under this title, the Secretary shall review and
9 approve or disapprove such assessment or plan.

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

13 “(A) the vulnerability assessment or facil-
14 ity security plan does not comply with regula-
15 tions prescribed under section 2103; or

16 “(B) in the case of a facility security plan,
17 the plan or the implementation of the plan is
18 insufficient to address any vulnerabilities identi-
19 fied in a vulnerability assessment of the chem-
20 ical facility or associated oversight actions
21 taken under sections 2103 and 2104, including
22 a red team exercise.

23 “(3) PROVISION OF NOTIFICATION OF DIS-
24 APPROVAL.—If the Secretary disapproves the vulner-
25 ability assessment or facility security plan submitted

1 by a chemical facility under this title or the imple-
2 mentation of a facility security plan by such a facil-
3 ity, the Secretary shall—

4 “(A) provide the owner or operator of the
5 facility a written notification of the disapproval,
6 that—

7 “(i) includes a clear explanation of de-
8 ficiencies in the assessment, plan, or imple-
9 mentation of the plan; and

10 “(ii) requires the owner or operator of
11 the facility to revise the assessment or plan
12 to address any deficiencies and to submit
13 to the Secretary the revised assessment or
14 plan;

15 “(B) provide guidance to assist the owner
16 or operator of the facility in addressing such
17 deficiency;

18 “(C) in the case of a facility for which the
19 owner or operator of the facility does not ad-
20 dress such deficiencies by such date as the Sec-
21 retary determines to be appropriate, issue an
22 order requiring the owner or operator to correct
23 specified deficiencies by a specified date; and

24 “(D) in the case of a facility assigned to
25 a high-risk tier under section 2102(e)(4), con-

1 sult with the owner or operator of the facility
2 to identify appropriate steps to be taken by the
3 owner or operator to address the deficiencies
4 identified by the Secretary.

5 “(c) REPORTING PROCESS.—

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

11 “(2) CONFIDENTIALITY.—The Secretary shall
12 keep confidential the identity of a person that sub-
13 mits a report under paragraph (1) and any such re-
14 port shall be treated as protected information under
15 section 2108(f) to the extent that it does not consist
16 of publicly available information.

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

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

1 address any problem, deficiency, or vulnerability
2 identified in the report.

3 “(5) RETALIATION PROHIBITED.—

4 “(A) PROHIBITION.—No profit or not-for-
5 profit corporation, association, or any con-
6 tractor, subcontractor or agent thereof, or a
7 Federal, State, local, or tribal government agen-
8 cy may discharge any employee or otherwise
9 discriminate against any employee with respect
10 to his compensation, terms, conditions, security
11 clearance or other access to classified or sen-
12 sitive information, or other privileges of employ-
13 ment because the employee (or any person act-
14 ing pursuant to a request of the employee)—

15 “(i) notified his employer of an al-
16 leged violation of this title, including com-
17 munications related to carrying out the
18 employee’s job duties;

19 “(ii) refused to engage in any practice
20 made unlawful by this title, if the employee
21 has identified the alleged illegality to the
22 employer;

23 “(iii) testified before or otherwise pro-
24 vided information relevant for Congress or
25 for any Federal or State proceeding re-

1 garding any provision (or proposed provi-
2 sion) of this title;

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

7 “(v) testified or is about to testify in
8 any such proceeding; or

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

15 “(B) ENFORCEMENT ACTION.—Any em-
16 ployee covered by this section who alleges dis-
17 crimination by an employer in violation of sub-
18 section (a) may bring an action governed by the
19 rules and procedures, legal burdens of proof,
20 and remedies applicable under subsections (c)
21 through (g) of section 20109 of title 49, United
22 States Code.

23 “**SEC. 2106. PENALTIES.**

24 “(a) ADMINISTRATIVE PENALTIES.—

1 “(1) IN GENERAL.—The Secretary may issue
2 an administrative penalty of not more than
3 \$250,000 for failure to comply with an order issued
4 by the Secretary under this title.

5 “(2) PROVISION OF NOTICE.—Before issuing a
6 penalty under paragraph (1), the Secretary shall
7 provide to the person against which the penalty is to
8 be assessed—

9 “(A) written notice of the proposed pen-
10 alty; and

11 “(B) to the extent possible, consistent with
12 the provisions of title 5, United States Code,
13 governing hearings on the record, the oppor-
14 tunity to request, not later than 30 days after
15 the date on which the notice is received, a hear-
16 ing on the proposed penalty.

17 “(3) PROCEDURES FOR REVIEW.—The Sec-
18 retary may prescribe regulations outlining the proce-
19 dures for administrative hearings and appropriate
20 review, including necessary deadlines.

21 “(b) CIVIL PENALTIES.—

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

1 “(A) any order issued by the Secretary
2 under this title; or

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

5 “(2) RELIEF.—In any action under paragraph
6 (1), a court may issue an order for injunctive relief
7 and may award a civil penalty of not more than
8 \$50,000 for each day on which a violation occurs or
9 a failure to comply continues.

10 “(c) CRIMINAL PENALTIES.—An owner or operator
11 of a chemical facility who knowingly and intentionally vio-
12 lates an order of compliance issued by the Secretary pur-
13 suant to section 2104(e) shall be fined not more than
14 \$100,000, imprisoned for not more than 1 year, or both.

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

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

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

4 “(e) TREATMENT OF INFORMATION IN ADJUDICA-
5 TIVE PROCEEDINGS.—In a proceeding under this section,
6 information protected under section 2108, or related vul-
7 nerability or security information, shall be treated in any
8 judicial or administrative action as if the information were
9 classified material.

10 **“SEC. 2107. FEDERAL PREEMPTION.**

11 “(a) IN GENERAL.—Nothing in this title shall pre-
12 clude or deny any right of any State or political subdivi-
13 sion thereof to adopt or enforce any regulation, require-
14 ment, or standard of performance with respect to chemical
15 facility security that is more stringent than a regulation,
16 requirement, or standard of performance issued pursuant
17 to this title, or shall otherwise impair any right or jurisdic-
18 tion of any State with respect to chemical facilities within
19 that State unless an actual conflict exists between this
20 title and the State regulation, requirement, or standard
21 of performance.

22 “(b) OTHER REQUIREMENTS.—Nothing in this title
23 shall preclude or deny the right of any State or political
24 subdivision thereof to adopt or enforce any regulation, re-

1 quirement, or standard of performance relating to environ-
2 mental protection, health, or safety.

3 “(c) APPLICATION FOR REVIEW.—

4 “(1) IN GENERAL.—A person, State, local, or
5 tribal government directly affected by a requirement
6 of a State, local, or tribal government may submit
7 to the Secretary, as provided in regulations that the
8 Secretary shall prescribe, an application asking the
9 Secretary to decide whether the requirement is pre-
10 empted by this title.

11 “(2) NOTICE.—The Secretary shall publish no-
12 tice of the application in the Federal Register.

13 “(3) DETERMINATION BY SECRETARY.—The
14 Secretary shall, by not later than 180 days after the
15 date of the publication of the notice under para-
16 graph (2)—

17 “(A) issue a decision pursuant to the ap-
18 plication; or

19 “(B) publish in the Federal Register—

20 “(i) a statement of the reason why the
21 Secretary’s decision on the application is
22 delayed; and

23 “(ii) an estimate of the additional
24 time necessary for the decision to be made.

1 “(4) LIMITATION ON JUDICIAL RELIEF.—After
2 publication of notice under paragraph (2), an appli-
3 cant may not seek judicial relief on the same or sub-
4 stantially the same issue until the earlier of—

5 “(A) the date the Secretary issues a deci-
6 sion pursuant to the application; or

7 “(B) the end of the 180-day period begin-
8 ning on the date the application is filed.

9 “(d) JUDICIAL REVIEW.—A person who submits an
10 application under subsection (c), or the State or local gov-
11 ernment that prescribed or issued the law, regulation,
12 standard, or order that is the subject of such an applica-
13 tion, may bring a civil action in an appropriate United
14 States district court for judicial review of the decision of
15 the Secretary made pursuant to the application no later
16 than 60 days after the Secretary issues the decision.

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

18 “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-
19 TECTED INFORMATION.—

20 “(1) IN GENERAL.—The Secretary shall ensure
21 that protected information, as described in sub-
22 section (f), is not disclosed except as provided in this
23 title.

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

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

6 “(B) under any State or local law.

7 “(b) REGULATIONS.—

8 “(1) IN GENERAL.—Not later than 1 year after
9 the date of enactment of the Chemical Facility Anti-
10 Terrorism Act of 2008, the Secretary shall prescribe
11 such regulations, and may issue such orders, as nec-
12 essary to prohibit the unauthorized disclosure of pro-
13 tected information, as described in subsection (f).

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

16 “(A) ensure information sharing, on a con-
17 fidential basis, with and between, Federal,
18 State, local, and tribal law enforcement officials
19 and emergency response providers and appro-
20 priate chemical facility personnel with security,
21 operational, or fiduciary responsibility for the
22 facility;

23 “(B) provide for the confidential use of
24 protected information in any administrative or
25 judicial proceeding, including placing under seal

1 any such information that is contained in any
2 filing, order, or other document used in such
3 proceedings that could otherwise become part of
4 the public record;

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

7 “(D) ensure, to the maximum extent prac-
8 ticable, that—

9 “(i) protected information shall be
10 maintained in a secure location; and

11 “(ii) access to protected information
12 shall be limited as may be necessary to—

13 “(I) enable enforcement of this
14 title; or

15 “(II) address an imminent and
16 substantial threat to security.

17 “(c) OTHER OBLIGATIONS UNAFFECTED.—Nothing
18 in this section affects any obligation of the owner or oper-
19 ator of a chemical facility to submit or make available in-
20 formation to facility employees, employee organizations, or
21 a Federal, State, or local government agency under, or
22 otherwise to comply with, any other law.

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

1 “(e) DISCLOSURE OF INDEPENDENTLY FURNISHED
2 INFORMATION.—Nothing in this title shall be construed
3 as affecting any authority or obligation of a Federal agen-
4 cy to disclose any record or information that the Federal
5 agency obtains from a chemical facility under any other
6 law.

7 “(f) PROTECTED INFORMATION.—

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

10 “(A) The criteria and data used by the
11 Secretary to assign chemical facilities to risk-
12 based tiers under section 2102 and the tier to
13 which each such facility is assigned.

14 “(B) The vulnerability assessments and fa-
15 cility security plans submitted to the Secretary
16 under this title.

17 “(C) Information concerning the security
18 performance requirements for a chemical facil-
19 ity under section 2103(e).

20 “(D) Any other information generated or
21 collected by a Federal, State, local, or tribal
22 government agency or by a chemical facility for
23 the purpose of carrying out or complying with
24 this title—

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

3 “(ii) that describes the assignment of
4 any chemical facility to a risk-based tier
5 under this title;

6 “(iii) that describes any security
7 measure (including any procedure, equip-
8 ment, training, or exercise) for the protec-
9 tion of a chemical facility from an act of
10 terrorism; or

11 “(iv) the disclosure of which the Sec-
12 retary determines would be detrimental to
13 the security of any chemical facility.

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

16 “(A) information that is publicly available;

17 “(B) information that a chemical facility
18 has disclosed other than in accordance with this
19 section; or

20 “(C) information that, if disclosed, would
21 not be detrimental to the security of a chemical
22 facility.

23 **“SEC. 2109. CERTIFICATION OF THIRD-PARTY ENTITIES.**

24 “(a) CERTIFICATION OF THIRD-PARTY ENTITIES.—

25 The Secretary may designate a third-party entity to carry

1 out any function under subsection (e)(5) of section 2103,
2 subsection (b) or (c) of section 2104, or subsection (b)(1)
3 of section 2105.

4 “(b) QUALIFICATIONS.—The Secretary shall estab-
5 lish standards for the qualifications of third-party entities,
6 including knowledge of physical infrastructure protection,
7 cybersecurity, facility security, hazard analysis, chemical
8 process engineering, chemical process safety reviews, and
9 other such factors that the Secretary determines to be nec-
10 essary.

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

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

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

24 “(B) upon completion of the independent
25 review under subparagraph (A), designating

1 any procedure or requirement (or any update
2 thereto) as a qualified anti-terrorism technology
3 pursuant to section 862(b);

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

7 “(3) conduct a review of the third-party enti-
8 ties’ business engagements to ensure that no conflict
9 exists that could compromise the execution of any
10 functions under subsection (e)(5) of section 2103,
11 subsection (b) or (c) of section 2104, or subsection
12 (b)(1) of section 2105; and

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

18 “(d) ENSURING CONTRACTING WITH CERTAIN
19 SMALL BUSINESS CONCERNS.—

20 “(1) REQUIREMENTS FOR PRIME CONTRACTS.—

21 The Secretary shall include in each contract awarded
22 to a third party—

23 “(A) a requirement that the contractor
24 shall implement a plan for the award of sub-
25 contracts under the contract to small business

1 concerns and disadvantaged business concerns
2 in accordance with other applicable require-
3 ments, including the terms of such plan; and

4 “(B) a requirement that the contractor
5 shall submit to the Secretary, during perform-
6 ance of the contract, periodic reports describing
7 the extent to which the contractor has complied
8 with such plan, including specification (by total
9 dollar amount and by percentage of the total
10 dollar value of the contract) of the value of sub-
11 contracts awarded at all tiers of subcontracting
12 to each of socially and economically disadvan-
13 taged small businesses concerns, small business
14 concerns owned and controlled by service-dis-
15 abled veterans, HUBZone small business con-
16 cerns, small business concerns eligible to be
17 awarded contracts pursuant to section 8(a) of
18 the Small Business Act (15 U.S.C. 637(a)), and
19 historically black colleges and universities and
20 minority institutions.

21 “(2) DEFINITIONS.—For purposes of this sub-
22 section, the terms ‘socially and economically dis-
23 advantaged small businesses concern’, ‘small busi-
24 ness concern owned and controlled by service-dis-
25 abled veterans’, and ‘HUBZone small business con-

1 cern' have the meaning given such terms under the
2 Small Business Act (15 U.S.C. 631 et seq.).

3 “(3) UTILIZATION OF ALLIANCES.—The Sec-
4 retary shall, to the maximum extent practicable,
5 seek to facilitate the award of third party contracts
6 by the United States under this title to alliances of
7 business concerns referred to in paragraph (1)(B).

8 “(4) ANNUAL REPORT.—

9 “(A) IN GENERAL.—The Secretary shall
10 submit to Congress by October 31 of each year
11 a report on the award of third party contracts
12 under this title to business concerns referred to
13 in paragraph (1)(B) during the fiscal year pre-
14 ceding the fiscal year in which the report is
15 submitted.

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

18 “(i) a specification of the value of
19 such contracts, by dollar amount and as a
20 percentage of the total dollar value of all
21 contracts awarded by the Department in
22 such fiscal year;

23 “(ii) a specification of the total dollar
24 value of such contracts awarded to each of

1 the categories of business concerns referred
2 to in paragraph (1)(B); and

3 “(iii) if the percentage of the total
4 dollar value of contracts awarded under
5 this section specified under clause (i) is
6 less than 25 percent, an explanation of—

7 “(I) why the percentage is less
8 than 25 percent; and

9 “(II) what will be done to ensure
10 that the percentage for the following
11 fiscal year will not be less than 25
12 percent.

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

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

21 “(2) approve or disapprove such procedures and
22 requirements (or updates thereto).

23 “(f) EFFECT OF APPROVAL.—

24 “(1) ISSUANCE OF CERTIFICATE OF CONFORM-
25 ANCE.—In accordance with section 863(d)(3), the

1 Secretary shall issue a certificate of conformance to
2 a third-party entity to perform a function under sub-
3 section (a) if the entity—

4 “(A) demonstrates to the satisfaction of
5 the Secretary the ability to perform functions in
6 accordance with standard operating procedures
7 and requirements (or updates thereto) approved
8 by the Secretary under this section;

9 “(B) agrees to—

10 “(i) perform such function in accord-
11 ance with such standard operating proce-
12 dures and requirements (or updates there-
13 to); and

14 “(ii) maintain liability insurance cov-
15 erage at policy limits and in accordance
16 with conditions to be established by the
17 Secretary pursuant to section 864; and

18 “(C) signs an agreement to protect the
19 proprietary and confidential information of any
20 chemical facility with respect to which the enti-
21 ty will perform such function.

22 “(2) LITIGATION AND RISK MANAGEMENT PRO-
23 TECTIONS.—A third-party entity that maintains li-
24 ability insurance coverage at policy limits and in ac-
25 cordance with conditions to be established by the

1 Secretary pursuant to section 864 and receives a
2 certificate of conformance under paragraph (1) shall
3 receive all applicable litigation and risk management
4 protections under sections 863 and 864.

5 “(3) RECIPROCAL WAIVER OF CLAIMS.—A re-
6 ciprocal waiver of claims shall be deemed to have
7 been entered into between a third-party entity that
8 receives a certificate of conformance under para-
9 graph (1) and its contractors, subcontractors, sup-
10 pliers, vendors, customers, and contractors and sub-
11 contractors of customers involved in the use or oper-
12 ation of any function performed by the third-party
13 entity under subparagraph (a).

14 “(4) INFORMATION FOR ESTABLISHING LIMITS
15 OF LIABILITY INSURANCE.—A third-party entity
16 seeking a certificate of conformance under para-
17 graph (1) shall provide to the Secretary necessary
18 information for establishing the limits of liability in-
19 surance required to be maintained by the entity
20 under section 864(a).

21 “(g) MONITORING.—The Secretary shall regularly
22 monitor and inspect the operations of a third-party entity
23 that performs a function under subsection (a) to ensure
24 that the entity is meeting the minimum standard oper-
25 ating procedures and requirements established under sub-

1 section (c) and any other applicable requirement under
2 this section.

3 **“SEC. 2110. METHODS TO REDUCE THE CONSEQUENCES OF**
4 **A TERRORIST ATTACK.**

5 “(a) METHOD TO REDUCE THE CONSEQUENCES OF
6 A TERRORIST ATTACK.—For purposes of this section, the
7 term ‘method to reduce the consequences of a terrorist at-
8 tack’ includes—

9 “(1) input substitution;

10 “(2) catalyst or carrier substitution;

11 “(3) process redesign (including reuse or recy-
12 cling of a substance of concern);

13 “(4) product reformulation;

14 “(5) procedure simplification;

15 “(6) technology modification;

16 “(7) use of less hazardous substances or benign
17 substances;

18 “(8) use of smaller quantities of substances of
19 concern;

20 “(9) reduction of hazardous pressures or tem-
21 peratures;

22 “(10) reduction of the possibility and potential
23 consequences of equipment failure and human error;

24 “(11) improvement of inventory control and
25 chemical use efficiency; and

1 “(12) reduction or elimination of the storage,
2 transportation, handling, disposal, and discharge of
3 substances of concern.

4 “(b) ASSESSMENT REQUIRED.—The owner or oper-
5 ator of a facility assigned to a tier under section 2102(c),
6 shall include in the facility security plan conducted pursu-
7 ant to section 2103, an assessment of methods to reduce
8 the consequences of a terrorist attack on that chemical
9 facility.

10 “(c) IMPLEMENTATION.—

11 “(1) IMPLEMENTATION.—The owner or oper-
12 ator of a high-risk chemical facility required to con-
13 duct an assessment under subsection (b) shall imple-
14 ment methods to reduce the consequences of a ter-
15 rorist attack on the chemical facility if the Secretary
16 determines, based on an assessment in subsection
17 (b), that the implementation of methods to reduce
18 the consequences of a terrorist attack at a high-risk
19 chemical facility—

20 “(A) would significantly reduce the risk of
21 death, injury, or serious adverse effects to
22 human health or the environment resulting
23 from a terrorist release;

24 “(B) can feasibly be incorporated into the
25 operation of the facility; and

1 “(C) would not significantly and demon-
2 strably impair the ability of the owner or oper-
3 ator of the facility to continue the business of
4 the facility.

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

6 “(A) IN GENERAL.—An owner or operator
7 of a chemical facility who is unable to comply
8 with the Secretary’s determination under sub-
9 section (c)(1) shall, within 60 days of receipt of
10 the Secretary’s determination, provide to the
11 Panel on Methods to Reduce the Consequences
12 of a Terrorist Attack, as established under sub-
13 paragraph (C), a written explanation that in-
14 cludes the reasons thereto.

15 “(B) REVIEW.—Not later than 60 days of
16 receipt of an explanation submitted under sub-
17 paragraph (A), the Panel on Methods to Reduce
18 the Consequences of a Terrorist Attack, as es-
19 tablished under subparagraph (C), after con-
20 sulting with the owner or operator who sub-
21 mitted such explanation, shall provide to the
22 owner or operator a written determination of
23 whether implementation shall be required pur-
24 suant to subsection (c)(1). If the Panel deter-
25 mines that implementation is required, the fa-

1 cility shall be required to begin implementation
2 within 180 days of that determination.

3 “(C) PANEL ON METHODS TO REDUCE
4 THE CONSEQUENCES OF A TERRORIST AT-
5 TACK.—The Secretary shall establish a panel to
6 be known as the ‘Panel on Methods to Reduce
7 the Consequences of a Terrorist Attack’, which
8 shall be chaired by the Secretary (or the Sec-
9 retary’s designee). Members of the Panel shall
10 be selected by the Secretary and shall include
11 representatives of other appropriate Federal
12 and State agencies, independent security ex-
13 perts, and representatives of the chemical in-
14 dustry, including owners, operators, and chem-
15 ical facility workers or representatives of their
16 respective associations.

17 “(d) PROVISION OF INFORMATION ON ALTERNATIVE
18 APPROACHES.—

19 “(1) IN GENERAL.—The Secretary, in consulta-
20 tion with the Panel on Methods to Reduce the Con-
21 sequences of a Terrorist Attack, established under
22 subsection (c)(2)(C), shall provide information to
23 chemical facilities on the use and availability of
24 methods to reduce the consequences of a terrorist
25 attack at a chemical facility to aid a covered chem-

1 ical facility in meeting the requirements of section
2 2110(b).

3 “(2) INFORMATION TO BE INCLUDED.—The in-
4 formation under paragraph (1) shall include infor-
5 mation about—

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

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

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

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

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

19 “(F) the availability of technical assist-
20 ance; and

21 “(G) such other matters as the Secretary
22 determines is appropriate.

23 “(3) COLLECTION OF INFORMATION.—The Sec-
24 retary, in consultation with the Panel on Methods to
25 Reduce the Consequences of a Terrorist Attack, es-

1 tablished under subsection (c)(2)(C), shall collect in-
2 formation necessary to fulfill the requirements of
3 paragraph (1)—

4 “(A) from information obtained from own-
5 ers or operators of chemical facilities pursuant
6 to this title, including those who have registered
7 such facilities pursuant to part 68 of title 40
8 Code of Federal Regulations (or successor regu-
9 lations);

10 “(B) from studies and reports published by
11 academic institutions, National Laboratories,
12 and other relevant and reputable public and pri-
13 vate sector experts; and

14 “(C) through such other methods as the
15 Secretary deems appropriate.

16 “(4) PUBLIC AVAILABILITY.—Information made
17 available publicly under this subsection shall not
18 identify any specific facility or violate the protection
19 of information provisions under section 2108.

20 “(e) PROTECTED INFORMATION.—An assessment
21 prepared under subsection (b) is protected information
22 under section 2108(f).

23 **“SEC. 2111. ANNUAL REPORT TO CONGRESS.**

24 “(a) ANNUAL REPORT.—Not later than one year
25 after the date of the enactment of the Chemical Facility

1 Anti-Terrorism Act of 2008, and annually thereafter, the
2 Secretary shall submit to Congress a report on progress
3 in achieving compliance with this title. Each such report
4 shall include—

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

7 “(2) any lessons learned in implementing this
8 title (including as a result of a red-team exercise);
9 and

10 “(3) any recommendations of the Secretary to
11 improve the programs, plans, and procedures under
12 this title, including the feasibility of programs to in-
13 crease the number of economically disadvantaged
14 businesses eligible to perform third-party entity re-
15 sponsibilities pursuant to sections 2103(e)(5),
16 2104(b) and (c), and 2105(b)(1).

17 “(b) PROTECTED INFORMATION.—A report under
18 this section may not include information protected under
19 section 2108.

20 **“SEC. 2112. APPLICABILITY.**

21 “‘This title shall not apply to—

22 “(1) any facility that is owned and operated by
23 the Secretary of Defense, the Attorney General, or
24 the Secretary of Energy;

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

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

8 **“SEC. 2113. SAVINGS CLAUSE.**

9 “Nothing in this title is intended to affect any other
10 Federal law, including section 112 of the Clean Air Act
11 (42 U.S.C. 7412), the Clean Water Act, the Resource
12 Conservation and Recovery Act, the National Environ-
13 mental Policy Act of 1969, the Occupational Safety and
14 Health Act, the National Labor Relations Act, the Emer-
15 gency Planning and Community Right to Know Act, Safe
16 Drinking Water Act, the Maritime Transportation Secu-
17 rity Act, and the Comprehensive Environmental Response,
18 Compensation, and Liability Act.

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

20 “There is in the Department an Office of Chemical
21 Facility Security. The head of the Office of Chemical Fa-
22 cility Security is responsible for carrying out the respon-
23 sibilities of the Secretary under this title.

1 **“SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED**
2 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
3 **TIES.**

4 “(a) DEFINITIONS.—In this section the following
5 definitions apply:

6 “(1) The term ‘security background check’
7 means a review of the following for the purpose of
8 identifying individuals who may pose a threat to
9 chemical facility security, to national security, or of
10 terrorism.

11 “(A) Relevant criminal history databases.

12 “(B) In the case of an alien (as defined in
13 section 101 of the Immigration and Nationality
14 Act (8 U.S.C. 1101(a)(3))), the relevant data
15 bases to determine the status of the alien under
16 the immigration laws of the United States.

17 “(C) Other relevant information or data
18 bases, as determined by the Secretary.

19 “(2) The term ‘covered individual’ means an
20 employee at a covered chemical facility assigned to
21 a risk-based tier under section 2102(c).

22 “(b) GUIDANCE ISSUED BY THE SECRETARY.—

23 “(1) IN GENERAL.—Any guidance, rec-
24 ommendations, suggested action items, or any other
25 widely disseminated voluntary action item issued by
26 the Secretary to a facility assigned to a risk-based

1 tier under section 2102(c) relating to performing a
2 security background check of a covered individual
3 shall contain recommendations on the appropriate
4 scope and application of such a security background
5 check, including the time period covered, the types
6 of disqualifying offenses, and a redress process for
7 adversely impacted covered individuals consistent
8 with subsections (c) and (d) of this section.

9 “(2) DEADLINE FOR UPDATING CERTAIN GUID-
10 ANCE.—Not later than 60 days after the date of en-
11 actment of the Chemical Facility Anti-Terrorism Act
12 of 2008, any guidance, recommendations, suggested
13 action items, or any other widely disseminated vol-
14 untary action item issued by the Secretary prior to
15 that date to a covered facility relating to performing
16 a security background check of a covered individual
17 shall be updated in compliance with paragraph
18 (b)(1).

19 “(3) REQUIREMENT FOR REDRESS PROCESS.—
20 If a covered chemical facility performs a security
21 background check on a covered individual to fulfill
22 guidance issued by the Secretary under paragraph
23 (1) or (2), the Secretary shall not consider such
24 guidance fulfilled unless an adequate redress process

1 as described in subsection (d) is provided to covered
2 individuals.

3 “(c) REQUIREMENTS.—If the Secretary issues a rule,
4 regulation, or directive requiring a chemical facility to per-
5 form a security background check of a covered individual,
6 then the Secretary shall prohibit the facility from making
7 an adverse employment decision, including removal or sus-
8 pension of the employee, due to such rule, regulation, or
9 directive with respect to a covered individual unless the
10 facility determines that the covered individual—

11 “(1) has been convicted of, has been found not
12 guilty of by reason of insanity, or is under want,
13 warrant, or indictment for a permanent disqualifying
14 criminal offense listed in part 1572 of title 49, Code
15 of Federal Regulations;

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

22 “(3) was incarcerated for an interim disquali-
23 fying criminal offense listed in part 1572 of title 49,
24 Code of Federal Regulations, and released from in-

1 carceration within 5 years of the date that the facil-
2 ity performs the security background check.

3 “(d) REDRESS PROCESS.— If the Secretary issues a
4 rule, regulation, or directive requiring a chemical facility
5 assigned to a risk-based tier under section 2102(c) to per-
6 form a security background check of a covered individual,
7 the Secretary shall—

8 “(1) provide an adequate redress process for a
9 covered individual subjected to an adverse employ-
10 ment decision, including removal or suspension of
11 the employee, due to such rule, regulation, or direc-
12 tive that is consistent with the appeals and waiver
13 processes established for applicants for commercial
14 motor vehicle hazardous materials endorsements and
15 transportation workers at ports, as required by sec-
16 tion 70105(c) of title 46, United States Code; and

17 “(2) have the authority to order an appropriate
18 remedy, including reinstatement of the covered indi-
19 vidual, should the Secretary determine that a cov-
20 ered facility wrongfully made an adverse employment
21 decision regarding a covered individual pursuant to
22 such rule, regulation, or directive.

23 “(e) FALSE STATEMENTS.—A chemical facility as-
24 signed to a risk-based tier under section 2102(c) may not
25 knowingly misrepresent to an employee or other relevant

1 person, including an arbiter involved in a labor arbitration,
2 the scope, application, or meaning of any rules, regula-
3 tions, directives, or guidance issued by the Secretary re-
4 lated to security background check requirements for cov-
5 ered individuals when conducting a security background
6 check. Not later than 1 year after the date of enactment
7 of this Act, the Secretary shall issue a regulation that pro-
8 hibits a covered chemical facility from knowingly misrepre-
9 senting to an employee or other relevant person, including
10 an arbiter involved in a labor arbitration, the scope, appli-
11 cation, or meaning of any rules, regulations, directives, or
12 guidance issued by the Secretary related to security back-
13 ground check requirements for covered individuals when
14 conducting a security background check.

15 “(g) RIGHTS AND RESPONSIBILITIES.—Nothing in
16 this section shall be construed to abridge a covered facili-
17 ty’s rights or responsibilities to make adverse employment
18 decisions permitted by other Federal, State, local or tribal
19 laws. Nothing in the section shall be construed to abridge
20 rights and responsibilities of covered individuals or covered
21 chemical facilities under any other Federal, State, local,
22 or tribal laws or collective bargaining agreement.

23 “(h) NO PREEMPTION OF FEDERAL OR STATE
24 LAW.—Nothing in this section shall be construed to pre-
25 empt a Federal, State, local, or tribal law that requires

1 criminal history background checks, immigration status
2 checks, or other background checks of covered individ-
3 uals.”.

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. Vulnerability assessments and facility security plans.
- “Sec. 2104. Record keeping; site inspections.
- “Sec. 2105. Enforcement.
- “Sec. 2106. Penalties.
- “Sec. 2107. Federal preemption.
- “Sec. 2108. Protection of information.
- “Sec. 2109. Certification of third-party entities.
- “Sec. 2110. Methods to reduce the consequences of a terrorist attack.
- “Sec. 2111. Annual report to Congress.
- “Sec. 2112. Applicability.
- “Sec. 2113. Savings clause.
- “Sec. 2114. Office of Chemical Facility Security.
- “Sec. 2115. Security background checks of covered individuals at certain chemical facilities.”.

7 (c) CONFORMING REPEAL.—

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

11 (2) EFFECTIVE DATE.—The amendment made
12 by paragraph (1) shall take effect on October 1,
13 2009.

14 **SEC. 4. INSPECTOR GENERAL REPORT.**

15 (a) REPORT REQUIRED.—Not later than 1 year after
16 the date on which the Secretary of Homeland Security

1 prescribes the regulations required to be prescribed under
2 title XXI of the Homeland Security Act of 2002, as added
3 by section 2, the Inspector General of the Department of
4 Homeland Security shall submit to the Committee on
5 Homeland Security of the House of Representatives and
6 the Committee on Homeland Security and Governmental
7 Affairs of the Senate a report that reviews the effective-
8 ness of the implementation of such title, including the ef-
9 fectiveness of facility security plans required under such
10 title and any recommendations to improve the programs,
11 plans, and procedures required under such title, including
12 the participating rates of economically disadvantaged busi-
13 nesses eligible to perform third-party entity responsibil-
14 ities pursuant to sections 2103(e)(5), 2104(b) and (c), and
15 2105(b)(1) of such Act.

16 (b) CLASSIFIED ANNEX.—The report required under
17 subsection (a) shall be in unclassified form but may in-
18 clude a classified annex, if the Inspector General deter-
19 mines a classified annex is necessary.

20 **SEC. 5. DEADLINE FOR REGULATIONS.**

21 (a) IN GENERAL.—The Secretary shall conduct the
22 rulemaking process so that a final rule carrying out the
23 provisions of this Act and the amendments made by this
24 Act is effective by October 1, 2009.

1 **SEC. 6. CHEMICAL FACILITY TRAINING PROGRAM.**

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

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

6 “(a) IN GENERAL.—The Secretary shall establish a
7 Chemical Facility Security Training Program (referred to
8 in this section as the ‘Program’) for the purpose of en-
9 hancing the capabilities of chemical facilities to prevent,
10 prepare for, respond to, mitigate against, and recover from
11 threatened or actual acts of terrorism.

12 “(b) REQUIREMENTS.—The Program shall provide
13 voluntary training that—

14 “(1) reaches multiple disciplines, including Fed-
15 eral, State, local, and tribal government officials,
16 chemical facility owners, operators, and employees,
17 and governmental and nongovernmental emergency
18 response providers;

19 “(2) utilizes multiple training mediums and
20 methods;

21 “(3) addresses chemical facility security and fa-
22 cility security plans, including—

23 “(A) facility security plans and procedures
24 for differing threat levels;

1 “(B) physical security, security equipment
2 and systems, access control, and methods for
3 preventing and countering theft;

4 “(C) recognition and detection of weapons
5 and devices;

6 “(D) security incident procedures, includ-
7 ing procedures for communicating with emer-
8 gency response providers;

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

11 “(F) other requirements that the Secretary
12 deems appropriate.

13 “(4) is consistent with, and supports implemen-
14 tation of, the National Incident Management Sys-
15 tem, the National Response Plan, the National In-
16 frastructure Protection Plan, the National Prepared-
17 ness Guidance, the National Preparedness Goal, and
18 other national initiatives;

19 “(5) includes consideration of existing security
20 and hazardous chemical training programs including
21 Federal or industry programs; and

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

24 “(c) NATIONAL VOLUNTARY CONSENSUS STAND-
25 ARDS.—The Secretary shall—

1 “(1) support the promulgation, and regular up-
2 dating as necessary and appropriate of national vol-
3 untary consensus standards for chemical facility se-
4 curity training ensuring that training is consistent
5 with such standards; and

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

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

10 “(1) work with government training programs,
11 facilities, academic institutions, industry and private
12 organizations, employee organizations, and other rel-
13 evant entities that provide specialized state-of-the-
14 art training; and

15 “(2) utilize, as appropriate, training provided
16 by industry, public safety academies, Federal pro-
17 grams, employee organizations, State and private
18 colleges and universities, and other facilities.”.

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

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