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(Original Signature of Member)

110TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend the Homeland Security Act of 2002 to provide for the regulation  
of certain chemical facilities, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. THOMPSON of Mississippi introduced the following bill; which was referred  
to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Homeland Security Act of 2002 to provide  
for the regulation of certain 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. REGULATION OF CHEMICAL FACILITIES.**

2 (a) IN GENERAL.—The Homeland Security Act of  
3 2002 (6 U.S.C. 101 et seq.) is amended by adding at the  
4 end the following new title:

5 **“TITLE XXI—REGULATION OF**  
6 **CHEMICAL FACILITIES**

7 **“SEC. 2101. DEFINITIONS.**

8 “In this title, the following definitions apply:

9 “(1) The term ‘environment’ has the meaning  
10 given the term in section 101 of the Comprehensive  
11 Environmental Response Compensation and Liability  
12 Act of 1980 (42 U.S.C. 9601).

13 “(2) The term ‘owner or operator of a chemical  
14 facility’ means any of the following:

15 “(A) The person who owns a chemical fa-  
16 cility.

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

18 “(C) The person who operates such a facil-  
19 ity.

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

24 “(4) The term ‘chemical facility security meas-  
25 ure’ means any action taken to ensure or enhance

1 the security of a chemical facility against a chemical  
2 facility terrorist incident, including—

3 “(A) employee background checks;

4 “(B) employee training;

5 “(C) personnel security measures;

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

8 “(E) protection of the perimeter of the  
9 chemical facility or the portion or sector within  
10 the facility in which a substance of concern is  
11 stored, used or handled, utilizing fences, bar-  
12 riers, guards, or other means;

13 “(F) installation and operation of cameras  
14 or other intrusion detection sensors;

15 “(G) the implementation of measures to  
16 increase computer or computer network secu-  
17 rity;

18 “(H) contingency and evacuation plans;

19 “(I) the relocation or hardening of storage  
20 or containment equipment;

21 “(J) methods to reduce the consequences  
22 of a terrorist attack, as defined in section  
23 2110(a);

24 “(K) coordination and communications  
25 with local emergency response providers; and

1           “(L) other security measures to prevent,  
2           protect against, mitigate or reduce the con-  
3           sequences of a chemical facility terrorist inci-  
4           dent.

5           “(5) The term ‘substance of concern’ means a  
6           chemical substance in quantity and form that is des-  
7           ignated by the Secretary by regulation under section  
8           2102(a) as a chemical substance to be considered for  
9           regulation under this act.

10          “(6) The term ‘chemical facility terrorist inci-  
11          dent’ means—

12               “(A) an act of terrorism committed against  
13               a chemical facility;

14               “(B) the release of a substance of concern  
15               from a chemical facility into the surrounding  
16               area as a consequence of an act of terrorism; or

17               “(C) the obtaining of a substance of con-  
18               cern by any person for the purposes of releasing  
19               the substance off-site in furtherance of an act  
20               of terrorism.

21   **“SEC. 2102. DESIGNATION AND RANKING OF CHEMICAL FA-**  
22               **CILITIES.**

23          “(a) SUBSTANCES OF CONCERN.—

24               “(1) DESIGNATION BY THE SECRETARY.—The  
25          Secretary may—

1 “(A) designate any chemical substance as  
2 a substance of concern;

3 “(B) establish and revise, for purposes of  
4 making determinations under subsection (b),  
5 the threshold quantity for a substance of con-  
6 cern; or

7 “(C) require the submission of information  
8 with respect to the quantities of substances of  
9 concern that are used, stored, manufactured,  
10 processed, or distributed by any chemical facil-  
11 ity.

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

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

22 “(1) LIST REQUIRED.—The Secretary shall  
23 maintain a list of significant chemical facilities in  
24 accordance with this subsection.

1           “(2) SIGNIFICANT CHEMICAL FACILITIES.—The  
2       Secretary shall include on the list maintained under  
3       paragraph (1) a chemical facility that has more than  
4       the threshold quantity established by the Secretary  
5       of any substance of concern, or that the Secretary  
6       determines to be a significant chemical facility based  
7       on the following criteria:

8           “(A) The potential threat or likelihood that  
9       the chemical facility will be the target of ter-  
10      rorism.

11          “(B) The potential extent and likelihood of  
12      death, injury, or serious adverse effects to  
13      human health and safety or to the environment  
14      that could result from a chemical facility ter-  
15      rorist incident.

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

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

21          “(E) The potential harm to critical infra-  
22      structure, national security, and the national  
23      economy from a chemical facility terrorist inci-  
24      dent.

1       “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO  
2 RISK-BASED TIERS.—

3               “(1) ASSIGNMENT.—The Secretary shall assign  
4 each chemical facility on the list of significant chem-  
5 ical facilities under subsection (b) to one of at least  
6 four risk-based tiers established by the Secretary.

7               “(2) PROVISION OF INFORMATION.—The Sec-  
8 retary may request, and the owner or operator of a  
9 chemical facility shall provide, information necessary  
10 for the Secretary to assign a chemical facility to the  
11 appropriate tier under paragraph (1).

12               “(3) NOTIFICATION.—Not later than 60 days  
13 after assigning a chemical facility to a tier under  
14 this subsection, the Secretary shall notify the chem-  
15 ical facility of the tier to which the facility is as-  
16 signed and shall provide the facility with the reasons  
17 for assignment of the facility to such tier.

18               “(4) HIGH-RISK CHEMICAL FACILITIES.—At  
19 least one of the tiers established by the Secretary for  
20 the assignment of chemical facilities under this sub-  
21 section shall be a tier designated for high-risk chem-  
22 ical facilities.

23       “(d) PERIODIC REVIEW OF LIST OF CHEMICAL FA-  
24 CILITIES.—

1           “(1) REQUIREMENT.—Not later than 3 years  
2           after the date on which the Secretary develops the  
3           list of significant chemical facilities under subsection  
4           (b)(1) and every 3 years thereafter, the Secretary  
5           shall—

6                   “(A) consider the criteria under subsection  
7                   (b)(2); and

8                   “(B) determine whether to add a chemical  
9                   facility to the list of significant chemical facili-  
10                  ties maintained under subsection (b)(1) or to  
11                  remove or change the tier assignment of any  
12                  chemical facility on such list.

13           “(2) AUTHORITY TO REVIEW.—The Secretary  
14           may, at any time, after considering the criteria  
15           under subsection (b)(2), add a chemical facility to  
16           the list of significant chemical facilities maintained  
17           under subsection (b)(1) or remove or change the tier  
18           assignment of any chemical facility on such list.

19           “(3) NOTIFICATION.—Not later than 30 days  
20           after the date on which the Secretary adds a facility  
21           to the list of significant chemical facilities main-  
22           tained by the Secretary under subsection (b)(1), re-  
23           moves a facility from such list, or changes the tier  
24           assignment of any facility on such list, the Secretary



1       shall notify the owner of that facility of that addi-  
2       tion, removal, or change.

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

5       “(a) VULNERABILITY ASSESSMENT AND FACILITY  
6       SECURITY PLAN REQUIRED FOR CHEMICAL FACILI-  
7       TIES.—

8               “(1) REQUIREMENT FOR VULNERABILITY AS-  
9       SESSMENT AND SECURITY PLAN.—

10              “(A) REGULATIONS REQUIRED.—The Sec-  
11       retary shall prescribe regulations to—

12                      “(i) establish standards, protocols,  
13                      and procedures for vulnerability assess-  
14                      ments and facility security plans to be re-  
15                      quired for chemical facilities on the list  
16                      maintained by the Secretary under section  
17                      2102(b)(1);

18                      “(ii) require the owner or operator of  
19       each such facility to—

20                              “(I) conduct an assessment of  
21                              the vulnerability of the chemical facil-  
22                              ity to a chemical facility terrorist inci-  
23                              dent;

24                              “(II) prepare and implement a  
25       facility security plan for that facility

1 that addresses the results of the vul-  
2 nerability assessment; and

3 “(III) consult with the appro-  
4 priate employees of the facility in de-  
5 veloping the vulnerability assessment  
6 and security plan required under this  
7 clause; and

8 “(iii) set deadlines for the completion  
9 of vulnerability assessments and facility se-  
10 curity plans, such that all such plans and  
11 assessments are completed and submitted  
12 to the Secretary for approval no later than  
13 3 years after final regulations are issued  
14 under this paragraph.

15 “(B) DEADLINE FOR HIGH-RISK CHEMICAL  
16 FACILITIES.—The owner or operator of a facil-  
17 ity assigned to the high-risk tier under section  
18 2102(c)(4) shall submit to the Secretary a vul-  
19 nerability assessment and facility security plan  
20 not later than 6 months after the date on which  
21 the Secretary prescribes regulations under this  
22 subsection.

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

25 “(A) be risk-based;

1 “(B) be performance-based; and

2 “(C) take into consideration—

3 “(i) the cost and technical feasibility  
4 of compliance by a chemical facility with  
5 the requirements under this title;

6 “(ii) the different quantities and  
7 forms of substances of concern stored,  
8 used, and handled at chemical facilities;  
9 and

10 “(iii) the criteria under section  
11 2102(a)(2).

12 “(3) PROVISION OF ASSISTANCE AND GUID-  
13 ANCE.—The Secretary shall provide assistance and  
14 guidance to a chemical facility conducting a vulner-  
15 ability assessment or facility security plan required  
16 under this section.

17 “(b) MINIMUM REQUIREMENTS FOR HIGH-RISK  
18 CHEMICAL FACILITIES.—

19 “(1) REQUIREMENTS FOR VULNERABILITY AS-  
20 SESSMENTS.—In the case of a facility assigned to  
21 the high-risk tier under section 2102(c)(4), the Sec-  
22 retary shall require that the vulnerability assessment  
23 required under this section for that facility include  
24 each of the following:

1           “(A) The identification of any hazard that  
2           could result from a chemical facility terrorist  
3           incident at the facility.

4           “(B) The number of individuals at risk of  
5           death, injury, or severe adverse effects to  
6           human health as a result of a chemical facility  
7           terrorist incident at the facility.

8           “(C) Information related to the criticality  
9           of the facility for purposes of assessing the de-  
10          gree to which the facility is critical to the econ-  
11          omy or national security of the United States.

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

14          “(E) Any vulnerability of the facility with  
15          respect to—

16               “(i) physical security;

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

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

25               “(iv) communication systems;

1 “(v) insider threats;

2 “(vi) any utility or infrastructure (in-  
3 cluding transportation) upon which the fa-  
4 cility relies to operate safely and securely;  
5 and

6 “(vii) the structural integrity of equip-  
7 ment for storage, handling, and other pur-  
8 poses.

9 “(F) Any information relating to threats  
10 relevant to the facility that is provided by the  
11 Secretary in accordance with paragraph (3).

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

14 “(2) REQUIREMENTS FOR FACILITY SECURITY  
15 PLANS.—In the case of a facility assigned to the  
16 high-risk tier under section 2102(c)(4), the Sec-  
17 retary shall require that the facility security plan re-  
18 quired under this section for that facility include  
19 each of the following:

20 “(A) Chemical facility security measures to  
21 address the vulnerabilities of the facility to a  
22 chemical facility terrorist incident.

23 “(B) A plan for periodic drills and exer-  
24 cises to be conducted at the facility that include  
25 participation by facility employees, local law en-

1           forcement agencies, and first responders, as ap-  
2           propriate.

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

9           “(D) An identification of any steps taken  
10          to coordinate with State and local law enforce-  
11          ment agencies, first responders, and Federal of-  
12          ficials on security measures and plans for re-  
13          sponse to a chemical facility terrorist incident.

14          “(E) A specification of the security officer  
15          who will be the point of contact for the Na-  
16          tional Incident Management System and for  
17          Federal, State, and local law enforcement and  
18          emergency response providers.

19          “(F) A description of enhanced security  
20          measures to be used during periods of time  
21          when the Secretary determines that heightened  
22          threat conditions exist.

23          “(G) A review and, as appropriate, a plan  
24          to implement methods to reduce the con-

1 sequences of a terrorist attack, as that term is  
2 defined in section 2110(a).

3 “(3) PROVISION OF THREAT-RELATED INFOR-  
4 MATION.—The Secretary shall provide in a timely  
5 manner, to the maximum extent practicable under  
6 applicable authority and in the interests of national  
7 security, to an owner, operator, or security officer of  
8 a facility assigned to the high-risk tier under section  
9 2102(c)(4), or another appropriate person, threat in-  
10 formation that is relevant to the facility, including  
11 an assessment of the most likely method that could  
12 be used by terrorists to exploit any vulnerabilities of  
13 the facility and the likelihood of the success of such  
14 method.

15 “(4) RED TEAM EXERCISES.—The Secretary  
16 shall conduct red team exercises at facilities selected  
17 by the Secretary that have been assigned to the  
18 high-risk tier under section 2102(c)(4). The Sec-  
19 retary shall ensure that each such facility shall un-  
20 dergo a red team exercise during the six-year period  
21 that begins on the date on which the Secretary pre-  
22 scribes regulations to carry out this title. The exer-  
23 cises required under this paragraph shall be—

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

1 “(B) designed to identify at the selected  
2 facility—

3 “(i) any vulnerabilities of the facility;

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

6 “(iii) any weaknesses in the security  
7 plan of the facility.

8 “(c) SECURITY PERFORMANCE REQUIREMENTS.—

9 “(1) IN GENERAL.—The Secretary shall estab-  
10 lish security performance requirements for the facil-  
11 ity security plans required to be prepared by chem-  
12 ical facilities assigned to each risk-based tier estab-  
13 lished under section 2102(c). The requirements  
14 shall—

15 “(A) require separate and increasingly  
16 stringent security performance requirements for  
17 facility security plans as the level of risk associ-  
18 ated with the tier increases; and

19 “(B) permit each chemical facility submit-  
20 ting a facility security plan to select a combina-  
21 tion of chemical facility security measures that  
22 satisfy the security performance requirements  
23 established by the Secretary under this sub-  
24 section.



1           “(2) CRITERIA.—In establishing the security  
2           performance requirements under paragraph (1), the  
3           Secretary shall consider the criteria under subsection  
4           (a)(2).

5           “(3) GUIDANCE.—The Secretary shall provide  
6           guidance to each chemical facility on the list main-  
7           tained by the Secretary under section 2102(b)(1) re-  
8           garding the types of chemical facility security meas-  
9           ures that, if applied, could satisfy the requirements  
10          under this section.

11          “(d) CO-LOCATED CHEMICAL FACILITIES.—The Sec-  
12          retary shall allow the owners or operators of two or more  
13          chemical facilities that are located geographically close to  
14          each other or otherwise co-located to develop and imple-  
15          ment coordinated vulnerability assessments and facility se-  
16          curity plans, at the discretion of the owners or operators  
17          of the chemical facilities.

18          “(e) PROCEDURES, PROTOCOLS, AND STANDARDS  
19          SATISFYING REQUIREMENTS FOR VULNERABILITY AS-  
20          SESSMENT AND SECURITY PLAN.—

21          “(1) DETERMINATION BY THE SECRETARY.—In  
22          response to a petition by any person, or at the dis-  
23          cretion of the Secretary, the Secretary may endorse  
24          or recognize procedures, protocols, and standards

1       that the Secretary determines meet all or part of the  
2       requirements of this section.

3           “(2) USE OF PROCEDURES, PROTOCOLS, AND  
4       STANDARDS.—

5           “(A) USE BY INDIVIDUAL FACILITIES.—

6       Upon review and written determination by the  
7       Secretary under paragraph (1) that the proce-  
8       dures, protocols, or standards of a chemical fa-  
9       cility subject to the requirements of this section  
10      satisfy some or all of the requirements of this  
11      section, the chemical facility may elect to com-  
12      ply with those procedures, protocols, or stand-  
13      ards.

14          “(B) USE BY CLASSES OF FACILITIES.—At  
15      the discretion of the Secretary, the Secretary  
16      may identify a class or category of chemical fa-  
17      cilities subject to the requirements of this sec-  
18      tion that may use the procedures, protocols, or  
19      standards recognized under this section in order  
20      to comply with all or part of the requirements  
21      of this section.

22          “(3) PARTIAL RECOGNITION.—If the Secretary  
23      finds that a procedure, protocol, or standard satis-  
24      fies only part of the requirements of this section, the  
25      Secretary may allow a chemical facility subject to

1 the requirements of this section to comply with that  
2 procedure, protocol, or standard for purposes of that  
3 requirement, but shall require the facility to submit  
4 any additional information required to satisfy the re-  
5 quirements of this section not met by that proce-  
6 dure, protocol, or standard.

7 “(4) NOTIFICATION.—If the Secretary does not  
8 endorse or recognize a procedure, protocol, or stand-  
9 ard for which a petition is submitted under para-  
10 graph (1), the Secretary shall provide to the person  
11 submitting a petition under paragraph (1) written  
12 notification that includes an explanation of the rea-  
13 sons why the endorsement or recognition was not  
14 made.

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

17 “(A) to review a vulnerability assessment  
18 and facility security plan submitted by a high-  
19 risk chemical facility under this section; and

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

22 “(f) OTHER AUTHORITIES.—

23 “(1) OTHER PROVISIONS OF LAW.—A chemical  
24 facility on the list maintained by the Secretary  
25 under section 2102(b)(1) that is required to prepare

1 a vulnerability assessment or facility security plan or  
2 to submit other relevant documents under chapter  
3 701 of title 46, United States Code, or section 1433  
4 of the Safe Drinking Water Act (42 U.S.C. 300i-2)  
5 shall submit such plan or documents to the Sec-  
6 retary. The Secretary shall determine the extent to  
7 which actions taken by such a facility pursuant to  
8 another provision of law fulfill the requirements of  
9 this section and require such a facility to complete  
10 any additional action required by this section. The  
11 Secretary shall work with the heads of the other  
12 Federal departments and agencies with authority  
13 with respect to such a facility to ensure that require-  
14 ments under other provisions of law and the require-  
15 ments under this title are non-duplicative and non-  
16 contradictory.

17 “(2) COORDINATION OF STORAGE LICENSING  
18 REQUIREMENT.—In the case of any storage required  
19 to be licensed under chapter 40 of title 18, United  
20 States Code, the Secretary shall prescribe the rules  
21 and regulations for the implementation of this sec-  
22 tion with the concurrence of the Attorney General  
23 and avoid unnecessary duplication of regulatory re-  
24 quirements.

1       “(g) PERIODIC REVIEW BY CHEMICAL FACILITY RE-  
2 QUIRED.—

3               “(1) SUBMISSION OF REVIEW.—Not later than  
4       3 years after the date on which a vulnerability as-  
5       sessment or facility security plan required under this  
6       section is submitted, and at least once every 5 years  
7       thereafter (or on such a schedule as the Secretary  
8       may establish by regulation), the owner or operator  
9       of the chemical facility covered by the vulnerability  
10      assessment or facility security plan shall submit to  
11      the Secretary a review of the adequacy of the vulner-  
12      ability assessment or facility security plan that in-  
13      cludes a description of any changes made to the vul-  
14      nerability assessment or facility security plan.

15              “(2) REVIEW OF REVIEW.—The Secretary  
16      shall—

17                      “(A) ensure that a review required under  
18                      paragraph (1) is submitted not later than the  
19                      applicable date; and

20                      “(B) not later than 6 months after the  
21                      date on which a review is submitted under  
22                      paragraph (1), review the review and notify the  
23                      facility submitting the review of the Secretary’s  
24                      approval or disapproval of the review.

1       “(h) **ROLE OF EMPLOYEES.**—As appropriate, vulner-  
2 ability assessments or facility security plans required  
3 under this section should describe the roles or responsibil-  
4 ities that facility employees are expected to perform to  
5 prevent or respond to a chemical facility terrorist incident.

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

7       “(a) **RECORD KEEPING.**—The Secretary shall require  
8 each chemical facility required to submit a vulnerability  
9 assessment or facility security plan under section 2103 to  
10 maintain a current copy of the assessment and the plan  
11 at the facility.

12       “(b) **RIGHT OF ENTRY.**—For purposes of carrying  
13 out this title, the Secretary (or a designee of the Sec-  
14 retary) shall have, on presentation of credentials, a right  
15 of entry to, on, or through any property of a chemical fa-  
16 cility on the list maintained by the Secretary under section  
17 2102(a)(1) or any property on which any record required  
18 to be maintained under this section is located.

19       “(c) **INSPECTIONS AND VERIFICATIONS.**—The Sec-  
20 retary shall, at such time and place as the Secretary deter-  
21 mines to be appropriate, conduct or require the conduct  
22 of facility security inspections and verifications and may,  
23 by regulation, authorize third-party inspections and  
24 verifications by persons trained and certified by the Sec-  
25 retary for that purpose. Such an inspection or verification

1 shall include a consultation with owners, operators, and  
2 employees of the facility, as appropriate, and ensure and  
3 evaluate compliance with—

4 “(1) this title and any regulations prescribed to  
5 carry out this title; and

6 “(2) any security standards or requirements  
7 adopted by the Secretary in furtherance of the pur-  
8 poses of this title.

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

14 “(1) reviewing or analyzing a vulnerability as-  
15 sessment or facility security plan submitted under  
16 section 2103; or

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

18 “(e) COMPLIANCE.—If the Secretary determines that  
19 an owner or operator of a chemical facility required to sub-  
20 mit a vulnerability assessment or facility security plan  
21 under section 2103 fails to maintain, produce, or allow  
22 access to records or to the property of the chemical facility  
23 as required by this section, the Secretary shall issue an  
24 order requiring compliance with this section.

1   **“SEC. 2105. ENFORCEMENT.**

2       “(a) SUBMISSION OF INFORMATION.—

3           “(1) INITIAL SUBMISSION.—The Secretary shall  
4       specify in the regulations prescribed under section  
5       2103(a), specific deadlines for the submission to the  
6       Secretary of the vulnerability assessments and facil-  
7       ity security plans required under this title. The Sec-  
8       retary may establish different submission require-  
9       ments for the different tiers of chemical facilities  
10      under section 2102(c).

11          “(2) MAJOR CHANGES REQUIREMENT.—The  
12      Secretary shall specify in the regulations prescribed  
13      under section 2103(a) specific deadlines and require-  
14      ments for the submission by a facility required to  
15      submit a vulnerability assessment or facility security  
16      plan under that section of information describing—

17           “(A) any change in the use by the facility  
18           of more than a threshold amount of any sub-  
19           stance of concern; and

20           “(B) any significant change in a vulner-  
21           ability assessment or facility security plan sub-  
22           mitted by the facility.

23          “(3) FAILURE TO COMPLY.—If an owner or op-  
24      erator of a chemical facility fails to submit or imple-  
25      ment a vulnerability assessment or facility security  
26      plan in accordance with this title, the Secretary shall



1 issue an order requiring the submission or imple-  
2 mentation of a vulnerability assessment or facility  
3 security plan in accordance with section 2104(e).

4 “(4) ORDER TO CEASE OPERATIONS.—The Sec-  
5 retary may issue an order to a high risk chemical fa-  
6 cility to cease operations if the Secretary determines  
7 that the owner or operator continues to be in non-  
8 compliance after an order for compliance is issued  
9 under paragraph (3), until the owner or operator  
10 complies with the previous order.

11 “(b) REVIEW OF SECURITY PLAN.—

12 “(1) DEADLINE FOR REVIEW.—Not later than  
13 180 days after the date on which the Secretary re-  
14 ceives a vulnerability assessment or facility security  
15 plan under this title, the Secretary shall review and  
16 approve or disapprove such assessment or plan.

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

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

23 “(B) in the case of a facility security plan,  
24 the plan or the implementation of the plan is  
25 insufficient to address any vulnerabilities identi-

1           fied in a vulnerability assessment of the chem-  
2           ical facility or associated oversight actions  
3           taken under sections 2103 and 2104, including  
4           a red team exercise.

5           “(3) PROVISION OF NOTIFICATION OF DIS-  
6           APPROVAL.—If the Secretary disapproves the vulner-  
7           ability assessment or facility security plan submitted  
8           by a chemical facility under this title or the imple-  
9           mentation of a facility security plan by such a facil-  
10          ity, the Secretary shall—

11                 “(A) provide the owner or operator of the  
12           facility a written notification of the disapproval,  
13           that—

14                         “(i) includes a clear explanation of de-  
15           ficiencies in the assessment, plan, or imple-  
16           mentation of the plan; and

17                         “(ii) requires the owner or operator of  
18           the facility to revise the assessment or plan  
19           to address any deficiencies and to submit  
20           to the Secretary the revised assessment or  
21           plan;

22                 “(B) provide guidance to assist the owner  
23           or operator of the facility in addressing such  
24           deficiency;

1           “(C) in the case of a facility for which the  
2           owner or operator of the facility does not ad-  
3           dress such deficiencies by such date as the Sec-  
4           retary determines to be appropriate, issue an  
5           order requiring the owner or operator to correct  
6           specified deficiencies by a specified date; and

7           “(D) in the case of a facility assigned to  
8           the high-risk tier under section 2102(c)(4), con-  
9           sult with the owner or operator of the facility  
10          to identify appropriate steps to be taken by the  
11          owner or operator to address the deficiencies  
12          identified by the Secretary.

13       “(c) REPORTING PROCESS.—

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

19           “(2) CONFIDENTIALITY.—The Secretary shall  
20          keep confidential the identity of a person that sub-  
21          mits a report under paragraph (1) and any such re-  
22          port shall be treated as protected information under  
23          section 2108(f) to the extent that it does not consist  
24          of publicly available information.

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

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

12          “(5) RETALIATION PROHIBITED.—

13               “(A) PROHIBITION.—No employer may  
14               discharge any employee or otherwise discrimi-  
15               nate against any employee with respect to the  
16               compensation of, or terms, conditions, or privi-  
17               leges of the employment of, such employee be-  
18               cause the employee (or a person acting pursu-  
19               ant to a request of the employee) submits a re-  
20               port under paragraph (1).

21               “(B) ENFORCEMENT PROCESS.—The Sec-  
22               retary shall establish—

23                       “(i) a process by which an employee  
24                       can notify the Secretary of any retaliation  
25                       prohibited under this paragraph; and

1 “(ii) a process by which the Secretary  
2 may take action as appropriate to enforce  
3 this section.

4 **“SEC. 2106. PENALTIES.**

5 “(a) ADMINISTRATIVE PENALTIES.—

6 “(1) IN GENERAL.—The Secretary may issue  
7 an administrative penalty of not more than  
8 \$250,000 for failure to comply with an order issued  
9 by the Secretary under this title.

10 “(2) PROVISION OF NOTICE.—Before issuing a  
11 penalty under paragraph (1), the Secretary shall  
12 provide to the person against which the penalty is to  
13 be assessed—

14 “(A) written notice of the proposed pen-  
15 alty; and

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

22 “(3) PROCEDURES FOR REVIEW.—The Sec-  
23 retary may prescribe regulations outlining the proce-  
24 dures for administrative hearings and appropriate  
25 review, including necessary deadlines.

1 “(b) CIVIL PENALTIES.—

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

6 “(A) any order issued by the Secretary  
7 under this title; or

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

10 “(2) RELIEF.—In any action under paragraph  
11 (1), a court may issue an order for injunctive relief  
12 and may award a civil penalty of not more than  
13 \$50,000 for each day on which a violation occurs or  
14 a failure to comply continues.

15 “(c) CRIMINAL PENALTIES.—An owner or operator  
16 of a chemical facility who knowingly and intentionally vio-  
17 lates an order of compliance issued by the Secretary pur-  
18 suant to section 2104(e) shall be fined not more than  
19 \$100,000, imprisoned for not more than 1 year, or both.

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

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

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

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

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

14          “(a) IN GENERAL.—Nothing in this title shall pre-  
15          clude or deny any right of any State or political subdivi-  
16          sion thereof to adopt or enforce any regulation, require-  
17          ment, or standard of performance respecting chemical fa-  
18          cility security that is more stringent than a regulation, re-  
19          quirement, or standard of performance in effect under this  
20          title, or shall otherwise impair any right or jurisdiction  
21          of any State with respect to chemical facilities within such  
22          State unless the State regulation, requirement, or stand-  
23          ard of performance would conflict with the purposes of  
24          this title.

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

6       “(c) APPLICATION FOR REVIEW.—

7           “(1) IN GENERAL.—A person, State, or local  
8 government directly affected by a requirement of a  
9 State or local government may submit to the Sec-  
10 retary, as provided in regulations that the Secretary  
11 shall prescribe, an application asking the Secretary  
12 to decide whether the requirement is preempted by  
13 this title.

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

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

20           “(A) issue a decision pursuant to the ap-  
21 plication; or

22           “(B) publish in the Federal Register—

23           “(i) a statement of the reason why the  
24 Secretary’s decision on the application is  
25 delayed; and



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

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

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

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

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

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

20 “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-  
21 TECTED INFORMATION.—

22 “(1) IN GENERAL.—The Secretary shall ensure  
23 that protected information, as described in sub-  
24 section (f), is not disclosed except as provided in this  
25 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) permit information sharing, on a con-  
17                   fidential basis, with and between, Federal,  
18                   State and local law enforcement officials and  
19                   first responders and chemical facility personnel,  
20                   as necessary to further the purposes of this  
21                   title;

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

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

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

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

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

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

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

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

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

22 “(d) SUBMISSION OF INFORMATION TO CONGRESS.—  
23 Nothing in this title shall be construed as authorizing the  
24 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.—For purposes of  
8 this section, protected information includes the following:

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

13           “(2) The vulnerability assessments and facility  
14 security plans submitted to the Secretary under this  
15 title.

16           “(3) Information concerning the security per-  
17 formance requirements for a chemical facility under  
18 section 2103(c).

19           “(4) Any other information generated or col-  
20 lected by a Federal, State, or local government agen-  
21 cy or by a chemical facility for the purpose of car-  
22 rying out or complying with this title—

23           “(A) that describes any vulnerability of a  
24 chemical facility to an act of terrorism;

1 “(B) that describes the assignment of any  
2 chemical facility to a risk-based tier under this  
3 title;

4 “(C) that describes any security measure  
5 (including any procedure, equipment, training,  
6 or exercise) for the protection of a chemical fa-  
7 cility from an act of terrorism; or

8 “(D) the disclosure of which the Secretary  
9 determines would be detrimental to the security  
10 of any chemical facility.

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

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

17 “(b) QUALIFICATIONS.—The Secretary shall estab-  
18 lish standards for the qualifications of third-party entities,  
19 including knowledge of physical infrastructure protection,  
20 cybersecurity, facility security plans, hazard analysis, en-  
21 gineering, and other such factors that the Secretary deter-  
22 mines to be necessary.

23 “(c) PROCEDURES AND REQUIREMENTS FOR PRI-  
24 VATE ENTITIES.—Before designating a third-party entity

1 to carry out a function under subsection (a), the Secretary  
2 shall—

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

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

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

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

20 “(3) conduct a review of the third-party enti-  
21 ties’ previous business engagements to ensure that  
22 no contractual relationship has or will exist that  
23 could compromise their independent business judg-  
24 ment in carrying out any functions under subsection

1 (e)(5) of section 2103, subsection (b) or (c) of sec-  
2 tion 2104, or subsection (b)(1) of section 2105; and

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

8 “(d) TECHNICAL REVIEW AND APPROVAL.—Not  
9 later than 60 days after the date on which the results of  
10 the safety and hazard analysis of the standard operating  
11 procedures and requirements are completed under sub-  
12 section (c)(2), the Secretary shall—

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

16 “(2) approve or disapprove such procedures and  
17 requirements (or updates thereto).

18 “(e) EFFECT OF APPROVAL.—

19 “(1) ISSUANCE OF CERTIFICATE OF CONFORM-  
20 ANCE.—In accordance with section 863(d)(3), the  
21 Secretary shall issue a certificate of conformance to  
22 a third-party entity to perform a function under sub-  
23 section (a) if the entity—

24 “(A) demonstrates to the satisfaction of  
25 the Secretary the ability to perform functions in

1           accordance with standard operating procedures  
2           and requirements (or updates thereto) approved  
3           by the Secretary under this section;

4           “(B) agrees to—

5                 “(i) perform such function in accord-  
6                 ance with such standard operating proce-  
7                 dures and requirements (or updates there-  
8                 to); and

9                 “(ii) maintain liability insurance cov-  
10                erage at policy limits and in accordance  
11                with conditions to be established by the  
12                Secretary pursuant to section 864; and

13           “(C) signs an agreement to protect the  
14           proprietary and confidential information of any  
15           chemical facility with respect to which the enti-  
16           ty will perform such function.

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



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

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

17          “(f) MONITORING.—The Secretary shall regularly  
18       monitor and inspect the operations of a third-party entity  
19       that performs a function under subsection (a) to ensure  
20       that the entity is meeting the minimum standard oper-  
21       ating procedures and requirements established under sub-  
22       section (c) and any other applicable requirement under  
23       this section.

24          “(g) RESTRICTION ON DESIGNATION.—No individual  
25       may be designated to carry out any function under this

1 title with respect to any facility with which that individual  
2 was affiliated as an officer, director, or employee during  
3 the three-year period preceding the date of such designa-  
4 tion.

5 **“SEC. 2110. METHODS TO REDUCE THE CONSEQUENCES OF**  
6 **A TERRORIST ATTACK.**

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

11 “(1) input substitution;

12 “(2) catalyst or carrier substitution;

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

15 “(4) product reformulation;

16 “(5) procedure simplification;

17 “(6) technology modification;

18 “(7) use of less hazardous substances or benign  
19 substances;

20 “(8) use of smaller quantities of substances of  
21 concern;

22 “(9) reduction of hazardous pressures or tem-  
23 peratures;

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

1           “(11) improvement of inventory control and  
2           chemical use efficiency; and

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

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

12          “(c) IMPLEMENTATION.—

13                 “(1) IMPLEMENTATION.—The owner or oper-  
14                 ator of a chemical facility required to conduct an as-  
15                 sessment under subsection (b) shall implement meth-  
16                 ods to reduce the consequences of a terrorist attack  
17                 on the chemical facility if the Secretary determines,  
18                 based on an assessment in subsection (b), that the  
19                 implementation of methods to reduce the con-  
20                 sequences of a terrorist attack at the high-risk  
21                 chemical facility—

22                         “(A) are necessary for the facility to meet  
23                         the security performance requirements for the  
24                         facility’s risk tier;

1           “(B) would significantly reduce the risk of  
2           death, injury, or serious adverse effects to  
3           human health or the environment resulting  
4           from a terrorist release;

5           “(C) can feasibly be incorporated into the  
6           operation of the facility; and

7           “(D) would not significantly and demon-  
8           strably impair the ability of the owner or oper-  
9           ator of the facility to continue the business of  
10          the facility.

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

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

21           “(B) REVIEW.—Not later than 60 days of  
22           receipt of an explanation submitted under sub-  
23           paragraph (A), the Panel on Methods to Reduce  
24           the Consequences of a Terrorist Attack, as es-  
25           tablished under subparagraph (C), after con-

1           sulting with the owner or operator who sub-  
2           mitted such explanation, shall provide to the  
3           owner or operator a written determination of  
4           whether implementation shall be required pur-  
5           suant to subsection (c)(1). If the Panel deter-  
6           mines that implementation is required, the fa-  
7           cility shall be required to begin implementation  
8           within 180 days of that determination.

9           “(C) PANEL ON METHODS TO REDUCE  
10          THE CONSEQUENCES OF A TERRORIST AT-  
11          TACK.—The Secretary shall establish a panel to  
12          be known as the ‘Panel on Methods to Reduce  
13          the Consequences of a Terrorist Attack’, which  
14          shall be chaired by the Secretary (or the Sec-  
15          retary’s designee). Members of the Panel shall  
16          be selected by the Secretary and shall include  
17          representatives of other appropriate Federal  
18          and State agencies, independent security ex-  
19          perts, and representatives of the chemical in-  
20          dustry.

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

23          “(1) IN GENERAL.—The Secretary, in consulta-  
24          tion with the Panel on Methods to Reduce the Con-  
25          sequences of a Terrorist Attack, established under

1 subsection (c)(2)(C), shall provide information to  
2 chemical facilities on the use and availability of  
3 methods to reduce the consequences of a terrorist  
4 attack at a chemical facility.

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

8 “(A) general and specific types of such  
9 methods;

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

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

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

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

21 “(F) the availability of technical assist-  
22 ance; and

23 “(G) such other matters as the Secretary  
24 determines is appropriate.

1           “(3) COLLECTION OF INFORMATION.—The Sec-  
2       retary, in consultation with the Panel on Methods to  
3       Reduce the Consequences of a Terrorist Attack, es-  
4       tablished under subsection (c)(2)(C), shall collect in-  
5       formation necessary to fulfill the requirements of  
6       paragraph (1)—

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

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

17          “(C) through such other methods as the  
18      Secretary deems appropriate.

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

23          “(e) PROTECTED INFORMATION.—An assessment  
24      prepared under subsection (b) is protected information  
25      under section 2108(f).

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

2       “(a) ANNUAL REPORT.—Not later than one year  
3 after the date of the enactment of the Chemical Facility  
4 Anti-Terrorism Act of 2008, and annually thereafter, the  
5 Secretary shall submit to Congress a report on progress  
6 in achieving compliance with this title. Each such report  
7 shall include—

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

10          “(2) any lessons learned in implementing this  
11 title (including as a result of a red-team exercise);  
12 and

13          “(3) any recommendations of the Secretary to  
14 improve the programs, plans, and procedures under  
15 this title, including the feasibility of programs to in-  
16 crease the number of economically disadvantaged  
17 businesses eligible to perform third-party entity re-  
18 sponsibilities pursuant to sections 2103(e)(5),  
19 2104(b) and (c), and 2105(b)(1).

20       “(b) PROTECTED INFORMATION.—A report under  
21 this section may not include information protected under  
22 section 2108.

23   **“SEC. 2112. APPLICABILITY.**

24       “‘This title shall not apply to—



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

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

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

11 **“SEC. 2113. SAVINGS CLAUSE.**

12 “Nothing in this title is intended to affect section 112  
13 of the Clean Air Act (42 U.S.C. 7412), the Clean Water  
14 Act, the Resource Conservation and Recovery Act, the Na-  
15 tional Environmental Policy Act of 1969, and the Occupa-  
16 tional Safety and Health Act.

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

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

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

“TITLE XXI—REGULATION OF CHEMICAL FACILITIES

“Sec. 2101. Definitions.

“Sec. 2102. 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.”.

1 (c) CONFORMING REPEAL.—

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

5 (2) EFFECTIVE DATE.—The amendment made  
6 by paragraph (1) shall take effect on October 1,  
7 2009.

8 **SEC. 3. INSPECTOR GENERAL REPORT.**

9 (a) REPORT REQUIRED.—Not later than 1 year after  
10 the date on which the Secretary of Homeland Security  
11 prescribes the regulations required to be prescribed under  
12 title XXI of the Homeland Security Act of 2002, as added  
13 by section 2, the Inspector General of the Department of  
14 Homeland Security shall submit to the Committee on  
15 Homeland Security of the House of Representatives and  
16 the Committee on Homeland Security and Governmental  
17 Affairs of the Senate a report that reviews the effective-  
18 ness of the implementation of such title, including the ef-  
19 fectiveness of facility security plans required under such

1 title and any recommendations to improve the programs,  
2 plans, and procedures required under such title, including  
3 the feasibility of programs to increase the number of eco-  
4 nomically disadvantaged businesses eligible to perform  
5 third-party entity responsibilities pursuant to sections  
6 2103(e)(5), 2104(b) and (c), and 2105(b)(1) of such Act.

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

11 **SEC. 4. DEADLINE FOR REGULATIONS.**

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

16 **SEC. 5. CHEMICAL FACILITY TRAINING PROGRAM.**

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

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

21 “(a) IN GENERAL.—The Secretary shall establish a  
22 Chemical Facility Security Training Program (referred to  
23 in this section as the ‘Program’) for the purpose of en-  
24 hancing the capabilities of chemical facilities to prevent,

1 prepare for, respond to, mitigate against, and recover from  
2 threatened or actual acts of terrorism.

3 “(b) REQUIREMENTS.—The Program shall provide  
4 voluntary training that—

5 “(1) reaches multiple disciplines, including Fed-  
6 eral, State, and local government officials, chemical  
7 facility owners, operators, and employees, and gov-  
8 ernmental and nongovernmental emergency response  
9 providers;

10 “(2) utilizes multiple training mediums and  
11 methods;

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

14 “(A) facility security plans and procedures  
15 for differing threat levels;

16 “(B) physical security, security equipment  
17 and systems, access control, and methods for  
18 preventing and countering theft;

19 “(C) recognition and detection of weapons  
20 and devices;

21 “(D) security incident procedures, includ-  
22 ing procedures for communicating with emer-  
23 gency response providers;

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

1                   “(F) other requirements that the Secretary  
2                   deems appropriate.

3                   “(4) is consistent with, and supports implemen-  
4                   tation of, the National Incident Management Sys-  
5                   tem, the National Response Plan, the National In-  
6                   frastructure Protection Plan, the National Prepared-  
7                   ness Guidance, the National Preparedness Goal, and  
8                   other national initiatives;

9                   “(5) includes consideration of existing security  
10                  and hazardous chemical training programs including  
11                  Federal or industry programs; and

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

14                  “(c) NATIONAL VOLUNTARY CONSENSUS STAND-  
15                  ARDS.—The Secretary shall—

16                  “(1) support the promulgation, and regular up-  
17                  dating as necessary of national voluntary consensus  
18                  standards for chemical facility security training en-  
19                  suring that training is consistent with such stand-  
20                  ards; and

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

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

1           “(1) work with government training programs,  
2           facilities, academic institutions, industry and private  
3           organizations, employee organizations, and other rel-  
4           evant entities that provide specialized state-of-the-  
5           art training; and

6           “(2) utilize, as appropriate, training provided  
7           by industry, public safety academies, Federal pro-  
8           grams, employee organizations, State and private  
9           colleges and universities, and other facilities.”.

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

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