

Calendar No. 495

109TH CONGRESS
2^D SESSION**S. 2145**

To enhance security and protect against terrorist attacks at chemical facilities.

IN THE SENATE OF THE UNITED STATES

DECEMBER 19, 2005

Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. COLEMAN, Mr. CARPER, Mr. LEVIN, Mr. CORZINE, and Mr. SALAZAR) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JUNE 26, 2006

Reported by Ms. COLLINS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To enhance security and protect against terrorist attacks
at chemical facilities.

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 2005”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **CHEMICAL SOURCE.**—The term “chemical
4 source” means a facility designated as a chemical
5 source by the Secretary under section 3.

6 (2) **CRITICAL INFRASTRUCTURE.**—The term
7 “critical infrastructure” has the meaning given the
8 term in section 2 of the Homeland Security Act of
9 2002 (6 U.S.C. 101).

10 (3) **DEPARTMENT.**—The term “Department”
11 means the Department of Homeland Security.

12 (4) **ENVIRONMENT.**—The term “environment”
13 has the meaning given the term in section 101 of the
14 Comprehensive Environmental Response, Compensation,
15 and Liability Act of 1980 (42 U.S.C. 9601).

16 (5) **HIGHER RISK TIER.**—The term “higher risk
17 tier” means a tier designated by the Secretary as a
18 higher risk tier under section 3(e)(3).

19 (6) **MTSA-REGULATED FACILITIES.**—The term
20 “MTSA-regulated facility” means a facility subject
21 to the security requirements under chapter 701 of
22 title 46, United States Code (commonly known as
23 the “Maritime Transportation Security Act”).

24 (7) **OWNER OR OPERATOR.**—The term “owner
25 or operator” means any person who owns, leases, op-
26 erates, controls, or supervises a chemical source.

1 (8) RELEASE.—The term “release” has the
2 meaning given the term in section 101 of the Com-
3 prehensive Environmental Response, Compensation,
4 and Liability Act of 1980 (42 U.S.C. 9601).

5 (9) SECRETARY.—The term “Secretary” means
6 the Secretary of Homeland Security.

7 (10) SECURITY MEASURE.—

8 (A) IN GENERAL.—The term “security
9 measure” means an action to ensure or enhance
10 the security of a chemical source against a ter-
11 rorist incident.

12 (B) INCLUSIONS.—The term “security
13 measure”, with respect to a chemical source, in-
14 cludes measures such as—

15 (i) employee training and background
16 and identification authentication checks;

17 (ii) the limitation and prevention of
18 access to controls of the chemical source;

19 (iii) the protection of the perimeter of
20 the chemical source;

21 (iv) the installation and operation of
22 intrusion detection sensors;

23 (v) the implementation of measures to
24 increase computer or computer network se-
25 curity;

1 (vi) the implementation of other secu-
2 rity-related measures to ensure or enhance
3 the security of a chemical source from a
4 terrorist incident;

5 (vii) the implementation of measures
6 and controls to prevent, protect against, or
7 reduce the consequences of a terrorist inci-
8 dent, including—

9 (I) contingency and evacuation
10 plans;

11 (II) early warning systems; and

12 (III) the relocation, hardening of
13 the storage or containment, modifica-
14 tion, processing, substitution, or re-
15 duction of substances of concern; and

16 (viii) the conduct of any similar secu-
17 rity-related activity, as determined by the
18 Secretary.

19 (11) SUBSTANCE OF CONCERN.—The term
20 “substance of concern” means—

21 (A) a chemical substance present at a
22 chemical source in quantities equal to or ex-
23 ceeding the threshold quantities for the chem-
24 ical substance, as defined in or established

1 under paragraphs (3) and (5) of section 112(r)
2 of the Clean Air Act (42 U.S.C. 7412(r));

3 (B) ammonium nitrate, in a quantity to be
4 determined by the Secretary by regulation; and

5 (C) any other chemical substance des-
6 ignated as a substance of concern by the Sec-
7 retary under section 3(i) in quantities equal to
8 or exceeding the threshold quantities estab-
9 lished under section 3(i), based on the potential
10 extent of death, injury, or serious adverse ef-
11 fects to human health and safety or the envi-
12 ronment or the potential impact on national or
13 economic security or critical infrastructure
14 caused by a terrorist incident involving the
15 chemical substance.

16 (12) TERRORISM.—The term “terrorism” has
17 the meaning given the term in section 2 of the
18 Homeland Security Act of 2002 (6 U.S.C. 101).

19 (13) TERRORIST INCIDENT.—The term “ter-
20 rorist incident” means—

21 (A) a terrorist attack against a chemical
22 source;

23 (B) a release from a chemical source into
24 the environment of a substance of concern that
25 is caused by an act of terrorism; and

1 (C) the theft of a substance of concern by
2 a person for off-site release in furtherance of an
3 act of terrorism.

4 **SEC. 3. DESIGNATION AND TIERING OF CHEMICAL**
5 **SOURCES.**

6 (a) **DESIGNATION.**—Not later than 1 year after the
7 date of enactment of this Act, the Secretary shall—

8 (1) promulgate regulations establishing criteria
9 for designating chemical sources by using the risk
10 factors described in subsection (b) and by evaluating
11 the types of facilities described in subsection (c) that
12 shall be considered in designating chemical sources;
13 and

14 (2) designate chemical sources in existence as
15 of that date.

16 (b) **RISK FACTORS TO BE CONSIDERED.**—In estab-
17 lishing criteria under subsection (a)(1) for designating
18 chemical sources, the Secretary shall consider—

19 (1) the perceived threat to a facility, including
20 a consideration of adversary capabilities and intent,
21 preparedness, target attractiveness, and deterrence
22 capabilities;

23 (2) the potential extent and likelihood of death,
24 injury, or serious adverse effects to human health

1 and safety or to the environment caused by a ter-
 2 rorist incident at a facility;

3 ~~(3) the threats to or potential impact on na-~~
 4 ~~tional security or critical infrastructure caused by a~~
 5 ~~terrorist incident at a facility;~~

6 ~~(4) the potential threats or harm to the econ-~~
 7 ~~omy that would result from a terrorist incident at a~~
 8 ~~facility, including whether a facility is the sole sup-~~
 9 ~~plier, or the producer of a high percentage, of a~~
 10 ~~product that is critical to the economy, the chemical~~
 11 ~~industry, or national security;~~

12 ~~(5) the proximity of a facility to population cen-~~
 13 ~~ters;~~

14 ~~(6) the nature and quantity of substances of~~
 15 ~~concern at a facility; and~~

16 ~~(7) such other security-related factors as the~~
 17 ~~Secretary determines to be appropriate and nec-~~
 18 ~~essary to protect the public health and safety, crit-~~
 19 ~~ical infrastructure, and national and economic secu-~~
 20 ~~rity.~~

21 ~~(c) CRITERIA FOR FACILITIES.—In establishing cri-~~
 22 ~~teria under subsection (a)(1) for designating chemical~~
 23 ~~sources, the Secretary shall—~~

24 ~~(1) consider any facility that is a stationary~~
 25 ~~source (as defined in section 112(r)(2) of the Clean~~

1 Air Act (42 U.S.C. 7412(r)(2)) for which the owner
2 or operator is required to complete a risk manage-
3 ment plan in accordance with section
4 112(r)(7)(B)(ii) of the Clean Air Act (42 U.S.C.
5 7412(r)(7)(B)(ii));

6 (2) consider any other facility that produces,
7 uses, or stores a substance of concern; and

8 (3) determine whether any additional facility
9 (including, as of the date of the determination, any
10 facility that is operational and any facility that will
11 become operational in the future) shall be designated
12 chemical sources under this Act.

13 (d) EXCLUSIONS.—In designating facilities as chem-
14 ical sources, the Secretary shall not include any facility
15 owned or operated by the Department of Defense or the
16 Department of Energy.

17 (e) TIERED SECURITY SYSTEM.—

18 (1) IN GENERAL.—Not later than 1 year after
19 the date of enactment of this Act, the Secretary
20 shall promulgate rules establishing a risk-based tier
21 system of chemical sources that—

22 (A) shall be based on the criteria estab-
23 lished by the Secretary under subsection (a)(1);

24 (B) consists of several tiers of chemical
25 sources;

1 (C) to the maximum extent practicable, en-
 2 ables a chemical source to develop appropriate
 3 site-specific measures to meet the security per-
 4 formance standards established under sub-
 5 section (f) for the tier applicable to the chem-
 6 ical source; and

7 (D) provides guidance to the owner or op-
 8 erator of a chemical source regarding the steps
 9 that would enable the chemical source to move
 10 to a lower risk tier, if the owner or operator
 11 seeks to move to a lower risk tier.

12 (2) DETERMINATION OF TIER.—Not later than
 13 1 year after the date of enactment of this Act, the
 14 Secretary shall determine the tier applicable to each
 15 chemical source designated under subsection (a)(2).

16 (3) HIGHER RISK TIERS.—The Secretary shall
 17 designate 1 or more tiers established under para-
 18 graph (1) as higher risk tiers.

19 (f) SECURITY PERFORMANCE STANDARDS.—

20 (1) IN GENERAL.—The Secretary shall establish
 21 security performance standards appropriate to the
 22 risk-based tiers established under subsection (e).

23 (2) CONTENTS.—The security performance
 24 standards established under paragraph (1) shall—

1 (A) set increasingly strict security require-
2 ments as the level of risk for the tier increases;

3 (B) enable a chemical source to select se-
4 curity measures that, in combination, satisfy
5 the security performance standards established
6 by the Secretary; and

7 (C) be based on the criteria in section
8 4(a)(2).

9 (3) GUIDANCE.—

10 (A) IN GENERAL.—The Secretary shall
11 provide guidance to a chemical source regarding
12 the types of security measures that, if applied,
13 could satisfy the security performance stand-
14 ards.

15 (B) ALTERNATE MEASURES.—The owner
16 or operator of a chemical source shall have
17 flexibility to employ different security measures
18 than those contained in the guidance described
19 in subparagraph (A) if such measures satisfy
20 the security performance standards established
21 for the tier applicable to the chemical source.

22 (g) NOTICE TO FACILITIES.—Not later than 180
23 days after the date of enactment of this Act, the Secretary
24 shall notify facilities that may be designated as chemical
25 sources regarding the review of facilities and designation

1 of chemical sources to be conducted under this Act, includ-
2 ing the timeline for such review and designation.

3 (h) SUBSEQUENT DETERMINATIONS.—

4 (1) PERIODIC REVIEW OF DETERMINATIONS.—

5 Not later than 3 years after the designation of
6 chemical sources under subsection (a)(2), and every
7 3 years thereafter, the Secretary shall, after consid-
8 ering the criteria established under subsection (a)(1)
9 and the exclusions under subsection (d), determine
10 whether to designate any additional facility as a
11 chemical source or remove the designation of any
12 particular facility as a chemical source.

13 (2) OTHER REVIEW.—In addition to the peri-
14 odic review required under paragraph (1), the Sec-
15 retary may, after considering the criteria established
16 under subsection (a)(1) and the exclusions under
17 subsection (d), designate a facility as chemical
18 source or remove the designation of any facility as
19 a chemical source.

20 (3) DUTY TO REPORT.—

21 (A) FACILITIES BECOMING OPER-
22 ATIONAL.—

23 (i) IN GENERAL.—Each facility de-
24 scribed in clause (ii) shall file a petition
25 with the Secretary for a determination on

1 whether that facility should be designated
 2 as a chemical source not later than 180
 3 days after the later of—

4 (I) the date of the promulgation
 5 of final rules under subsection (a)(1);
 6 or

7 (II) the date that facility be-
 8 comes operational.

9 (ii) ~~FACILITIES COVERED.~~—A facility
 10 described in this clause is a facility—

11 (I) that becomes operational on
 12 or after the date of the designation of
 13 chemical sources under subsection
 14 (a)(2); and

15 (II) at which a threshold quan-
 16 tity of a substance of concern is
 17 present.

18 ~~(B) EXISTING FACILITIES.~~—

19 (i) ~~IN GENERAL.~~—Each facility de-
 20 scribed in clause (ii) shall submit a petition
 21 to the Secretary for a determination on
 22 whether that facility should be designated
 23 as a chemical source not later than 180
 24 days after the later of—

1 (I) the date of the promulgation
2 of final regulations under subsection
3 (a)(1); or

4 (II) the date on which the
5 threshold quantity of a substance of
6 concern is first present at that facil-
7 ity.

8 (ii) FACILITIES COVERED.—A facility
9 described in this clause is a facility—

10 (I) for which the owner or oper-
11 ator is not required to complete a risk
12 management plan under section
13 112(r)(7)(B)(ii) of the Clean Air Act
14 (42 U.S.C. 7412(r)(7)(B)(ii));

15 (II) that is operational before the
16 date of the promulgation of the final
17 rules establishing criteria for desig-
18 nating chemical sources under sub-
19 section (a)(1); and

20 (III) at which a threshold quan-
21 tity of a substance of concern is
22 present.

23 (C) CONSULTATION.—The Secretary, in
24 consultation with the Administrator of the En-
25 vironmental Protection Agency, shall establish a

1 mechanism for the Secretary to receive notice in
2 a timely fashion of a facility required by the
3 Administrator to complete a risk management
4 plan in accordance with section 112(r)(7)(B)(ii)
5 of the Clean Air Act (42 U.S.C.
6 7412(r)(7)(B)(ii)).

7 (D) REGULATIONS.—The Secretary may
8 promulgate regulations to carry out this para-
9 graph.

10 (i) DESIGNATION, EXEMPTION, AND ADJUSTMENT
11 OF THRESHOLD QUANTITIES OF SUBSTANCES OF CON-
12 CERN.—

13 (1) IN GENERAL.—The Secretary may, by regu-
14 lation—

15 (A) designate a chemical substance, in a
16 particular threshold quantity, as a substance of
17 concern under this Act;

18 (B) exempt a chemical substance from des-
19 ignation as a substance of concern under this
20 Act; and

21 (C) establish or revise the threshold quan-
22 tity for a chemical substance to be designated
23 a substance of concern.

24 (2) CONSIDERATIONS.—In designating or ex-
25 empting a chemical substance or establishing or re-

1 vising the threshold quantity of a chemical substance
2 under paragraph (1), the Secretary shall consider
3 the potential extent of death, injury, or serious ad-
4 verse effects to human health and safety or the envi-
5 ronment and the potential impact on national secu-
6 rity, the economy, or critical infrastructure that
7 would result from a terrorist incident involving the
8 chemical substance.

9 ~~(3) REGULATIONS.~~—The Secretary may make a
10 designation, exemption, or revision under paragraph
11 ~~(1)~~ in the regulations promulgated under subsection
12 ~~(a)(1)~~.

13 **SEC. 4. VULNERABILITY ASSESSMENTS, SITE SECURITY**
14 **PLANS, AND EMERGENCY RESPONSE PLANS.**

15 ~~(a) REQUIREMENT.~~—

16 ~~(1) IN GENERAL.~~—Not later than 1 year after
17 the date of enactment of this Act, the Secretary
18 shall promulgate regulations that require the owner
19 or operator of each chemical source—

20 ~~(A) to conduct a vulnerability assessment,~~
21 ~~evaluating the vulnerability of the chemical~~
22 ~~source to a terrorist incident;~~

23 ~~(B) to prepare and implement a site secu-~~
24 ~~rity plan that addresses the risks identified in~~
25 ~~the vulnerability assessment; and~~

1 (C) to prepare and implement an emer-
 2 gency response plan or prepare and implement
 3 an addendum to an existing emergency re-
 4 sponse plan to include response planning for a
 5 terrorist incident.

6 (2) REGULATORY CRITERIA.—The regulations
 7 promulgated under paragraph (1)—

8 (A) shall be risk-based, performance based,
 9 and flexible; and

10 (B) shall include consideration of—

11 (i) the criteria established by the Sec-
 12 retary under section 3(a)(1);

13 (ii) cost and technical feasibility; and

14 (iii) scale of operations.

15 (3) CO-LOCATED CHEMICAL SOURCES.—The
 16 regulations promulgated under paragraph (1) shall
 17 permit the development and implementation of co-
 18 ordinated vulnerability assessments, site security
 19 plans, and emergency response plans in any case in
 20 which more than 1 chemical source is operating at
 21 a single location or at contiguous locations, including
 22 cases in which a chemical source is under the control
 23 of more than 1 owner or operator.

24 (4) SHARING OF THREAT INFORMATION.—To
 25 the maximum extent practicable under applicable au-

1 thority and in the interests of national security, the
2 Secretary shall provide State and local government
3 officials and an owner or operator of a chemical
4 source with threat information that is relevant to the
5 chemical source in particular or to the chemical sec-
6 tor in general.

7 (5) CONTENTS OF VULNERABILITY ASSESS-
8 MENT.—A vulnerability assessment shall—

9 (A) be based on a rigorous methodology
10 developed or endorsed by the Secretary;

11 (B) incorporate any threat information
12 provided under paragraph (4);

13 (C) address the appropriate security per-
14 formance standards established by Secretary
15 under section 3(f); and

16 (D) include an analysis of—

17 (i) physical security;

18 (ii) communication systems;

19 (iii) electronic, computer, or other
20 automated systems which are utilized by
21 the chemical source;

22 (iv) the sufficiency of security meas-
23 ures relative to the threats and con-
24 sequences of a terrorist incident, including
25 vulnerabilities at the chemical source aris-

1 ing from the nature and quantities of sub-
2 stances of concern and the use, storage, or
3 handling of substances of concern; and

4 (v) other areas, as determined by the
5 Secretary.

6 (6) CONTENTS OF SITE SECURITY PLAN.—A
7 site security plan shall—

8 (A) indicate the tier applicable to the
9 chemical source, as determined by the Secretary
10 under section 3(e)(2);

11 (B) address the risks identified in the vul-
12 nerability assessment;

13 (C) address the appropriate security per-
14 formance standards established by Secretary
15 under section 3(f);

16 (D) include security measures appropriate
17 to the tier level of the chemical source that ad-
18 dress the risks identified in the vulnerability as-
19 sessment and are sufficient to deter, to the
20 maximum extent practicable, a terrorist inci-
21 dent or a substantial threat of such an incident;

22 (E) include security measures to mitigate
23 the consequences of a terrorist incident;

24 (F) describe, at a minimum, particular
25 plans, processes, or procedures that could be

1 used by or at the chemical source in the event
2 of a terrorist incident;

3 (G) identify the roles and responsibilities
4 of employees at the chemical source;

5 (H) identify steps taken by the chemical
6 source to coordinate security measures and
7 plans for response to a terrorist incident with
8 Federal, State, and local government officials,
9 including law enforcement and first responders
10 and specify the security officer who will be the
11 point of contact for the National Incident Man-
12 agement System and Federal, State, and local
13 law enforcement and first responders; and

14 (I) describe the training, drills (including
15 periodic unannounced drills), exercises, and se-
16 curity actions of persons at the chemical source,
17 to be carried out under the plan to deter, to the
18 maximum extent practicable, a terrorist inci-
19 dent or a substantial threat of such an incident.

20 (7) CONTENTS OF EMERGENCY RESPONSE
21 PLAN.—

22 (A) IN GENERAL.—An emergency response
23 plan shall—

24 (i) specifically address the con-
25 sequences of a terrorist incident identified

1 in the vulnerability assessment prepared
2 under paragraph (4);

3 (ii) be consistent with the site security
4 plan prepared under paragraph (6); and

5 (iii) identify the roles and responsibil-
6 ities of employees at the chemical source.

7 (B) RELATIONSHIP TO THE NATIONAL
8 CONTINGENCY PLAN.—

9 (i) IN GENERAL.—Except as provided
10 in clause (ii), an emergency response plan
11 shall be a Federally approved or certified
12 emergency response plan in effect on the
13 date of enactment of this Act that is—

14 (I) consistent with guidance pro-
15 vided by the National Response Team
16 established under the National Con-
17 tingency Plan created under section
18 105 of the Comprehensive Environ-
19 mental Response, Compensation, and
20 Liability Act of 1980 (42 U.S.C.
21 9605); and

22 (II) modified to satisfy the re-
23 quirements of subparagraph (A).

24 (ii) NO EXISTING PLAN.—The owner
25 or operator of a chemical source that does

1 not have a Federally approved or certified
2 emergency response plan in effect on the
3 date of enactment of this Act shall follow
4 the guidance provided by the National Re-
5 sponse Team established under the Na-
6 tional Contingency Plan created under sec-
7 tion 105 of the Comprehensive Environ-
8 mental Response, Compensation, and Li-
9 ability Act of 1980 (42 U.S.C. 9605) in
10 developing an emergency response plan to
11 meet the specific considerations of that
12 chemical source.

13 (C) PROTECTION OF SECURITY INFORMA-
14 TION.—If, in order meet the requirements of
15 this paragraph, the owner or operator of a
16 chemical source is required to include in an
17 emergency response plan information, the re-
18 lease of which would be detrimental to the secu-
19 rity of the source, that information shall be sep-
20 arated in a security addendum to the emer-
21 gency response plan.

22 (8) GUIDANCE TO CHEMICAL SOURCES.—Not
23 later than 1 year after the date of enactment of this
24 Act, the Secretary shall publish guidance to assist
25 owners and operators of chemical sources in com-

1 plying with this Act, including advice on aspects of
2 compliance with this Act that may be unique to
3 small business concerns.

4 (b) CERTIFICATION AND SUBMISSION.—

5 (1) IN GENERAL.—Not later than 6 months
6 after the date of the promulgation of regulations
7 under subsection (a)(1), each owner or operator of
8 a chemical source shall certify in writing to the Sec-
9 retary that the owner or operator has completed a
10 vulnerability assessment and has developed and im-
11 plemented, or is implementing, a site security plan
12 and an emergency response plan in accordance with
13 this Act.

14 (2) SUBMISSION.—Not later than 6 months
15 after the date of the promulgation of regulations
16 under subsection (a)(1), an owner or operator of a
17 chemical source shall submit to the Secretary copies
18 of the vulnerability assessment, site security plan,
19 and emergency response plan of the chemical source
20 for review.

21 (3) FAILURE TO COMPLY.—If an owner or oper-
22 ator of a chemical source fails to certify or submit
23 a vulnerability assessment, site security plan, or
24 emergency response plan in accordance with para-
25 graph (2), the Secretary may issue an order requir-

1 ing the certification and submission of a vulner-
2 ability assessment, site security plan, or emergency
3 response plan in accordance with this section.

4 ~~(c) REVIEW BY THE SECRETARY.—~~

5 ~~(1) IN GENERAL.—~~The Secretary shall review
6 the vulnerability assessment, site security plan, and
7 emergency response plan submitted by the owner or
8 operator of a chemical source under subsection
9 ~~(b)(2)~~ to determine whether the assessment and
10 plans and the implementation of such plans comply
11 with this section.

12 ~~(2) DISAPPROVAL.—~~The Secretary shall dis-
13 approve a vulnerability assessment, site security
14 plan, or emergency response plan submitted under
15 subsection ~~(b)(2)~~ if the Secretary determines that
16 the vulnerability assessment, site security plan,
17 emergency response plan, or the implementation of
18 such plans does not comply with this section.

19 ~~(3) COMPLIANCE.—~~

20 ~~(A) IN GENERAL.—~~If the Secretary dis-
21 approves a vulnerability assessment, site secu-
22 rity plan, or emergency response plan of a
23 chemical source under paragraph ~~(2)~~, the Sec-
24 retary—

1 (i) shall provide the owner or operator
 2 of the chemical source a written notifica-
 3 tion of the determination that includes a
 4 clear explanation of deficiencies in the vul-
 5 nerability assessment, site security plan,
 6 emergency response plan, or implementa-
 7 tion of the site security plan;

8 (ii) shall consult with the owner or op-
 9 erator of the chemical source to identify
 10 appropriate steps to achieve compliance;

11 (iii) if, following consultation under
 12 clause (ii), the owner or operator of the
 13 chemical source does not achieve compli-
 14 ance by such date as the Secretary deter-
 15 mines to be appropriate under the cir-
 16 cumstances, shall issue an order requiring
 17 the owner or operator to correct specified
 18 deficiencies; and

19 (iv) if the owner or operator continues
 20 to be in noncompliance, may issue an order
 21 for the chemical source to cease operation.

22 (B) COMPLIANCE FOR HIGHER RISK
 23 THERS.—

24 (i) IN GENERAL.—Not later than 1
 25 year after the later of the date of the pro-

1 promulgation of regulations under subsection
2 (a)(1) and the date of the promulgation of
3 regulations under section 3(e); the Sec-
4 retary shall—

5 (I) determine whether to approve,
6 disapprove, or modify the vulnerability
7 assessment, site security plan, and
8 emergency response plan submitted
9 under subsection (b)(2) by a chemical
10 source in a higher risk tier; and

11 (II) determine whether a chem-
12 ical source in a higher risk tier is op-
13 erating in compliance with the site se-
14 curity plan and emergency response
15 plan submitted by the chemical source
16 under subsection (b)(2).

17 (ii) ENFORCEMENT.—The Secretary
18 may issue an order to a chemical source in
19 a higher risk tier to cease operation if the
20 Secretary—

21 (I) disapproves the vulnerability
22 assessment, site security plan, or
23 emergency response plan submitted
24 under subsection (b)(2) by a chemical
25 source in a higher risk tier; or

1 (H) determines that a chemical
2 source in a higher risk tier is not op-
3 erating in compliance with the site se-
4 curity plan or emergency response
5 plan submitted by the chemical source
6 under subsection (b)(2).

7 (C) COMPLIANCE FOR OTHER TIERS.—Not
8 later than 5 years after the date of the submis-
9 sion of the vulnerability assessment, site secu-
10 rity plan, and emergency response plan by a
11 chemical source that is not in a higher risk tier
12 under subsection (b)(2), the Secretary shall
13 complete the review of the assessment and
14 plans and make a determination regarding com-
15 pliance with this section.

16 (D) SUBSEQUENT REVIEW.—The Sec-
17 retary may conduct subsequent reviews and de-
18 terminations of compliance under this Act for a
19 chemical source on a schedule as determined to
20 be appropriate by the Secretary, with priority
21 given to chemical sources in a higher risk tier.

22 (d) SUBMISSION AND CERTIFICATION OF
23 CHANGES.—

24 (1) IN GENERAL.—Not later than 60 days after
25 the date on which a change is made to a chemical

1 source that affects the security of the chemical
2 source, the owner or operator of the chemical source
3 shall—

4 (A) notify the Secretary in writing;

5 (B) provide a description of the change at
6 the chemical source; and

7 (C) either—

8 (i) request a waiver from resubmitting
9 the vulnerability assessment, security plan,
10 and emergency response plan; or

11 (ii) review and resubmit the vulner-
12 ability assessment, site security plan, and
13 emergency response plan, with the appro-
14 priate modifications.

15 (2) NOTICE AND REQUEST.—If the Secretary
16 determines that additional modification of a vulner-
17 ability assessment, site security plan, or emergency
18 response plan is required, the Secretary shall—

19 (A) provide a written notice to the chem-
20 ical source owner or operator, requiring modi-
21 fications addressing any matters specified in
22 the notice; and

23 (B) provide the owner or operator of the
24 chemical source not less than 60 days after the

1 date of the notice under subparagraph (A) to
2 submit proposed modifications.

3 ~~(3) TEMPORARY SECURITY MEASURES.—~~During
4 the period before the Secretary approves a modified
5 vulnerability assessment, site security plan, or emer-
6 gency response plan or issues a waiver, an owner or
7 operator of a chemical source shall ensure temporary
8 security measures are implemented.

9 ~~(c) MTSA-REGULATED FACILITIES.—~~

10 ~~(1) IN GENERAL.—~~Except as provided in para-
11 graph (4), a chemical source that is also a MTSA-
12 regulated facility shall comply with this Act.

13 ~~(2) COMPLIANCE.—~~

14 ~~(A) IN GENERAL.—~~A chemical source that
15 is also a MTSA-regulated facility shall review
16 its facility security assessment, facility security
17 plan, and emergency response plan and make
18 any modifications necessary to comply with the
19 security performance standards established for
20 the tier applicable to the chemical source under
21 section 3(f) and the requirements of subsection
22 (a)(1).

23 ~~(B) SUBMISSION.—~~Not later than 180
24 days after the date on which the Secretary pro-
25 mulgates regulations under subsection (a)(1);

1 the owner or operator of a chemical source that
2 is also a MTSA-regulated facility shall—

3 (i) submit the facility security assess-
4 ment, facility security plan, and emergency
5 response plan, with any appropriate modi-
6 fications under subparagraph (A), for the
7 chemical source to the Federal Maritime
8 Security Coordinator for the area in which
9 the chemical source is located and the Sec-
10 retary for approval; and

11 (ii) certify in writing to the Federal
12 Maritime Security Coordinator for the area
13 in which the facility is located and the Sec-
14 retary that—

15 (I) the facility security assess-
16 ment and facility security plan for the
17 facility are in compliance with the se-
18 curity performance standards for the
19 tier applicable to the chemical source
20 under section 3(f) and the require-
21 ments under subsection (a)(1); and

22 (II) the owner or operator has
23 submitted an approved or certified
24 emergency response plan required
25 under chapter 701 of title 46, United

1 States Code, to the Federal Maritime
2 Security Coordinator for the area in
3 which the facility is located.

4 ~~(3) REVIEW BY THE SECRETARY.~~—In accord-
5 ance with the procedures under subsection ~~(e)~~, the
6 Secretary, in consultation with the Federal Maritime
7 Security Coordinator for the area in which a chem-
8 ical source that is also a MTSA-regulated facility is
9 located, shall determine whether a facility security
10 assessment and facility security plan submitted
11 under paragraph ~~(2)(B)~~ meets the security perform-
12 ance standards established by the Secretary under
13 section ~~3(f)~~ and the requirements under subsection
14 ~~(a)(1)~~.

15 ~~(4) EXEMPTION.~~—A chemical source that is a
16 MTSA-regulated facility is exempt from section ~~6(d)~~
17 of this Act.

18 ~~(5) INTEGRATION AND COORDINATION.~~—

19 ~~(A) IN GENERAL.~~—The Secretary shall im-
20 plement this Act and chapter 701 of title 46,
21 United States Code, in as consistent and inte-
22 grated manner as possible.

23 ~~(B) COAST GUARD.~~—The Secretary shall
24 ensure coordination between the Under Sec-

1 retary for Preparedness and the Coast Guard
2 Commandant in carrying out this Act.

3 (f) ~~ALTERNATIVE SECURITY PROGRAMS.~~—

4 (1) ~~IN GENERAL.~~—The Secretary may consider
5 a petition submitted by any person that describes—

6 (A) alternate procedures, protocols, and
7 standards established by an industry entity,
8 Federal, State, or local government authorities,
9 or other applicable laws; and

10 (B) the scope of chemical sources to which
11 such program would apply.

12 (2) ~~REVIEW.~~—The Secretary may review the re-
13 quirements of any alternative security program sub-
14 mitted under paragraph (1) to determine whether a
15 vulnerability assessment, security plan, or emergency
16 response plan prepared under that program meets
17 each required element under subsection (a)(1) for a
18 vulnerability assessment, security plan, and emer-
19 gency response plan submitted under subsection
20 (b)(2).

21 (3) ~~DETERMINATION.~~—

22 (A) ~~IN GENERAL.~~—If the Secretary deter-
23 mines that a vulnerability assessment, security
24 plan, or emergency response plan prepared
25 under that alternative security program meets

1 each required element under subsection (a)(1)
2 for a vulnerability assessment, security plan,
3 and emergency response plan submitted under
4 subsection (b)(2); the Secretary shall notify the
5 petitioner that any chemical source covered by
6 that program may submit an assessment or
7 plan prepared under that program without fur-
8 ther revision.

9 (B) OTHER DETERMINATIONS.—If the
10 Secretary determines that a vulnerability as-
11 sessment, security plan, or emergency response
12 plan prepared under that alternative security
13 program does not meet each required element
14 under subsection (a)(1) for a vulnerability as-
15 sessment, security plan, and emergency re-
16 sponse plan submitted under subsection
17 (b)(2)—

18 (i) the Secretary may specify what
19 modifications would be necessary to meet
20 the required elements for a vulnerability
21 assessment, security plan, or emergency re-
22 sponse plan submitted under subsection
23 (b)(2); and

1 (ii) a chemical source covered by that
2 program may submit the assessment or
3 plans with the specified modifications.

4 (C) FORM.—Any action taken by the Sec-
5 retary under this paragraph shall be made by
6 rule, regulation, or order.

7 (4) REVIEW.—Nothing in this subsection shall
8 relieve the Secretary of the obligation—

9 (A) to review the vulnerability assessment,
10 security plan, and emergency response plan
11 submitted by each chemical source under this
12 section according to the performance standards
13 established by section 3(f) and the requirements
14 under subsection (a)(1); or

15 (B) to approve or disapprove each submis-
16 sion on an individual basis.

17 (g) PERIODIC REVIEW.—

18 (1) IN GENERAL.—On the timeline established
19 by the Secretary under paragraph (2), the owner or
20 operator of a chemical source shall—

21 (A) review the adequacy of the vulner-
22 ability assessment, site security plan, and emer-
23 gency response plan for the chemical source;

24 (B) certify to the Secretary that the chem-
25 ical source has completed the review and imple-

1 mented any necessary modifications to the vul-
2 nerability assessment, site security plan, or
3 emergency response plan; and

4 (C) provide to the Secretary a description
5 of any changes to the vulnerability assessment,
6 site security plan, or emergency response plan.

7 (2) TIMING.—The Secretary shall establish a
8 timeline for review appropriate to the tier level of
9 the chemical source that requires a review—

10 (A) for a higher risk tier, not later than 1
11 year after the date of approval of a vulner-
12 ability assessment, site security plan, and emer-
13 gency response plan under subsection (b)(1)
14 and not less often than every 3 years thereafter;
15 and

16 (B) for all other tiers, not later than 5
17 years after the date of approval of a vulner-
18 ability assessment, site security plan, and emer-
19 gency response plan under subsection (b)(1)
20 and not less often than every 5 years thereafter.

21 **SEC. 5. RECORDKEEPING; SITE INSPECTIONS; PRODUCTION**
22 **OF INFORMATION.**

23 (a) RECORDKEEPING.—The owner or operator of a
24 chemical source shall retain a copy of the vulnerability as-
25 sessment, site security plan, and emergency response plan

1 for the chemical source for not less than 5 years after the
2 date on which such assessment or plan was approved by
3 the Secretary under section 4(e).

4 (b) RIGHT OF ENTRY.—

5 (1) IN GENERAL.—In carrying out this Act, the
6 Secretary or the designee of the Secretary, on pres-
7 entation of credentials, shall have a right of entry to,
8 on, or through—

9 (A) the premises of a chemical source; and

10 (B) any premises on which any record re-
11 quired to be maintained under subsection (a) is
12 located.

13 (2) AUDITS AND INSPECTIONS.—

14 (A) IN GENERAL.—The Secretary shall, at
15 such times and places as the Secretary deter-
16 mines to be appropriate, conduct, or require the
17 conduct of, facility security audits and inspec-
18 tions, the requirements of which may be estab-
19 lished by rule, regulation, or order.

20 (B) SCOPE.—Audits and inspections under
21 subparagraph (A) shall ensure and evaluate
22 compliance with this Act.

23 (c) REQUESTS FOR RECORDS.—In carrying out this
24 Act, the Secretary may require the submission of, or, on

1 presentation of credentials, may at reasonable times seek
2 access to and copy—

3 (1) any records, reports, or other information
4 described in subsection (a); and

5 (2) any other documentation necessary for
6 the—

7 (A) review or analysis of a vulnerability as-
8 sessment or security plan; or

9 (B) implementation of a security plan.

10 (d) COMPLIANCE.—If the Secretary determines that
11 an owner or operator of a chemical source is not maintain-
12 ing, producing, or permitting access to records or to the
13 premises of the chemical source as required by this sec-
14 tion, the Secretary may issue an order requiring compli-
15 ance with the relevant provisions of this section.

16 **SEC. 6. INFRASTRUCTURE PROTECTION AND IMPLEMENTA-**
17 **TION.**

18 (a) COORDINATION.—

19 (1) IN GENERAL.—The Secretary shall ensure
20 effective chemical security planning and response by
21 providing the necessary infrastructure, leadership,
22 technical assistance, guidance, and accountability for
23 security planning and response in areas surrounding
24 chemical sources.

1 (2) ~~WITH OTHER LAW.~~—The Secretary shall
2 model the regulations promulgated, organizations es-
3 tablished, and actions taken under this section on
4 the requirements of sections 70102, 70103, 70104,
5 and 70112 of title 46, United States Code.

6 (3) ~~WITH COMMITTEES.~~—The Secretary, and
7 those in positions assigned under this section, shall
8 coordinate with other Federal area security and re-
9 sponse committees in order to provide a unified and
10 effective Federal effort for security and response or-
11 ganizational infrastructure for the Nation. Nothing
12 in this section shall supersede any other Federal
13 area security or response committee and the entities
14 established under this section shall be organized to
15 complement such other committees.

16 (b) ~~COMPLIANCE OFFICE.~~—

17 (1) ~~ESTABLISHMENT.~~—Not later than 3
18 months after the date of enactment of this Act, the
19 Secretary shall establish an office under the Assist-
20 ant Secretary for Infrastructure Protection that
21 shall be responsible for implementing and enforcing
22 this Act.

23 (2) ~~ACTIVITIES.~~—The Secretary, acting
24 through the Assistant Secretary for Infrastructure
25 Protection, shall—

1 (A) provide leadership, guidance, planning,
2 technical assistance, resources, and conduct
3 oversight activities to establish an effective
4 chemical security planning and response infra-
5 structure for the Nation;

6 (B) provide leadership, personnel, training,
7 equipment, other resources as necessary, and
8 technical assistance to—

9 (i) Federal, State and local govern-
10 ment agencies;

11 (ii) Infrastructure Protection Regional
12 Security Offices; and

13 (iii) Area Security Committees, as re-
14 quested by the Federal Area Security Co-
15 ordinator;

16 (C) coordinate with law enforcement agen-
17 cies, first responders, and chemical sources re-
18 garding the response to a potential or actual
19 terrorist incident at a chemical source;

20 (D) review and approve each Area Security
21 Plan submitted under subsection (d); and

22 (E) coordinate with the Office of State and
23 Local Government Coordination and Prepared-
24 ness of the Department, to ensure some home-
25 land security grants administered by the De-

1 partment support the plans required under this
2 section:

3 (c) ~~INFRASTRUCTURE PROTECTION REGIONAL SECUR-~~
4 ~~RITY OFFICES.—~~

5 (1) ~~IN GENERAL.—~~Not later than 6 months
6 after the date of enactment of this Act, the Sec-
7 retary shall establish in each Federal Emergency
8 Management Agency Region an Infrastructure Pro-
9 tection Regional Security Office, for purposes of ear-
10 rying out this Act and coordinating regional secu-
11 rity, as described in this section.

12 (2) ~~MEMBERSHIP AND DUTIES.—~~Each Infra-
13 structure Protection Regional Security Office shall—

14 (A) consist of—

15 (i) the personnel of the Infrastructure
16 Protection Office of the Department within
17 the region; and

18 (ii) a regional security advisory staff,
19 to be appointed by the Secretary;

20 (B) review and approve each Area Security
21 Plan for the region to ensure coordination be-
22 tween regions and States;

23 (C) oversee implementation of this Act to
24 ensure consistent implementation within the re-
25 gion, in conjunction with the strategic mission

1 and policies of, and guidance from, the Depart-
2 ment; and

3 ~~(D)~~ perform other functions as assigned by
4 the Secretary necessary to implement the re-
5 quirements of this Act or help protect other
6 critical infrastructure.

7 ~~(d) AREA SECURITY COMMITTEES AND PLANS.—~~

8 ~~(1) DESIGNATION OF AREAS AND FEDERAL~~
9 ~~AREA SECURITY COORDINATORS.—~~

10 ~~(A) DEADLINE.—~~Not later than 6 months
11 after the date of enactment of this Act, the Sec-
12 retary shall designate geographic areas for the
13 Area Committees established under paragraph
14 ~~(2)~~.

15 ~~(B) REQUIREMENTS.—~~In designating
16 areas under subparagraph ~~(A)~~, the Secretary
17 shall ensure that—

18 ~~(i)~~ except as provided in subparagraph
19 ~~(C)~~, all parts of the United States are in-
20 cluded in an area; and

21 ~~(ii)~~ no area is larger than a single
22 State, although an area may incorporate
23 portions of more than 1 State, based on
24 the organization and number of chemical
25 sources in a geographic area.

1 (C) EXCLUSION.—Any area designated
2 under section 70103(a)(2)(G) of title 46,
3 United States Code, shall not be included in
4 any area designated under this Act.

5 (2) ESTABLISHMENT AND DESIGNATION.—

6 (A) COMMITTEES.—There is established
7 for each area designated by the Secretary under
8 paragraph (1) an Area Security Committee,
9 comprised of members appointed by the Sec-
10 retary, in consultation with State and local gov-
11 ernment officials, from qualified and effected
12 security and response personnel of Federal,
13 State, and local government agencies, chemical
14 sources, local emergency planning and response
15 entities, other critical infrastructure sectors,
16 and other appropriate organizations.

17 (B) COORDINATOR.—For each area des-
18 ignated by the Secretary under paragraph (1),
19 the Secretary shall designate a Federal Area
20 Security Coordinator with knowledge of and ex-
21 perience in the activities required under this
22 subsection.

23 (3) DUTIES.—

24 (A) COMMITTEES.—Each Area Security
25 Committee, under the direction of the Federal

1 Area Security Coordinator for the area assigned
2 to such Area Security Committee, shall—

3 (i) meet not less frequently than twice
4 per year;

5 (ii) prepare the Area Security Plan
6 described in paragraph (4) for that area
7 and submit the Area Security Plan to the
8 Secretary for approval; and

9 (iii) coordinate with Federal, State,
10 and local government officials and chemical
11 sources to enhance the security and re-
12 sponse planning of those officials and to
13 assure effective preplanning of joint secu-
14 rity and response efforts, including exer-
15 cises, drills, evacuations, sheltering, and
16 rescue.

17 (B) COORDINATOR.—Each Federal Area
18 Security Coordinator shall, for the area as-
19 signed to such official—

20 (i) conduct audits and inspections of
21 chemical sources under this Act;

22 (ii) provide appropriate guidance and
23 support to chemical sources; and

1 (iii) perform such other duties as are
2 required by the Area Security Committee
3 or the Secretary.

4 (4) AREA SECURITY PLANS.—

5 (A) IN GENERAL.—Not later than 2 years
6 after the date of enactment of this Act, each
7 Area Security Committee shall prepare and sub-
8 mit to the Secretary for approval an Area Secu-
9 rity Plan for the area assigned to such Area Se-
10 curity Committee.

11 (B) PLAN REQUIREMENTS.—The Area Se-
12 curity Plan shall—

13 (i) coordinate the resources of the
14 area assigned to the Area Security Com-
15 mittee to deter a potential or actual ter-
16 rorist incident at a chemical source in that
17 area; or to respond to a terrorist incident
18 at a chemical source in that area;

19 (ii) coordinate with the National In-
20 frastructure Protection Plan, the National
21 Response Plan, the site security plan of
22 any chemical source located in the area as-
23 signed to the Area Security Committee,
24 other appropriate national security and re-

1 sponse plans, and the Area Security Plans
2 for contiguous areas;

3 (iii) reflect security and response post-
4 incident investigative reports, as deter-
5 mined by the Secretary;

6 (iv) describe in detail the responsibil-
7 ities of an owner or operator of a chemical
8 source (based upon the approved site secu-
9 rity plan for the chemical source) and of
10 Federal, State, and local government agen-
11 cies in responding to potential or actual
12 terrorist incident at a chemical source op-
13 erating in the area assigned to the Area
14 Security Committee;

15 (v) describe the area covered by the
16 plan, list the assets and resources available
17 to respond to a terrorist incident, and in-
18 clude any other information the Secretary
19 requires;

20 (vi) be updated periodically by the
21 Area Security Committee; and

22 (vii) provide for coordination with the
23 appropriate Federal, State and local gov-
24 ernment agencies or members of local enti-
25 ties that plan for emergency releases from

1 chemical sources regarding how local popu-
2 lations that may be affected by a release
3 are provided with information, including
4 evacuation planning, sheltering in place,
5 and areas of refuge.

6 ~~(5) REVIEW.~~—Not later than 24 months after
7 the date of enactment of this Act, the Secretary
8 shall—

9 ~~(A) review each Area Security Plan devel-~~
10 ~~oped under paragraph (4);~~

11 ~~(B) require amendments to any plan that~~
12 ~~does not meet the requirements of this section;~~
13 ~~and~~

14 ~~(C) approve each plan that meets the re-~~
15 ~~quirements of this section.~~

16 ~~(e) AREA EXERCISES AND DRILLS.—~~

17 ~~(1) IN GENERAL.—The Secretary shall periodi-~~
18 ~~cally conduct drills and exercises, some without prior~~
19 ~~notice, including full functional and communications~~
20 ~~exercises of security and response capability in each~~
21 ~~area for which an Area Security Plan is required~~
22 ~~under this section and under the site security plan~~
23 ~~and emergency response plans of relevant chemical~~
24 ~~sources.~~

1 (2) SCOPE OF PARTICIPATION.—The drills and
2 exercises conducted under paragraph (1) may in-
3 clude participation by—

4 (A) Federal, State, and local government
5 agencies, including law enforcement and first
6 responders;

7 (B) the owner and operator of any chem-
8 ical source in the area;

9 (C) members of local entities that plan for
10 emergency releases;

11 (D) representatives of other critical infra-
12 structure; and

13 (E) other participants as determined ap-
14 propriate by the Secretary or the designee of
15 the Secretary.

16 (3) REPORTS.—The Secretary shall publish an-
17 nual reports on drills under this subsection, includ-
18 ing assessments of the effectiveness of the plans de-
19 scribed in paragraph (1), lessons learned, and a list
20 of any amendments made to improve any plan de-
21 scribed in paragraph (1). The annual reports shall
22 not include protected information.

23 **SEC. 7. HEIGHTENED SECURITY MEASURES.**

24 (a) IN GENERAL.—If the Secretary determines that
25 additional security measures are necessary to respond to

1 a threat assessment or to a specific threat against the
2 chemical sector, the Secretary may issue an order to the
3 owner or operator of a chemical source setting forth man-
4 datory security measures. Only the Secretary or the des-
5 ignee of the Secretary may issue an order under this sec-
6 tion.

7 (b) PERIOD OF ORDER.—

8 (1) IN GENERAL.—Any order issued by the Sec-
9 retary under subsection (a) shall be effective upon
10 issuance and shall remain in effect for a period of
11 not more than 90 days, unless the Secretary files an
12 action in an appropriate United States district court
13 before the expiration of that 90-day period.

14 (2) EFFECT OF FILING.—If the Secretary files
15 an action described in paragraph (1), an order
16 issued by the Secretary under subsection (a) shall
17 remain in effect for 14 days in addition to the 90-
18 day period under paragraph (1), or for such shorter
19 or longer period as may be authorized by the court
20 in which such action is filed.

21 **SEC. 8. PENALTIES.**

22 (a) ADMINISTRATIVE PENALTIES.—

23 (1) PENALTIES.—The Secretary may impose an
24 administrative penalty of not more than \$25,000 per
25 day, and not more than a maximum of \$1,000,000

1 per year, for failure to comply with an order or di-
2 rective issued by the Secretary under this Act.

3 ~~(2) NOTICE AND HEARING.~~—Before imposing a
4 penalty under paragraph (1), the Secretary shall
5 provide to the person against which the penalty is to
6 be assessed—

7 (A) a written notice of the proposed pen-
8 alty, and

9 (B) not later than 30 days after the date
10 on which the person receives the notice, the op-
11 portunity to request a hearing on the proposed
12 penalty.

13 ~~(3) PROCEDURES.~~—The Secretary shall promul-
14 gate regulations establishing procedures for adminis-
15 trative hearings and appropriate review, including
16 necessary deadlines.

17 ~~(b) CIVIL PENALTIES.~~—

18 (1) ~~IN GENERAL.~~—The Secretary may bring an
19 action in a United States district court against any
20 owner or operator of a chemical source that violates
21 or fails to comply with any order or directive issued
22 by the Secretary under this Act or a site security
23 plan approved by the Secretary under this Act.

24 (2) ~~RELIEF.~~—In any action under paragraph
25 (1), a court may issue an order for injunctive relief

1 and may award a civil penalty of not more than
 2 \$50,000 for each day on which a violation occurs or
 3 a failure to comply continues.

4 (c) CRIMINAL PENALTIES.—An owner or operator of
 5 a chemical source who knowingly violates any order issued
 6 by the Secretary under this Act or knowingly fails to com-
 7 ply with a site security plan approved by the Secretary
 8 under this Act shall be fined not more than \$50,000 for
 9 each day of such violation, imprisoned not more than 2
 10 years, or both.

11 **SEC. 9. PROTECTION OF INFORMATION.**

12 (a) DISCLOSURE EXEMPTIONS.—

13 (1) RECORDS OF THE DEPARTMENT.—

14 (A) IN GENERAL.—Except as provided in
 15 subsection (b), the Department shall not be re-
 16 quired under section 552 of title 5, United
 17 States Code, to make available to the public a
 18 record described in subparagraph (B).

19 (B) RECORDS NOT DISCLOSED.—A record
 20 described in this subparagraph is—

21 (i) a vulnerability assessment, site se-
 22 curity plan, or a security addendum to an
 23 emergency response plan obtained by the
 24 Department under section 4;

1 (ii) an area security plan required
2 under section 6(d)(4);

3 (iii) materials developed or produced
4 by a chemical source exclusively in prepa-
5 ration of documents referred to in clause
6 (i) and obtained by the Department under
7 section 4; or

8 (iv) any record developed exclusively
9 for the purposes of this Act by the Depart-
10 ment, or produced exclusively for the pur-
11 poses of this Act by a chemical source and
12 obtained by the Department under section
13 4, to the extent that the record contains
14 information that—

15 (I) describes a specific chemical
16 source or the specific vulnerabilities of
17 a chemical source;

18 (II) was taken from a record de-
19 scribed in clause (i) or (ii) or from a
20 copy of such record in possession of
21 the chemical source; and

22 (III) would, if disclosed, be detri-
23 mental to the security of a chemical
24 source.

25 (2) RECORDS OF OTHER AGENCIES.—

1 (A) ~~IN GENERAL.~~—A Federal agency other
2 than the Department shall not be required
3 under section 552 of title 5, United States
4 Code, to make available to the public a record
5 described in subparagraph (C).

6 (B) ~~REFERRAL OF REQUESTS.~~—If a Fed-
7 eral agency other than the Department receives
8 a request under section 552 of title 5, United
9 States Code, for a record described in clause (i)
10 or clause (ii)(I) of subparagraph (C), the agen-
11 cy, without consideration by the agency of
12 whether subparagraph (C)(ii)(II) is satisfied—

13 (i) shall not disclose the record; and

14 (ii) shall refer the request to the De-
15 partment for processing and response.

16 (C) ~~RECORDS NOT DISCLOSED.~~—A record
17 described in this subparagraph is any record—

18 (i) described in paragraph (1)(B) that
19 was shared by the Department with the
20 agency under this section; and

21 (ii) produced exclusively for the pur-
22 poses of this Act by the agency, to the ex-
23 tent that the record contains information
24 that—

1 (I) describes a specific chemical
2 source or the specific vulnerabilities of
3 a chemical source;

4 (II) was taken from a record de-
5 scribed in clause (i); and

6 (III) would, if disclosed, be detri-
7 mental to the security of a chemical
8 source.

9 ~~(3)~~ RECORDS OF STATE OR LOCAL GOVERN-
10 MENT AGENCIES.—

11 (A) IN GENERAL.—A State or local gov-
12 ernment agency shall not be required under any
13 State or local law providing for public access to
14 information to make available to the public a
15 record described in subparagraph (B).

16 (B) RECORDS NOT DISCLOSED.—A record
17 described in this subparagraph is any record—

18 (i) described in paragraph (1)(B) that
19 was shared by the Department with the
20 State or local government agency under
21 section 6; and

22 (ii) produced exclusively for the pur-
23 poses of this Act by the State or local gov-
24 ernment agency, to the extent that the
25 record contains information that—

1 (I) describes a specific chemical
2 source or the specific vulnerabilities of
3 a chemical source; and

4 (II) was taken from a record de-
5 scribed in clause (i) or (ii) or from a
6 copy of such document in possession
7 of the chemical source.

8 (b) PUBLIC INFORMATION.—

9 (1) IN GENERAL.—

10 (A) INFORMATION DISCLOSED.—Except as
11 provided in subparagraph (B), the following
12 records shall be made available to the public
13 under section 552 of title 5, United States
14 Code:

15 (i) CERTIFICATIONS.—A certification
16 under section 4(b)(1).

17 (ii) ORDER FOR FAILURE TO COM-
18 PLY.—An order under section 4(b)(3).

19 (iii) COMPLIANCE CERTIFICATES.—A
20 certificate of compliance under paragraph
21 (2).

22 (iv) OTHER ORDERS.—The identity of
23 any chemical source and the owner or op-
24 erator of the chemical source for which any
25 other order or any approval or disapproval

1 is issued under this Act, together with in-
2 formation identifying the applicable order,
3 approval, or disapproval.

4 ~~(B)~~ EXCEPTION.—

5 (i) IN GENERAL.—If the Secretary
6 makes a specific finding and determination
7 with respect to a particular chemical
8 source that releasing any record described
9 in subparagraph (A) regarding that chem-
10 ical source would increase the risk to the
11 security of any chemical source, the Sec-
12 retary may establish a period, not to ex-
13 ceed 6 months, during which the record
14 shall not be made available to the public
15 under section 552 of title 5, United States
16 Code.

17 (ii) EXTENSION.—Not more than 60
18 days before to the expiration of a period
19 established under clause (i) (or an exten-
20 sion of such period under this clause), the
21 Secretary may extend the period for an ad-
22 ditional period not to exceed 6 months if
23 the Secretary makes a specific finding and
24 determination with respect to a particular
25 chemical source that releasing any record

1 described in subparagraph (A) regarding
2 that chemical source would increase the
3 risk to the security of any chemical source.

4 (iii) NOTICE TO GAO.—If the Sec-
5 retary determines not to allow a record to
6 be made available to the public under
7 clause (i) or extends the period of non-
8 disclosure under clause (ii), the Secretary
9 shall submit to the Comptroller General of
10 the United States, for inclusion and eval-
11 uation in the reports under section 12, a
12 detailed statement—

13 (I) identifying the chemical
14 source;

15 (II) describing the record;

16 (III) explaining the basis for the
17 Secretary's determination; and

18 (IV) describing any security
19 measures being implemented by the
20 chemical source.

21 (2) CERTIFICATION OF COMPLIANCE.—When
22 the Secretary determines that a chemical source is
23 in compliance with the requirements of this Act, the
24 Secretary shall issue and make available for public
25 inspection a certificate of approval that contains the

1 following statement: “_____ (chemical source
2 name) _____ is in compliance with the Chemical
3 Facility Anti-Terrorism Act of 2005.”.

4 (3) REPORT TO CONGRESS.—Not less fre-
5 quently than once each year, the Secretary shall sub-
6 mit to Congress a public report on the performance
7 of chemical sources under the Act, in the aggregate,
8 including a description of common problems, solu-
9 tions, and industry best practices.

10 (c) DEVELOPMENT OF PROTOCOLS.—

11 (1) IN GENERAL.—The Secretary, in consulta-
12 tion with the Director of the Office of Management
13 and Budget and appropriate Federal law enforce-
14 ment and intelligence officials and in a manner con-
15 sistent with existing protections for sensitive or clas-
16 sified information, shall, by regulation, establish con-
17 fidentiality protocols for maintenance and use of
18 records described in paragraphs (1)(B), (2)(C), and
19 (3)(B) of subsection (a).

20 (2) REQUIREMENTS FOR PROTOCOLS.—The
21 protocols established under paragraph (1) shall en-
22 sure, to the maximum extent practicable, that—

23 (A) the records shall be maintained in a
24 secure location; and

25 (B) access to records shall be limited—

- 1 (i) as may be necessary to—
- 2 (I) enable enforcement of this
- 3 Act; or
- 4 (II) address an imminent and
- 5 substantial threat to security, health,
- 6 safety, or the environment;
- 7 (ii) to State or local law enforcement
- 8 officials, first responders, or other State or
- 9 local government officials granted access to
- 10 records for the purpose of carrying out this
- 11 Act; and
- 12 (iii) to other persons granted access
- 13 for the purpose of carrying out this Act.

14 ~~(3) OTHER PROCEDURES IN PROTOCOLS.—~~The

15 protocols established under paragraph ~~(1)~~ shall

16 also—

- 17 (A) provide for the labeling of any record
- 18 described in paragraph ~~(1)(B)~~, ~~(2)(C)~~, or
- 19 ~~(3)(B)~~ of subsection (a), to enable the sensitive
- 20 information in such record to be traced back to
- 21 the specific document from which the informa-
- 22 tion was derived;
- 23 (B) accommodate the making of disclo-
- 24 sures under sections ~~2302(b)(8)~~ and ~~7211~~ of
- 25 title ~~5~~, United States Code, and provide guid-

1 ance to employees as to how to make such dis-
2 losures without compromising security;

3 (C) include procedures applicable to a re-
4 quest under section 552 of title 5, United
5 States Code, requiring that any portion of a
6 record that reasonably may be separated shall
7 be provided to a person requesting the record
8 after redaction of any portion that is exempt
9 from disclosure;

10 (D) establish procedures by which a record
11 described in paragraph (1)(B), (2)(C), or
12 (3)(B) of subsection (a) may become subject to
13 the requirements regarding public disclosure
14 under section 552 of title 5, United States
15 Code, when, because of changed circumstances
16 or the passage of time, disclosure of the record
17 would not be detrimental to the security of a
18 chemical source.

19 (d) PROCESS FOR REPORTING PROBLEMS.—

20 (1) ESTABLISHMENT OF A REPORTING PROC-
21 ESS.—The Secretary shall establish, and provide in-
22 formation to the public regarding, a process by
23 which any person may submit a report to the Sec-
24 retary regarding problems, deficiencies, or
25 vulnerabilities at a chemical source.

1 (2) CONFIDENTIALITY.—The Secretary shall
2 keep confidential the identity of a person who sub-
3 mits a report under paragraph (1) and any such re-
4 port shall be treated as a record described in sub-
5 section (a)(1)(B), to the extent that it does not con-
6 sist of publicly available information.

7 (3) ACKNOWLEDGMENT OF RECEIPT.—If a re-
8 port submitted under paragraph (1) identifies the
9 person making the report, the Secretary shall re-
10 spond promptly to such person and acknowledge re-
11 ceipt of the report.

12 (4) STEPS TO ADDRESS PROBLEMS.—The Sec-
13 retary shall review and consider the information pro-
14 vided in any report submitted under paragraph (1)
15 and shall take whatever steps the Secretary deter-
16 mines appropriate to address any problems, defi-
17 ciencies, or vulnerabilities identified.

18 (5) RETALIATION PROHIBITED.—No employer
19 may discharge any employee or otherwise discrimi-
20 nate against any employee with respect to the com-
21 pensation to, or terms, conditions, or privileges of
22 the employment of, such employee because the em-
23 ployee (or a person acting pursuant to a request of
24 the employee) made a report under paragraph (1).

1 (6) GAO REPORTING.—The Comptroller Gen-
2 eral of the United States shall, in the reports under
3 section 12—

4 (A) describe the number and type of prob-
5 lems, deficiencies, and vulnerabilities reported
6 on under this subsection; and

7 (B) evaluate the Secretary's efforts in ad-
8 dressing such problems, deficiencies, and
9 vulnerabilities.

10 (e) PROTECTED DISCLOSURES.—Nothing in this Act
11 shall be construed to limit—

12 (1) the right of an individual to make any dis-
13 closure—

14 (A) protected or authorized under section
15 2302(b)(8) or 7211 of title 5, United States
16 Code; or

17 (B) to the Special Counsel, the inspector
18 general of an agency, or any other employee
19 designated by the head of an agency to receive
20 similar disclosures; or

21 (2) the applicability or enforcement of sections
22 818 and 820 of the Transportation, Treasury, Hous-
23 ing and Urban Development, the Judiciary, and
24 Independent Agencies Appropriations Act, 2006
25 (Public Law 109–115).

1 (f) MATERIALS NOT HELD BY AGENCIES.—Nothing
2 in this Act shall be construed to limit the rights or obliga-
3 tions of any chemical source, any entity that is not a Fed-
4 eral, State, or local government agency in possession of
5 a record described in paragraphs (1)(B), (2)(C), and
6 (3)(B) of subsection (a), or any individual, with respect
7 to the withholding or disclosure of any information or
8 record held by the chemical source, entity, or individual,
9 regardless of whether or not the Department has received
10 or possesses similar or identical information or a similar
11 or identical record.

12 (g) DISCLOSURE OF INDEPENDENTLY FURNISHED
13 INFORMATION.—

14 (1) IN GENERAL.—Nothing in this Act shall be
15 construed to affect the handling, treatment, or dis-
16 closure of a record or information obtained from a
17 chemical source under any other law.

18 (2) OTHER AUTHORITY.—Nothing in this Act
19 shall be construed to affect any authority or obliga-
20 tion of an agency to disclose any record that the
21 agency receives independently of a record that is ex-
22 empt under this section from the public disclosure
23 requirements under section 552 of title 5, United
24 States Code, regardless of whether or not the De-

1 partment has an identical or similar record that is
2 so exempt.

3 (h) OTHER OBLIGATIONS UNAFFECTED.—

4 (1) IN GENERAL.—Nothing in this section af-
5 fects any obligation of the owner or operator of a
6 chemical source to submit or make available infor-
7 mation to a Federal, State, or local government
8 agency under, or otherwise to comply with, any
9 other law.

10 (2) NO USE OF INFORMATION TO GAIN GOV-
11 ERNMENTAL BENEFIT.—The owner or operator of a
12 chemical source may not use any record described in
13 paragraph (1)(B), (2)(C), or (3)(B) of subsection
14 (a) to satisfy any legal requirement or obligation
15 other than a requirement under this Act or to obtain
16 any grant, permit, contract, benefit (including agen-
17 cy forbearance, loans, or deduction or modifications
18 of agency penalties or rulings) or other govern-
19 mental approval.

20 (i) AVAILABILITY OF INFORMATION TO CONGRESS.—

21 Nothing in this Act shall be construed to authorize infor-
22 mation to be withheld from Congress.

23 (j) PENALTIES FOR UNAUTHORIZED DISCLOSURE.—

24 Any officer or employee of a Federal, State, or local gov-
25 ernment agency who, in a manner or to an extent not au-

1 thORIZED BY LAW, KNOWINGLY DISCLOSES ANY RECORD DESCRIBED
2 IN PARAGRAPH (1)(B), (2)(C), OR (3)(B) OF SUBSECTION (A)
3 SHALL—

4 (1) BE IMPRISONED NOT MORE THAN 1 YEAR, FINED
5 UNDER CHAPTER 227 OF TITLE 18, UNITED STATES CODE,
6 OR BOTH; AND

7 (2) IF AN OFFICER OR EMPLOYEE OF THE GOVERNMENT,
8 BE REMOVED FROM FEDERAL OFFICE OR EMPLOYMENT.

9 **SEC. 10. STATE AND OTHER LAWS.**

10 (1) IN GENERAL.—Nothing in this Act shall
11 preclude or deny any right of any State or political
12 subdivision thereof to adopt or enforce any regula-
13 tion, requirement, or standard of performance re-
14 specting chemical facility security that is more strin-
15 gent than a regulation, requirement, or standard of
16 performance in effect under this Act, or shall other-
17 wise impair any right or jurisdiction of the States
18 with respect to chemical facilities within such States
19 unless there is an actual conflict between a provision
20 of this Act and the law of the State.

21 (2) OTHER REQUIREMENTS.—Nothing in this
22 Act shall preclude or deny the right of any State or
23 political subdivision thereof to adopt or enforce any
24 regulation, requirement, or standard of performance,
25 including air or water pollution requirements, that

1 are directed at problems other than reducing dam-
2 age from terrorist attacks.

3 **SEC. 11. CHEMICAL SECURITY REPORTING.**

4 Not later than 6 months after the date of enactment
5 of this Act, the Secretary shall submit to the Committee
6 on Homeland Security and Governmental Affairs of the
7 Senate and the Committee on Homeland Security and the
8 Committee on Energy and Commerce of the House of
9 Representatives an update of the national strategy for the
10 chemical sector required to be submitted by the Secretary
11 to the Committee on Appropriations of the Senate and the
12 Committee on Appropriations of the House of Representa-
13 tives by February 10, 2006.

14 **SEC. 12. REVIEW BY THE GOVERNMENT ACCOUNTABILITY**
15 **OFFICE.**

16 (a) **ACCESSIBILITY.**—The Secretary shall provide ac-
17 cess to the Government Accountability Office of any docu-
18 ment or information required to be submitted to, gen-
19 erated by, or otherwise in the possession of the Depart-
20 ment under this Act.

21 (b) **REVIEW AND REPORTS.**—

22 (1) **IN GENERAL.**—Not later than January 1 of
23 the first year following the calendar year in which
24 the regulations are promulgated under section
25 4(a)(1), and on January 1 of each year thereafter,

1 the Government Accountability Office shall submit a
2 report described under paragraph (2) to—

3 (A) the Committee on Homeland Security
4 and Governmental Affairs of the Senate; and

5 (B) the Committee on Homeland Security
6 of the House of Representatives and the Com-
7 mittee on Energy and Commerce of the House
8 of Representatives.

9 (2) CONTENTS.—Each report submitted under
10 paragraph (1) shall include—

11 (A) a review of site security plans, vulner-
12 ability assessments, and emergency response
13 plans under this Act; and

14 (B) a determination of whether such plans
15 and assessments are in compliance with this
16 Act.

17 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated such sums
19 as are necessary to carry out this Act.

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “Chemical Facility Anti-*
22 *Terrorism Act of 2006”.*

23 **SEC. 2. DEFINITIONS.**

24 *In this Act:*

1 (1) *CHEMICAL SOURCE.*—The term “chemical
2 source” means a facility designated as a chemical
3 source by the Secretary under section 3.

4 (2) *CRITICAL INFRASTRUCTURE.*—The term
5 “critical infrastructure” has the meaning given the
6 term in section 2 of the Homeland Security Act of
7 2002 (6 U.S.C. 101).

8 (3) *DEPARTMENT.*—The term “Department”
9 means the Department of Homeland Security.

10 (4) *ENVIRONMENT.*—The term “environment”
11 has the meaning given the term in section 101 of the
12 Comprehensive Environmental Response, Compensa-
13 tion, and Liability Act of 1980 (42 U.S.C. 9601).

14 (5) *HIGHER RISK TIER.*—The term “higher risk
15 tier” means a tier designated by the Secretary as a
16 higher risk tier under section 3(e)(3).

17 (6) *MTSA-REGULATED FACILITIES.*—The term
18 “MTSA-regulated facility” means a facility subject to
19 the security requirements under chapter 701 of title
20 46, United States Code (commonly known as the
21 “Maritime Transportation Security Act”).

22 (7) *OWNER OR OPERATOR.*—The term “owner or
23 operator” means any person who owns, leases, oper-
24 ates, controls, or supervises a chemical source.

1 (8) *PROTECTED INFORMATION*.—The term “pro-
2 *tected information*” means—

3 (A) *a vulnerability assessment, site security*
4 *plan, an area security plan required under sec-*
5 *tion 6(d)(4), and a security addendum to the*
6 *emergency response plan under section*
7 *4(a)(7)(C), prepared for the purposes of this Act*
8 *and obtained by the Department under section 4;*

9 (B) *materials obtained by the Department*
10 *and developed or produced by a chemical source*
11 *exclusively in preparation of records, documents,*
12 *or information referred to under subparagraph*
13 *(A) or an emergency response plan;*

14 (C) *any document or other information ob-*
15 *tained by the Secretary or a State or local gov-*
16 *ernment from a chemical source in accordance*
17 *with this Act, to the extent that the document or*
18 *information contains information that—*

19 (i) *describes a specific chemical source*
20 *or the specific vulnerabilities of a chemical*
21 *source;*

22 (ii) *was taken from a record described*
23 *under subparagraph (A) or (B) or from a*
24 *copy of such record in the possession of the*
25 *chemical source; and*

1 (iii) would, if disclosed, be detrimental
2 to the security of a chemical source; and

3 (D) any document prepared by, or provided
4 to a Federal agency or State or local govern-
5 ment, to the extent that the document contains
6 information that—

7 (i) describes a specific chemical source
8 or the specific vulnerabilities of a chemical
9 source;

10 (ii) was taken from a record described
11 under subparagraph (A) or (B) or from a
12 copy of such record in the possession of the
13 chemical source; and

14 (iii) would, if disclosed, be detrimental
15 to the security of a chemical source.

16 (9) *RELEASE.*—The term “release” has the
17 meaning given the term in section 101 of the Com-
18 prehensive Environmental Response, Compensation,
19 and Liability Act of 1980 (42 U.S.C. 9601).

20 (10) *SECRETARY.*—The term “Secretary” means
21 the Secretary of Homeland Security.

22 (11) *SECURITY MEASURE.*—

23 (A) *IN GENERAL.*—The term “security
24 measure” means an action to ensure or enhance

1 *the security of a chemical source against a ter-*
2 *rorist incident.*

3 *(B) INCLUSIONS.—The term “security meas-*
4 *ure”, with respect to a chemical source, includes*
5 *measures such as—*

6 *(i) employee training and background*
7 *and identification authentication checks;*

8 *(ii) the limitation and prevention of*
9 *access to the controls of the chemical source;*

10 *(iii) the protection of the perimeter of*
11 *the chemical source;*

12 *(iv) the installation and operation of*
13 *intrusion detection sensors;*

14 *(v) the implementation of measures to*
15 *increase computer or computer network se-*
16 *curity;*

17 *(vi) the implementation of other secu-*
18 *rity-related measures to ensure or enhance*
19 *the security of a chemical source from a ter-*
20 *rorist incident;*

21 *(vii) the implementation of measures*
22 *and controls to prevent, protect against, or*
23 *reduce the consequences of a terrorist inci-*
24 *dent, including—*

- 1 (I) contingency and evacuation
2 plans;
3 (II) early warning systems; and
4 (III) the relocation, hardening of
5 the storage or containment, modifica-
6 tion, processing, substitution, or reduc-
7 tion of substances of concern; and
8 (viii) the conduct of any similar secu-
9 rity-related activity, as determined by the
10 Secretary.

11 (12) *SUBSTANCE OF CONCERN*.—The term “sub-
12 stance of concern” means—

13 (A) a chemical substance present at a chem-
14 ical source in quantities equal to or exceeding the
15 threshold quantities for the chemical substance,
16 as defined in or established under paragraphs
17 (3) and (5) of section 112(r) of the Clean Air Act
18 (42 U.S.C. 7412(r)); and

19 (B) any other chemical substance designated
20 as a substance of concern by the Secretary under
21 section 3(i), including ammonium nitrate, in
22 quantities equal to or exceeding the threshold
23 quantities established under section 3(i), based
24 on the potential extent of death, injury, or seri-
25 ous adverse effects to human health and safety or

1 *the environment or the potential impact on na-*
2 *tional or economic security or critical infrastruc-*
3 *ture caused by a terrorist incident involving the*
4 *chemical substance.*

5 (13) *TERRORISM.*—*The term “terrorism” has the*
6 *meaning given the term in section 2 of the Homeland*
7 *Security Act of 2002 (6 U.S.C. 101).*

8 (14) *TERRORIST INCIDENT.*—*The term “terrorist*
9 *incident” means—*

10 (A) *a terrorist attack against a chemical*
11 *source;*

12 (B) *a release from a chemical source into*
13 *the environment of a substance of concern that is*
14 *caused by an act of terrorism; and*

15 (C) *the theft or diversion of a substance of*
16 *concern by a person for off-site release in further-*
17 *ance of an act of terrorism.*

18 **SEC. 3. DESIGNATION AND TIERING OF CHEMICAL**
19 **SOURCES.**

20 (a) *DESIGNATION.*—*Not later than 1 year after the*
21 *date of enactment of this Act, the Secretary shall—*

22 (1) *promulgate regulations establishing criteria*
23 *for designating chemical sources by using the risk fac-*
24 *tors described in subsection (b) and by evaluating the*

1 *types of facilities described in subsection (c) that shall*
2 *be considered in designating chemical sources; and*

3 *(2) designate chemical sources in existence as of*
4 *that date.*

5 *(b) RISK FACTORS TO BE CONSIDERED.—In estab-*
6 *lishing criteria under subsection (a)(1) for designating*
7 *chemical sources, the Secretary shall consider—*

8 *(1) the perceived threat to a facility, including*
9 *a consideration of adversary capabilities and intent,*
10 *preparedness, target attractiveness, and deterrence ca-*
11 *pabilities;*

12 *(2) the potential extent and likelihood of death,*
13 *injury, or serious adverse effects to human health and*
14 *safety or to the environment caused by a terrorist in-*
15 *cident at a facility;*

16 *(3) the threats to or potential impact on na-*
17 *tional security or critical infrastructure caused by a*
18 *terrorist incident at a facility;*

19 *(4) the potential threats or harm to the economy*
20 *that would result from a terrorist incident at a facil-*
21 *ity, including whether a facility is the sole supplier,*
22 *or the producer of a high percentage, of a product*
23 *that is critical to the economy, the chemical industry,*
24 *or national security;*

1 (5) *the proximity of a facility to population cen-*
2 *ters;*

3 (6) *the nature and quantity of substances of con-*
4 *cern at a facility; and*

5 (7) *such other security-related factors as the Sec-*
6 *retary determines to be appropriate and necessary to*
7 *protect the public health and safety, critical infra-*
8 *structure, and national and economic security.*

9 (c) *CRITERIA FOR FACILITIES.*—*In establishing cri-*
10 *teria under subsection (a)(1) for designating chemical*
11 *sources, the Secretary shall—*

12 (1) *consider any facility that is a stationary*
13 *source (as defined in section 112(r)(2) of the Clean*
14 *Air Act (42 U.S.C. 7412(r)(2))) for which the owner*
15 *or operator is required to complete a risk manage-*
16 *ment plan in accordance with section 112(r)(7)(B)(ii)*
17 *of the Clean Air Act (42 U.S.C. 7412(r)(7)(B)(ii));*

18 (2) *consider any other facility that produces,*
19 *uses, or stores a substance of concern at which a risk*
20 *factor described in subsection (b) is present; and*

21 (3) *determine whether any additional facility*
22 *(including, as of the date of the determination, any*
23 *facility that is operational and any facility that will*
24 *become operational in the future) shall be designated*
25 *chemical sources under this Act.*

1 (d) *EXCLUSIONS.*—*In designating facilities as chem-*
2 *ical sources, the Secretary shall not include any facility*
3 *owned or operated by the Department of Defense or the De-*
4 *partment of Energy, or any facility owned or operated by*
5 *a licensee or certificate holder of the Nuclear Regulatory*
6 *Commission.*

7 (e) *TIERED SECURITY SYSTEM.*—

8 (1) *IN GENERAL.*—*Not later than 1 year after*
9 *the date of enactment of this Act, the Secretary shall*
10 *promulgate rules establishing a risk-based tier system*
11 *of chemical sources that—*

12 (A) *shall be based on the criteria established*
13 *by the Secretary under subsection (a)(1);*

14 (B) *consists of several tiers of chemical*
15 *sources;*

16 (C) *to the maximum extent practicable, en-*
17 *ables a chemical source to develop appropriate*
18 *site-specific measures to meet the security per-*
19 *formance standards established under subsection*
20 *(f) for the tier applicable to the chemical source;*
21 *and*

22 (D) *provides guidance to the owner or oper-*
23 *ator of a chemical source regarding the steps that*
24 *would enable the chemical source to move to a*

1 *lower risk tier, if the owner or operator seeks to*
2 *move to a lower risk tier.*

3 (2) *DETERMINATION OF TIER.*—*Not later than 1*
4 *year after the date of enactment of this Act, the Sec-*
5 *retary shall determine the tier applicable to each*
6 *chemical source designated under subsection (a)(2).*

7 (3) *HIGHER RISK TIERS.*—*The Secretary shall*
8 *designate 1 or more tiers established under paragraph*
9 *(1) as higher risk tiers.*

10 (f) *SECURITY PERFORMANCE STANDARDS.*—

11 (1) *IN GENERAL.*—*Not later than 1 year after*
12 *the date of enactment of this Act, the Secretary shall*
13 *establish security performance standards appropriate*
14 *to the risk-based tiers established under subsection (e).*

15 (2) *CONTENTS.*—*The security performance*
16 *standards established under paragraph (1) shall—*

17 (A) *set increasingly strict security require-*
18 *ments as the level of risk for the tier increases;*

19 (B) *enable a chemical source to select secu-*
20 *rity measures that, in combination, satisfy the*
21 *security performance standards established by*
22 *the Secretary; and*

23 (C) *be based on the criteria in section*
24 *4(a)(2).*

25 (3) *GUIDANCE AND CONSULTATION.*—

1 (A) *IN GENERAL.*—On the date on which
2 the Secretary establishes security performance
3 standards under paragraph (1), and based on
4 the risk factors to be considered under subsection
5 (b), the Secretary shall provide guidance to a
6 chemical source regarding the types of security
7 measures that, if applied, could satisfy the secu-
8 rity performance standards.

9 (B) *ALTERNATE MEASURES.*—The owner or
10 operator of a chemical source shall have flexi-
11 bility to employ different security measures than
12 those contained in the guidance described in sub-
13 paragraph (A) if such measures satisfy the secu-
14 rity performance standards established for the
15 tier applicable to the chemical source.

16 (C) *HIGHER RISK TIERS.*—At the request of
17 the owner or operator of a chemical source as-
18 signed to a higher risk tier under subsection
19 (e)(2), the Secretary shall provide consultation
20 on the types of security measures that, if ap-
21 plied, could satisfy the security performance
22 standards.

23 (g) *NOTICE TO FACILITIES.*—Not later than 180 days
24 after the date of enactment of this Act, the Secretary shall
25 notify facilities that may be designated as chemical sources

1 *regarding the review of facilities and designation of chem-*
2 *ical sources to be conducted under this Act, including the*
3 *timeline for such review and designation.*

4 *(h) SUBSEQUENT DETERMINATIONS.—*

5 *(1) PERIODIC REVIEW OF DETERMINATIONS.—*

6 *Not later than 3 years after the designation of chem-*
7 *ical sources under subsection (a)(2), and every 3*
8 *years thereafter, the Secretary shall, after considering*
9 *the criteria established under subsection (a)(1) and*
10 *the exclusions under subsection (d), determine whether*
11 *to designate any additional facility as a chemical*
12 *source or remove the designation of any particular fa-*
13 *cility as a chemical source.*

14 *(2) OTHER REVIEW.—In addition to the periodic*
15 *review required under paragraph (1), the Secretary*
16 *may, after considering the criteria established under*
17 *subsection (a)(1) and the exclusions under subsection*
18 *(d), designate a facility as a chemical source or re-*
19 *move the designation of any facility as a chemical*
20 *source.*

21 *(3) DUTY TO REPORT.—*

22 *(A) FACILITIES BECOMING OPERATIONAL.—*

23 *(i) IN GENERAL.—Each facility de-*
24 *scribed in clause (ii) shall file a petition*
25 *with the Secretary for a determination on*

1 *whether that facility should be designated as*
2 *a chemical source not later than 180 days*
3 *after the later of—*

4 (I) *the date of the promulgation of*
5 *final rules under subsection (a)(1); or*

6 (II) *the date that facility becomes*
7 *operational.*

8 (ii) *FACILITIES COVERED.—A facility*
9 *described in this clause is a facility—*

10 (I) *that becomes operational on or*
11 *after the date of the designation of*
12 *chemical sources under subsection*
13 *(a)(2); and*

14 (II) *at which a threshold quantity*
15 *of a substance of concern is present.*

16 (B) *EXISTING FACILITIES.—*

17 (i) *IN GENERAL.—Each facility de-*
18 *scribed in clause (ii) shall submit a petition*
19 *to the Secretary for a determination on*
20 *whether that facility should be designated as*
21 *a chemical source not later than 180 days*
22 *after the later of—*

23 (I) *the date of the promulgation of*
24 *final regulations under subsection*
25 *(a)(1); or*

1 (II) *the date on which the thresh-*
2 *old quantity of a substance of concern*
3 *is first present at that facility.*

4 (ii) *FACILITIES COVERED.—A facility*
5 *described in this clause is a facility—*

6 (I) *for which the owner or oper-*
7 *ator is not required to complete a risk*
8 *management plan under section*
9 *112(r)(7)(B)(ii) of the Clean Air Act*
10 *(42 U.S.C. 7412(r)(7)(B)(ii));*

11 (II) *that is operational before the*
12 *date of the promulgation of the final*
13 *rules establishing criteria for desig-*
14 *nating chemical sources under sub-*
15 *section (a)(1); and*

16 (III) *at which a threshold quan-*
17 *tity of a substance of concern is*
18 *present.*

19 (C) *CONSULTATION.—The Secretary, in*
20 *consultation with the Administrator of the Envi-*
21 *ronmental Protection Agency, shall establish a*
22 *mechanism for the Secretary to receive notice in*
23 *a timely fashion of a facility required by the Ad-*
24 *ministrator to complete a risk management plan*

1 *in accordance with section 112(r)(7)(B)(ii) of the*
2 *Clean Air Act (42 U.S.C. 7412(r)(7)(B)(ii)).*

3 (D) *REGULATIONS.—The Secretary may*
4 *promulgate regulations to carry out subpara-*
5 *graphs (A) and (B).*

6 (i) *DESIGNATION, EXEMPTION, AND ADJUSTMENT OF*
7 *THRESHOLD QUANTITIES OF SUBSTANCES OF CONCERN.—*

8 (1) *IN GENERAL.—The Secretary may, by regu-*
9 *lation—*

10 (A) *designate a chemical substance, in a*
11 *particular threshold quantity, as a substance of*
12 *concern under this Act;*

13 (B) *exempt a chemical substance from des-*
14 *ignation as a substance of concern under this*
15 *Act; and*

16 (C) *establish or revise the threshold quantity*
17 *for a chemical substance to be designated a sub-*
18 *stance of concern.*

19 (2) *CONSIDERATIONS.—In designating or ex-*
20 *empting a chemical substance or establishing or revis-*
21 *ing the threshold quantity of a chemical substance*
22 *under paragraph (1), the Secretary shall consider the*
23 *potential extent of death, injury, or serious adverse ef-*
24 *fects to human health and safety or the environment*
25 *and the potential impact on national security, the*

1 *economy, or critical infrastructure that would result*
2 *from a terrorist incident involving the chemical sub-*
3 *stance.*

4 (3) *REGULATIONS.—The Secretary may make a*
5 *designation, exemption, or revision under paragraph*
6 *(1) in the regulations promulgated under subsection*
7 *(a)(1).*

8 **SEC. 4. VULNERABILITY ASSESSMENTS, SITE SECURITY**
9 **PLANS, AND EMERGENCY RESPONSE PLANS.**

10 (a) *REQUIREMENT.—*

11 (1) *IN GENERAL.—Not later than 1 year after*
12 *the date of enactment of this Act, the Secretary shall*
13 *promulgate regulations that require the owner or op-*
14 *erator of each chemical source—*

15 (A) *to conduct a vulnerability assessment,*
16 *evaluating the vulnerability of the chemical*
17 *source to a terrorist incident;*

18 (B) *to prepare and implement a site secu-*
19 *rity plan that addresses the risks identified in*
20 *the vulnerability assessment; and*

21 (C) *to prepare and implement an emer-*
22 *gency response plan or prepare and implement*
23 *an addendum to an existing emergency response*
24 *plan to include response planning for a terrorist*
25 *incident.*

1 (2) *REGULATORY CRITERIA.*—*The regulations*
2 *promulgated under paragraph (1)—*

3 (A) *shall be risk-based, performance-based,*
4 *and flexible; and*

5 (B) *shall include consideration of—*

6 (i) *the criteria established by the Sec-*
7 *retary under section 3(a)(1);*

8 (ii) *cost and technical feasibility; and*

9 (iii) *scale of operations.*

10 (3) *CO-LOCATED CHEMICAL SOURCES.*—*The reg-*
11 *ulations promulgated under paragraph (1) shall per-*
12 *mit the development and implementation of coordi-*
13 *nated vulnerability assessments, site security plans,*
14 *and emergency response plans in any case in which*
15 *more than 1 chemical source is operating at a single*
16 *location or at contiguous locations, including cases in*
17 *which a chemical source is under the control of more*
18 *than 1 owner or operator.*

19 (4) *SHARING OF THREAT INFORMATION.*—*To the*
20 *maximum extent practicable under applicable author-*
21 *ity and in the interests of national security, the Sec-*
22 *retary shall provide State and local government offi-*
23 *cial and an owner or operator of a chemical source*
24 *with threat information that is relevant to the chem-*

1 *ical source in particular or to the chemical sector in*
2 *general.*

3 (5) *CONTENTS OF VULNERABILITY ASSESS-*
4 *MENT.—A vulnerability assessment shall—*

5 (A) *employ or be based on a rigorous meth-*
6 *odology developed or endorsed by the Secretary;*

7 (B) *incorporate any threat information pro-*
8 *vided under paragraph (4);*

9 (C) *address the appropriate security per-*
10 *formance standards established by Secretary*
11 *under section 3(f); and*

12 (D) *include an analysis of—*

13 (i) *physical security;*

14 (ii) *communication systems;*

15 (iii) *the vulnerability of programmable*
16 *electronic devices, computers, computer or*
17 *communications networks or other auto-*
18 *mated systems which are utilized by the*
19 *chemical source;*

20 (iv) *the sufficiency of security meas-*
21 *ures in place when the vulnerability assess-*
22 *ment is prepared relative to the threats and*
23 *consequences of a terrorist incident, includ-*
24 *ing vulnerabilities at the chemical source*
25 *arising from the nature and quantities of*

1 *substances of concern and the use, storage,*
2 *or handling of substances of concern; and*

3 *(v) other areas, as determined by the*
4 *Secretary.*

5 *(6) CONTENTS OF SITE SECURITY PLAN.—A site*
6 *security plan shall—*

7 *(A) indicate the tier applicable to the chem-*
8 *ical source, as determined by the Secretary under*
9 *section 3(e)(2);*

10 *(B) include security measures that, in com-*
11 *bination, address—*

12 *(i) the risks identified in the vulner-*
13 *ability assessment; and*

14 *(ii) the appropriate security perform-*
15 *ance standards established by Secretary*
16 *under section 3(f) for the tier applicable to*
17 *the chemical source, as determined by the*
18 *Secretary under section 3(e)(2);*

19 *(C) include security measures—*

20 *(i) sufficient to deter, to the maximum*
21 *extent practicable, a terrorist incident or a*
22 *substantial threat of such an incident;*

23 *(ii) to mitigate the consequences of a*
24 *terrorist incident; and*

1 (iii) to increase the security of pro-
2 grammable electronic devices, computers,
3 computer or communications networks, and
4 other automated systems.

5 (D) describe, at a minimum, particular
6 plans, processes, or procedures that could be used
7 by or at the chemical source in the event of a ter-
8 rorist incident;

9 (E) identify the roles and responsibilities of
10 employees at the chemical source;

11 (F) identify steps taken by the chemical
12 source to coordinate security measures and plans
13 for response to a terrorist incident with Federal,
14 State, and local government officials, including
15 law enforcement and first responders and specify
16 the security officer who will be the point of con-
17 tact for the National Incident Management Sys-
18 tem and Federal, State, and local law enforce-
19 ment and first responders;

20 (G) describe the training, drills (including
21 periodic unannounced drills), exercises, and se-
22 curity actions of persons at the chemical source,
23 to be carried out under the plan to deter, to the
24 maximum extent practicable, a terrorist incident
25 or a substantial threat of such an incident; and

1 (H) describe security measures that would
2 be implemented under an order issued by the
3 Secretary or the designee of the Secretary under
4 section 7(a).

5 (7) CONTENTS OF EMERGENCY RESPONSE
6 PLAN.—

7 (A) IN GENERAL.—An emergency response
8 plan shall—

9 (i) specifically address the consequences
10 of a terrorist incident identified in the vul-
11 nerability assessment prepared under para-
12 graph (5);

13 (ii) be consistent with the site security
14 plan prepared under paragraph (6); and

15 (iii) identify the roles and responsibil-
16 ities of employees at the chemical source.

17 (B) RELATIONSHIP TO THE NATIONAL CON-
18 TINGENCY PLAN.—

19 (i) IN GENERAL.—Except as provided
20 in clause (ii), an emergency response plan
21 shall be a Federally approved or certified
22 emergency response plan in effect on the
23 date of enactment of this Act that is—

24 (I) consistent with guidance pro-
25 vided by the National Response Team

1 *established under the National Contingency Plan created under section 105*
2 *of the Comprehensive Environmental*
3 *Response, Compensation, and Liability*
4 *Act of 1980 (42 U.S.C. 9605); and*

5 *(II) modified to satisfy the re-*
6 *quirements of subparagraph (A).*

7 *(ii) NO EXISTING PLAN.—The owner or*
8 *operator of a chemical source that does not*
9 *have a Federally approved or certified*
10 *emergency response plan in effect on the*
11 *date of enactment of this Act shall follow the*
12 *guidance provided by the National Response*
13 *Team established under the National Con-*
14 *tingency Plan created under section 105 of*
15 *the Comprehensive Environmental Re-*
16 *sponse, Compensation, and Liability Act of*
17 *1980 (42 U.S.C. 9605) in developing an*
18 *emergency response plan to meet the specific*
19 *considerations of that chemical source.*

20 *(C) PROTECTION OF SECURITY INFORMA-*
21 *TION.—If, in order to meet the requirements of*
22 *this paragraph, the owner or operator of a chem-*
23 *ical source is required to include in an emer-*
24 *gency response plan information, the release of*
25

1 *which would be detrimental to the security of the*
2 *source, that information shall be separated in a*
3 *security addendum to the emergency response*
4 *plan.*

5 (8) *GUIDANCE AND CONSULTATION TO CHEMICAL*
6 *SOURCES.—*

7 (A) *IN GENERAL.—On the date on which*
8 *the Secretary promulgates regulations under*
9 *paragraph (1), the Secretary shall provide guid-*
10 *ance to assist owners and operators of chemical*
11 *sources in complying with this Act, including*
12 *advice on aspects of compliance with this Act*
13 *that may be unique to small business concerns.*

14 (B) *HIGHER RISK TIERS.—At the request of*
15 *the owner or operator of a chemical source as-*
16 *signed to a higher risk tier under section 3(e)(2),*
17 *the Secretary shall provide consultation on*
18 *achieving compliance with this Act, including*
19 *consultation on the guidance provided under sub-*
20 *paragraph (A).*

21 (b) *CERTIFICATION AND SUBMISSION.—*

22 (1) *IN GENERAL.—Not later than 6 months after*
23 *the date of the promulgation of regulations under sub-*
24 *section (a)(1), each owner or operator of a chemical*
25 *source shall certify in writing to the Secretary that*

1 *the owner or operator has completed a vulnerability*
2 *assessment and has developed and implemented, or is*
3 *implementing, a site security plan and an emergency*
4 *response plan in accordance with this Act.*

5 (2) *SUBMISSION.—Not later than 6 months after*
6 *the date of the promulgation of regulations under sub-*
7 *section (a)(1), an owner or operator of a chemical*
8 *source shall submit to the Secretary copies of the vul-*
9 *nerability assessment, site security plan, and emer-*
10 *gency response plan of the chemical source for review.*

11 (3) *FAILURE TO COMPLY.—If an owner or oper-*
12 *ator of a chemical source fails to certify or submit a*
13 *vulnerability assessment, site security plan, or emer-*
14 *gency response plan in accordance with paragraph*
15 *(2), the Secretary may issue an order requiring the*
16 *certification and submission of a vulnerability assess-*
17 *ment, site security plan, or emergency response plan*
18 *in accordance with this section.*

19 (c) *REVIEW BY THE SECRETARY.—*

20 (1) *IN GENERAL.—The Secretary shall—*

21 (A) *review the vulnerability assessment, site*
22 *security plan, and emergency response plan sub-*
23 *mitted by the owner or operator of a chemical*
24 *source under subsection (b)(2) to determine*
25 *whether the assessment and plans and the imple-*

1 *mentation of such plans comply with this sec-*
2 *tion;*

3 *(B) provide written notice to the owner or*
4 *operator of the chemical source regarding the de-*
5 *termination of whether the assessment and plans*
6 *described in subparagraph (A) comply with this*
7 *section; and*

8 *(C) provide written notice to the owner or*
9 *operator of the chemical source, if the Secretary*
10 *determines the implementation of a plan de-*
11 *scribed in subparagraph (A) does not comply*
12 *with this section.*

13 (2) *DISAPPROVAL OF SITE SECURITY PLANS.—*
14 *Notwithstanding any other provision of this sub-*
15 *section, the Secretary may not disapprove a site secu-*
16 *rity plan submitted under subsection (b)(2) based on*
17 *the presence or absence of a particular security meas-*
18 *ure, if the site security plan satisfies the security per-*
19 *formance standards established under section 3(f) for*
20 *the tier applicable to the chemical source.*

21 (3) *COMPLIANCE.—*

22 (A) *IN GENERAL.—If the Secretary dis-*
23 *approves a vulnerability assessment, site security*
24 *plan, or emergency response plan of a chemical*
25 *source under paragraph (1), or determines that*

1 *the implementation of such a plan does not com-*
2 *ply with this section, the Secretary—*

3 *(i) shall provide the owner or operator*
4 *of the chemical source a written notification*
5 *of the determination that includes a clear*
6 *explanation of deficiencies in the vulner-*
7 *ability assessment, site security plan, emer-*
8 *gency response plan, or implementation of*
9 *the site security plan;*

10 *(ii) shall consult with the owner or op-*
11 *erator of the chemical source to identify ap-*
12 *propriate steps to achieve compliance;*

13 *(iii) if, following consultation under*
14 *clause (ii), the owner or operator of the*
15 *chemical source does not achieve compliance*
16 *by such date as the Secretary determines to*
17 *be appropriate under the circumstances,*
18 *shall issue an order requiring the owner or*
19 *operator to correct specified deficiencies;*
20 *and*

21 *(iv) if the owner or operator continues*
22 *to be in noncompliance, may issue an order*
23 *for the chemical source to cease operation.*

24 *(B) COMPLIANCE FOR HIGHER RISK*
25 *TIERS.—*

1 (i) *INTERIM NOTICE.*—Not later than 9
2 months after the later of the date of the pro-
3 mulgation of regulations under subsection
4 (a)(1) and the date of the promulgation of
5 regulations under section 3(e), the Secretary
6 shall—

7 (I) conduct a preliminary review
8 of the vulnerability assessment, site se-
9 curity plan, and emergency response
10 plan submitted under subsection (b)(2)
11 by a chemical source assigned to a
12 higher risk tier under section 3(e)(2);
13 and

14 (II) provide notice and assistance
15 in achieving compliance with this Act
16 to any chemical source assigned to a
17 higher risk tier under section 3(e)(2)
18 for which the Secretary determines the
19 vulnerability assessment, site security
20 plan, or emergency response plan may
21 not be approved under clause (ii).

22 (ii) *DETERMINATION.*—Not later than
23 1 year after the later of the date of the pro-
24 mulgation of regulations under subsection
25 (a)(1) and the date of the promulgation of

1 regulations under section 3(e), the Secretary
2 shall determine whether to approve, dis-
3 approve, or modify the vulnerability assess-
4 ment, site security plan, and emergency re-
5 sponse plan submitted under subsection
6 (b)(2) by a chemical source assigned to a
7 higher risk tier under section 3(e)(2).

8 (iii) IMPLEMENTATION.—The Sec-
9 retary shall determine whether implementa-
10 tion of the plans described in clause (ii)
11 complies with this section.

12 (iv) ENFORCEMENT.—The Secretary
13 may issue an order to a chemical source as-
14 signed to a higher risk tier under section
15 3(e)(2) to cease operation if the Secretary—

16 (I) disapproves the vulnerability
17 assessment, site security plan, or emer-
18 gency response plan submitted by such
19 chemical source under subsection
20 (b)(2); or

21 (II) determines that the imple-
22 mentation of a plan described in sub-
23 clause (I) does not comply with this
24 section.

1 (C) *COMPLIANCE FOR OTHER TIERS.*—Not
2 later than 5 years after the date of the submis-
3 sion of the vulnerability assessment, site security
4 plan, and emergency response plan under sub-
5 section (b)(2) by a chemical source that is not
6 assigned to a higher risk tier under section
7 3(e)(2), the Secretary shall complete the review of
8 the assessment, plans, and implementation of
9 such plans and make a determination regarding
10 compliance with this section.

11 (D) *SUBSEQUENT REVIEW.*—The Secretary
12 may conduct subsequent reviews and determina-
13 tions of compliance under this Act for a chemical
14 source on a schedule as determined to be appro-
15 priate by the Secretary, with priority given to
16 chemical sources assigned to a higher risk tier
17 under section 3(e)(2).

18 (d) *SUBMISSION AND CERTIFICATION OF CHANGES.*—

19 (1) *IN GENERAL.*—Not later than 60 days after
20 the date on which a change is made to a chemical
21 source that would have a materially detrimental effect
22 on the security of the chemical source, the owner or
23 operator of the chemical source shall—

24 (A) notify the Secretary in writing;

1 (B) provide a description of the change at
2 the chemical source;

3 (C) certify to the Secretary that the chem-
4 ical source has completed the review and imple-
5 mented any necessary modifications to the vul-
6 nerability assessment, site security plan, or
7 emergency response plan; and

8 (D) provide to the Secretary a description
9 of any changes to the vulnerability assessment,
10 site security plan, or emergency response plan.

11 (2) NOTICE AND REQUEST.—If the Secretary de-
12 termines that additional modification of a vulner-
13 ability assessment, site security plan, or emergency
14 response plan is required, the Secretary shall—

15 (A) provide a written notice to the chemical
16 source owner or operator, requiring modifica-
17 tions addressing any matters specified in the no-
18 tice; and

19 (B) provide the owner or operator of the
20 chemical source not less than 60 days after the
21 date of the notice under subparagraph (A) to
22 submit proposed modifications.

23 (3) TEMPORARY SECURITY MEASURES.—During
24 the period before any revised security measures are
25 implemented, an owner or operator of a chemical

1 source shall ensure temporary security measures are
2 implemented to address, to the maximum extent prac-
3 ticable, the vulnerabilities identified by the owner or
4 operator of the chemical source during preparation of
5 the assessment or plans.

6 *(e) MTSA-REGULATED FACILITIES.—*

7 *(1) IN GENERAL.—Except as provided in para-*
8 *graph (4), a chemical source that is also a MTSA-reg-*
9 *ulated facility shall comply with this Act.*

10 *(2) COMPLIANCE.—*

11 *(A) IN GENERAL.—A chemical source that*
12 *is also a MTSA-regulated facility shall review its*
13 *facility security assessment, facility security*
14 *plan, and emergency response plan and make*
15 *any modifications necessary to comply with the*
16 *security performance standards established for*
17 *the tier applicable to the chemical source under*
18 *section 3(f) and the requirements under sub-*
19 *section (a)(1).*

20 *(B) SUBMISSION.—Not later than 180 days*
21 *after the date on which the Secretary promul-*
22 *gates regulations under subsection (a)(1), the*
23 *owner or operator of a chemical source that is*
24 *also a MTSA-regulated facility shall—*

1 (i) submit the facility security assess-
2 ment, facility security plan, and emergency
3 response plan, with any appropriate modi-
4 fications under subparagraph (A), for the
5 chemical source to the Federal Maritime Se-
6 curity Coordinator for the area in which the
7 chemical source is located and the Secretary
8 for approval; and

9 (ii) certify in writing to the Federal
10 Maritime Security Coordinator for the area
11 in which the facility is located and the Sec-
12 retary that—

13 (I) the facility security assessment
14 and facility security plan for the facil-
15 ity are in compliance with the security
16 performance standards for the tier ap-
17 plicable to the chemical source under
18 section 3(f) and the requirements under
19 subsection (a)(1); and

20 (II) the owner or operator has
21 submitted an approved or certified
22 emergency response plan required
23 under chapter 701 of title 46, United
24 States Code, to the Federal Maritime

1 *Security Coordinator for the area in*
2 *which the facility is located.*

3 (3) *REVIEW BY THE SECRETARY.*—*In accordance*
4 *with the procedures under subsection (c), the Sec-*
5 *retary, in consultation with the Federal Maritime Se-*
6 *curity Coordinator for the area in which a chemical*
7 *source that is also a MTSA-regulated facility is lo-*
8 *cated, shall determine whether a facility security as-*
9 *essment and facility security plan submitted under*
10 *paragraph (2)(B) meets the security performance*
11 *standards established by the Secretary under section*
12 *3(f) and the requirements under subsection (a)(1).*

13 (4) *EXEMPTION.*—*A chemical source that is a*
14 *MTSA-regulated facility is exempt from section 6(d)*
15 *of this Act.*

16 (5) *INTEGRATION AND COORDINATION.*—

17 (A) *IN GENERAL.*—*The Secretary shall im-*
18 *plement this Act and chapter 701 of title 46,*
19 *United States Code, in as consistent and inte-*
20 *grated manner as possible.*

21 (B) *COAST GUARD.*—*The Secretary shall en-*
22 *sure coordination between the Under Secretary*
23 *for Preparedness and the Coast Guard Com-*
24 *mandant in carrying out this Act.*

25 (f) *ALTERNATIVE SECURITY PROGRAMS.*—

1 (1) *IN GENERAL.*—*The Secretary may consider a*
2 *petition submitted by any person that describes—*

3 (A) *alternate procedures, protocols, and*
4 *standards established by an industry entity, Fed-*
5 *eral, State, or local government authorities, or*
6 *other applicable laws; and*

7 (B) *the scope of chemical sources to which*
8 *such program would apply.*

9 (2) *REVIEW.*—*The Secretary may review the re-*
10 *quirements of any alternative security program sub-*
11 *mitted under paragraph (1) to determine whether a*
12 *vulnerability assessment, security plan, or emergency*
13 *response plan prepared under that program meets*
14 *each required element under subsection (a)(1) for a*
15 *vulnerability assessment, security plan, and emer-*
16 *gency response plan submitted under subsection*
17 *(b)(2).*

18 (3) *DETERMINATION.*—

19 (A) *IN GENERAL.*—*If the Secretary deter-*
20 *mines that a vulnerability assessment, security*
21 *plan, or emergency response plan prepared*
22 *under that alternative security program meets*
23 *each required element under subsection (a)(1) for*
24 *a vulnerability assessment, security plan, and*
25 *emergency response plan submitted under sub-*

1 *section (b)(2), the Secretary shall notify the peti-*
2 *tioner that any chemical source covered by that*
3 *program may submit an assessment or plan pre-*
4 *pared under that program without further revi-*
5 *sion.*

6 *(B) OTHER DETERMINATIONS.—If the Sec-*
7 *retary determines that a vulnerability assess-*
8 *ment, security plan, or emergency response plan*
9 *prepared under that alternative security pro-*
10 *gram does not meet each required element under*
11 *subsection (a)(1) for a vulnerability assessment,*
12 *security plan, and emergency response plan sub-*
13 *mitted under subsection (b)(2)—*

14 *(i) the Secretary may specify what*
15 *modifications would be necessary to meet*
16 *the required elements for a vulnerability as-*
17 *essment, security plan, or emergency re-*
18 *sponse plan submitted under subsection*
19 *(b)(2); and*

20 *(ii) a chemical source covered by that*
21 *program may submit the assessment or*
22 *plans with the specified modifications.*

23 *(C) FORM.—Any action taken by the Sec-*
24 *retary under this paragraph shall be made by*
25 *rule, regulation, or order.*

1 (4) *REVIEW.*—*Nothing in this subsection shall*
2 *relieve the Secretary of the obligation—*

3 (A) *to review the vulnerability assessment,*
4 *security plan, and emergency response plan sub-*
5 *mitted by each chemical source under this section*
6 *according to the performance standards estab-*
7 *lished by section 3(f) and the requirements under*
8 *subsection (a)(1); or*

9 (B) *to approve or disapprove each submis-*
10 *sion on an individual basis.*

11 (g) *PERIODIC REVIEW.*—

12 (1) *IN GENERAL.*—*On the timeline established by*
13 *the Secretary under paragraph (2), the owner or op-*
14 *erator of a chemical source shall—*

15 (A) *review the adequacy of the vulnerability*
16 *assessment, site security plan, and emergency re-*
17 *sponse plan for the chemical source;*

18 (B) *certify to the Secretary that the chem-*
19 *ical source has completed the review and imple-*
20 *mented any necessary modifications to the vul-*
21 *nerability assessment, site security plan, or*
22 *emergency response plan; and*

23 (C) *provide to the Secretary a description of*
24 *any changes to the vulnerability assessment, site*
25 *security plan, or emergency response plan.*

1 (2) *TIMING.*—*The Secretary shall establish a*
2 *timeline for review appropriate to the tier level of the*
3 *chemical source that requires a review—*

4 (A) *for a higher risk tier, not later than 1*
5 *year after the date of approval of a vulnerability*
6 *assessment, site security plan, and emergency re-*
7 *sponse plan under subsection (c)(1) and not less*
8 *often than every 3 years thereafter; and*

9 (B) *for all other tiers, not later than 5 years*
10 *after the date of approval of a vulnerability as-*
11 *essment, site security plan, and emergency re-*
12 *sponse plan under subsection (c)(1) and not less*
13 *often than every 5 years thereafter.*

14 **SEC. 5. RECORDKEEPING; SITE INSPECTIONS; PRODUCTION**
15 **OF INFORMATION.**

16 (a) *RECORDKEEPING.*—*The owner or operator of a*
17 *chemical source shall retain a copy of the vulnerability as-*
18 *essment, site security plan, and emergency response plan*
19 *for the chemical source for not less than 5 years after the*
20 *date on which such assessment or plan was approved by*
21 *the Secretary under section 4(c).*

22 (b) *RIGHT OF ENTRY.*—

23 (1) *IN GENERAL.*—*In carrying out this Act, the*
24 *Secretary or the designee of the Secretary, on presen-*

1 *tation of credentials, shall have a right of entry to,*
2 *on, or through—*

3 *(A) the premises of a chemical source; and*

4 *(B) any premises on which any record re-*
5 *quired to be maintained under subsection (a) is*
6 *located.*

7 *(2) AUDITS AND INSPECTIONS.—*

8 *(A) IN GENERAL.—The Secretary shall, at*
9 *such times and places as the Secretary deter-*
10 *mines to be appropriate, conduct, or require the*
11 *conduct of, facility security audits and inspec-*
12 *tions, the requirements of which may be estab-*
13 *lished by rule, regulation, or order.*

14 *(B) SCOPE.—Audits and inspections under*
15 *subparagraph (A) shall ensure and evaluate com-*
16 *pliance with this Act.*

17 *(C) HIGHER RISK TIERS.—*

18 *(i) IN GENERAL.—Not later than 1*
19 *year after the date of submission of the vul-*
20 *nerability assessment, site security plan,*
21 *and emergency response plan under section*
22 *4(b)(2) by the owner or operator of a chem-*
23 *ical source assigned to a higher risk tier*
24 *under section 3(e)(2), and every year there-*

1 *after, the Secretary shall conduct an audit*
2 *or inspection of such chemical source.*

3 *(ii) FEDERAL AREA SECURITY COORDI-*
4 *NATOR AUDITS.—An audit or inspection by*
5 *a Federal Area Security Coordinator shall*
6 *qualify as an audit or inspection under*
7 *clause (i).*

8 *(iii) EXEMPTION FROM ANNUAL AU-*
9 *DITS AND INSPECTIONS.—*

10 *(I) IN GENERAL.—The Secretary*
11 *may exempt a chemical source from*
12 *annual audits or inspections under*
13 *this subparagraph, if the chemical*
14 *source has been found in compliance*
15 *with this Act by the Secretary based*
16 *upon 5 consecutive years of audits or*
17 *inspections.*

18 *(II) AUDITS AND INSPECTIONS.—*
19 *If the Secretary exempts a chemical*
20 *source under this clause, during the 5-*
21 *year period after the date of granting*
22 *such exemption, and during each 5-*
23 *year period thereafter, the Secretary*
24 *shall conduct not less than 1 audit or*

1 *unannounced inspection of such chem-*
2 *ical source.*

3 (c) *REQUESTS FOR RECORDS.*—*In carrying out this*
4 *Act, the Secretary may require the submission of, or, on*
5 *presentation of credentials, may at reasonable times seek*
6 *access to and copy—*

7 (1) *any records, reports, or other information de-*
8 *scribed in subsection (a); and*

9 (2) *any other documentation necessary for the—*

10 (A) *review or analysis of a vulnerability as-*
11 *essment or security plan; or*

12 (B) *implementation of a security plan.*

13 (d) *COMPLIANCE.*—*If the Secretary determines that an*
14 *owner or operator of a chemical source is not maintaining,*
15 *producing, or permitting access to records or to the premises*
16 *of the chemical source as required by this section, the Sec-*
17 *retary may issue an order requiring compliance with the*
18 *relevant provisions of this section.*

19 **SEC. 6. INFRASTRUCTURE PROTECTION AND IMPLEMENTA-**
20 **TION.**

21 (a) *COORDINATION.*—

22 (1) *IN GENERAL.*—*The Secretary shall ensure ef-*
23 *fective chemical security planning and response by*
24 *providing the necessary infrastructure, leadership,*
25 *technical assistance, guidance, and accountability for*

1 *security planning and response in areas surrounding*
2 *chemical sources.*

3 (2) *WITH OTHER LAW.*—*The Secretary shall*
4 *model the regulations promulgated, organizations es-*
5 *tablished, and actions taken under this section on the*
6 *requirements of sections 70102, 70103, 70104, and*
7 *70112 of title 46, United States Code.*

8 (3) *WITH COMMITTEES.*—*The Secretary, and*
9 *those in positions assigned under this section, shall*
10 *coordinate with other Federal area security and re-*
11 *sponse committees in order to provide a unified and*
12 *effective Federal effort for security and response orga-*
13 *nizational infrastructure for the Nation. Nothing in*
14 *this section shall supersede any other Federal area se-*
15 *curity or response committee and the entities estab-*
16 *lished under this section shall be organized to com-*
17 *plement such other committees.*

18 (b) *COMPLIANCE OFFICE.*—

19 (1) *ESTABLISHMENT.*—*Not later than 3 months*
20 *after the date of enactment of this Act, the Secretary*
21 *shall establish an office under the Assistant Secretary*
22 *for Infrastructure Protection that shall be responsible*
23 *for implementing and enforcing this Act.*

1 (2) *ACTIVITIES.*—*The Secretary, acting through*
2 *the Assistant Secretary for Infrastructure Protection,*
3 *shall—*

4 (A) *provide leadership, guidance, planning,*
5 *technical assistance, resources, and conduct over-*
6 *sight activities to establish an effective chemical*
7 *security planning and response infrastructure*
8 *for the Nation;*

9 (B) *provide leadership, personnel, training,*
10 *equipment, other resources as necessary, and*
11 *technical assistance to—*

12 (i) *Federal, State and local government*
13 *agencies;*

14 (ii) *Infrastructure Protection Regional*
15 *Security Offices; and*

16 (iii) *Area Security Committees, as re-*
17 *quested by the Federal Area Security Coor-*
18 *dinator;*

19 (C) *coordinate with law enforcement agen-*
20 *cies, first responders, and chemical sources re-*
21 *garding the response to a potential or actual ter-*
22 *rorist incident at a chemical source;*

23 (D) *review and approve each Area Security*
24 *Plan submitted under subsection (d); and*

1 (E) coordinate with the Office of State and
2 Local Government Coordination and Prepared-
3 ness of the Department, to ensure some homeland
4 security grants administered by the Department
5 support the plans required under this section.

6 (c) *INFRASTRUCTURE PROTECTION REGIONAL SECUR-*
7 *RITY OFFICES.*—

8 (1) *IN GENERAL.*—Not later than 6 months after
9 the date of enactment of this Act, the Secretary shall
10 establish in each Federal Emergency Management
11 Agency Region (or the regional office of a successor
12 agency with responsibility for emergency manage-
13 ment, preparedness, and response) an Infrastructure
14 Protection Regional Security Office, for purposes of
15 carrying out this Act and coordinating regional secu-
16 rity, as described in this section.

17 (2) *MEMBERSHIP AND DUTIES.*—Each Infra-
18 structure Protection Regional Security Office shall—

19 (A) consist of—

20 (i) the personnel of the Infrastructure
21 Protection Office of the Department within
22 the region; and

23 (ii) a regional security advisory staff,
24 to be appointed by the Secretary;

1 (B) review and approve each Area Security
2 Plan for the region to ensure coordination be-
3 tween regions and States;

4 (C) oversee implementation of this Act to
5 ensure consistent implementation within the re-
6 gion, in conjunction with the strategic mission
7 and policies of, and guidance from, the Depart-
8 ment; and

9 (D) perform other functions as assigned by
10 the Secretary necessary to implement the re-
11 quirements of this Act or help protect other crit-
12 ical infrastructure.

13 (d) AREA SECURITY COMMITTEES AND PLANS.—

14 (1) DESIGNATION OF AREAS AND FEDERAL AREA
15 SECURITY COORDINATORS.—

16 (A) DEADLINE.—Not later than 6 months
17 after the date of enactment of this Act, the Sec-
18 retary shall designate geographic areas for the
19 Area Security Committees established under
20 paragraph (2).

21 (B) REQUIREMENTS.—In designating areas
22 under subparagraph (A), the Secretary shall en-
23 sure that—

1 (i) *except as provided in subparagraph*
2 (C), *all parts of the United States are in-*
3 *cluded in an area; and*

4 (ii) *no area is larger than a single*
5 *State, although an area may incorporate*
6 *portions of more than 1 State, based on the*
7 *organization and number of chemical*
8 *sources in a geographic area.*

9 (C) *EXCLUSION.—Any area designated*
10 *under section 70103(a)(2)(G) of title 46, United*
11 *States Code, shall not be included in any area*
12 *designated under this Act.*

13 (2) *ESTABLISHMENT AND DESIGNATION.—*

14 (A) *COMMITTEES.—There is established for*
15 *each area designated by the Secretary under*
16 *paragraph (1) an Area Security Committee,*
17 *comprised of members appointed by the Sec-*
18 *retary, in consultation with State and local gov-*
19 *ernment officials, from qualified and affected se-*
20 *curity and response personnel of Federal, State,*
21 *and local government agencies, chemical sources,*
22 *local emergency planning and response entities,*
23 *other critical infrastructure sectors, and other*
24 *appropriate organizations.*

1 (B) *COORDINATOR.*—For each area des-
2 ignated by the Secretary under paragraph (1),
3 the Secretary shall designate a Federal Area Se-
4 curity Coordinator with knowledge of and expe-
5 rience in the activities required under this sub-
6 section.

7 (3) *DUTIES.*—

8 (A) *COMMITTEES.*—Each Area Security
9 Committee, under the direction of the Federal
10 Area Security Coordinator for the area assigned
11 to such Area Security Committee, shall—

12 (i) meet not less frequently than twice
13 each year;

14 (ii) prepare the Area Security Plan de-
15 scribed in paragraph (4) for that area and
16 submit the Area Security Plan to the Sec-
17 retary for approval; and

18 (iii) coordinate with Federal, State,
19 and local government officials and chemical
20 sources to enhance the security and response
21 planning of those officials and to assure ef-
22 fective preplanning of joint security and re-
23 sponse efforts, including exercises, drills,
24 evacuations, sheltering, and rescue.

1 (B) *COORDINATOR.*—*Each Federal Area Security Coordinator shall, for the area assigned to*
2 *such official—*

3 (i) *conduct audits and inspections of*
4 *chemical sources under this Act;*

5 (ii) *provide appropriate guidance and*
6 *support to chemical sources; and*

7 (iii) *perform such other duties as are*
8 *required by the Area Security Committee or*
9 *the Secretary.*

10 (4) *AREA SECURITY PLANS.*—

11 (A) *IN GENERAL.*—*Not later than 2 years*
12 *after the date of enactment of this Act, each Area*
13 *Security Committee shall prepare and submit to*
14 *the Secretary for approval an Area Security*
15 *Plan for the area assigned to such Area Security*
16 *Committee.*

17 (B) *PLAN REQUIREMENTS.*—*The Area Security Plan shall—*

18 (i) *coordinate the resources of the area*
19 *assigned to the Area Security Committee to*
20 *deter a potential or actual terrorist incident*
21 *at a chemical source in that area, or to re-*
22 *spond to a terrorist incident at a chemical*
23 *source in that area;*
24
25

1 (ii) coordinate with the National In-
2 frastructure Protection Plan, the National
3 Response Plan, the site security plan of any
4 chemical source located in the area assigned
5 to the Area Security Committee, other ap-
6 propriate national security and response
7 plans, and the Area Security Plans for con-
8 tiguous areas;

9 (iii) reflect security and response post-
10 incident investigative reports, as determined
11 by the Secretary;

12 (iv) describe in detail the responsibil-
13 ities of an owner or operator of a chemical
14 source (based upon the approved site secu-
15 rity plan for the chemical source) and of
16 Federal, State, and local government agen-
17 cies in responding to potential or actual
18 terrorist incident at a chemical source oper-
19 ating in the area assigned to the Area Secu-
20 rity Committee;

21 (v) describe the area covered by the
22 plan, list the assets and resources available
23 to respond to a terrorist incident, and in-
24 clude any other information the Secretary
25 requires;

1 (vi) be updated periodically by the
2 Area Security Committee; and

3 (vii) provide for coordination with the
4 appropriate Federal, State and local gov-
5 ernment agencies or members of local enti-
6 ties that plan for emergency releases from
7 chemical sources regarding how local popu-
8 lations that may be affected by a release are
9 provided with information, including evac-
10 uation planning, sheltering in place, and
11 areas of refuge.

12 (5) *REVIEW.*—Not later than 3 years after the
13 date of enactment of this Act, the Secretary shall—

14 (A) review each Area Security Plan devel-
15 oped under paragraph (4);

16 (B) require amendments to any plan that
17 does not meet the requirements of this section;
18 and

19 (C) approve each plan that meets the re-
20 quirements of this section.

21 (e) *AREA EXERCISES AND DRILLS.*—

22 (1) *IN GENERAL.*—The Secretary shall periodi-
23 cally conduct drills and exercises, some without prior
24 notice, including full functional and communications
25 exercises of security and response capability in each

1 *area for which an Area Security Plan is required*
2 *under this section and under the site security plan*
3 *and emergency response plans of relevant chemical*
4 *sources.*

5 (2) *SCOPE OF PARTICIPATION.—The drills and*
6 *exercises conducted under paragraph (1) may include*
7 *participation by—*

8 (A) *Federal, State, and local government*
9 *agencies, including law enforcement and first re-*
10 *sponders;*

11 (B) *the owner and operator of any chemical*
12 *source in the area;*

13 (C) *members of local entities that plan for*
14 *emergency releases;*

15 (D) *representatives of other critical infra-*
16 *structure; and*

17 (E) *other participants as determined appro-*
18 *priate by the Secretary or the designee of the*
19 *Secretary.*

20 (3) *REPORTS.—The Secretary shall publish an-*
21 *ual reports on drills under this subsection, including*
22 *assessments of the effectiveness of the plans described*
23 *in paragraph (1), lessons learned, and recommenda-*
24 *tions, if any, to improve the programs, plans, and*

1 *procedures under this subsection. The annual reports*
2 *shall not include protected information.*

3 *(f) REGULATIONS.—The Secretary may promulgate*
4 *such regulations as are necessary to carry out this section.*

5 **SEC. 7. HEIGHTENED SECURITY MEASURES.**

6 *(a) IN GENERAL.—If the Secretary determines, based*
7 *on the risk factors described in section 3(b), that additional*
8 *security measures are necessary to respond to a threat as-*
9 *essment or to a specific threat against the chemical sector,*
10 *the Secretary may issue an order to the owner or operator*
11 *of a chemical source to implement the heightened security*
12 *measures described under section 4(a)(6)(H). Only the Sec-*
13 *retary or the designee of the Secretary may issue an order*
14 *under this section.*

15 *(b) PERIOD OF ORDER.—*

16 *(1) IN GENERAL.—Any order issued by the Sec-*
17 *retary under subsection (a) shall be effective upon*
18 *issuance and shall remain in effect for a period of not*
19 *more than 90 days, unless the Secretary files an ac-*
20 *tion in an appropriate United States district court*
21 *before the expiration of that 90-day period.*

22 *(2) EFFECT OF FILING.—If the Secretary files an*
23 *action described in paragraph (1), an order issued by*
24 *the Secretary under subsection (a) shall remain in ef-*
25 *fect for 14 days in addition to the 90-day period*

1 *under paragraph (1), or for such shorter or longer pe-*
2 *riod as may be authorized by the court in which such*
3 *action is filed.*

4 **SEC. 8. PENALTIES.**

5 *(a) ADMINISTRATIVE PENALTIES.—*

6 *(1) PENALTIES.—The Secretary may impose an*
7 *administrative penalty of not more than \$25,000 for*
8 *each day, and not more than a maximum of*
9 *\$1,000,000 for each year, for failure to comply with*
10 *an order or directive issued by the Secretary under*
11 *this Act.*

12 *(2) NOTICE AND HEARING.—Before imposing a*
13 *penalty under paragraph (1), the Secretary shall pro-*
14 *vide to the person against which the penalty is to be*
15 *assessed—*

16 *(A) a written notice of the proposed pen-*
17 *alty; and*

18 *(B) not later than 30 days after the date on*
19 *which the person receives the notice, the oppor-*
20 *tunity to request a hearing on the proposed pen-*
21 *alty.*

22 *(3) PROCEDURES.—The Secretary shall promul-*
23 *gate regulations establishing procedures for adminis-*
24 *trative hearings and appropriate review, including*
25 *necessary deadlines.*

1 **(b) CIVIL PENALTIES.**—

2 **(1) IN GENERAL.**—*The Secretary may bring an*
3 *action in a United States district court against any*
4 *owner or operator of a chemical source that violates*
5 *or fails to comply with any order or directive issued*
6 *by the Secretary under this Act or a site security*
7 *plan approved by the Secretary under this Act*

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

13 **(c) CRIMINAL PENALTIES.**—*An owner or operator of*
14 *a chemical source who knowingly and willfully violates any*
15 *order issued by the Secretary under this Act or knowingly*
16 *and willfully fails to comply with a site security plan ap-*
17 *proved by the Secretary under this Act shall be fined not*
18 *more than \$50,000 for each day of such violation, impris-*
19 *oned not more than 2 years, or both.*

20 **SEC. 9. PROTECTION OF INFORMATION.**

21 **(a) DISCLOSURE EXEMPTIONS.**—

22 **(1) RECORDS OF THE DEPARTMENT.**—*The De-*
23 *partment shall not be required under section 552 of*
24 *title 5, United States Code, to make available to the*
25 *public protected information.*

1 (2) *RECORDS OF OTHER AGENCIES.*—If a Fed-
2 eral agency other than the Department receives a re-
3 quest under section 552 of title 5, United States Code,
4 for protected information, that Federal agency—

5 (A) shall not disclose the record; and

6 (B) shall refer the request to the Depart-
7 ment for processing and response.

8 (3) *RECORDS OF STATE OR LOCAL GOVERNMENT*
9 *AGENCIES.*—A State or local government agency shall
10 not be required under any State or local law pro-
11 viding for public access to information to make avail-
12 able to the public protected information.

13 (b) *CERTIFICATIONS AND ORDERS.*—

14 (1) *IN GENERAL.*—

15 (A) *INFORMATION NOT DISCLOSED.*—Except
16 as provided in subparagraph (B), the following
17 records shall not be made available to the public
18 under section 552 of title 5, United States Code:

19 (i) *CERTIFICATIONS.*—A certification
20 under section 4(b)(1).

21 (ii) *ORDER FOR FAILURE TO COM-*
22 *PLY.*—An order under section 4(b)(3).

23 (iii) *COMPLIANCE CERTIFICATES.*—A
24 certificate of compliance under paragraph
25 (2).

1 (iv) *OTHER ORDERS.*—Any other order
2 or any notice of disapproval issued under
3 this Act.

4 (B) *EXCEPTION.*—

5 (i) *IN GENERAL.*—If the Secretary
6 makes a specific finding and determination
7 with respect to a particular chemical source
8 that releasing any record described in sub-
9 paragraph (A)(i) or (iii) regarding that
10 chemical source would not increase the risk
11 to the security of any chemical source, the
12 Secretary may make the record available to
13 the public under section 552 of title 5,
14 United States Code.

15 (ii) *NOTICE TO GAO.*—If the Secretary
16 does not allow a record to be made available
17 to the public under this subsection, the Sec-
18 retary shall submit to the Comptroller Gen-
19 eral of the United States, for inclusion and
20 evaluation in the reports under section 12,
21 a detailed statement—

22 (I) identifying the chemical
23 source;

24 (II) describing the record;

1 (III) explaining the basis for the
2 Secretary's determination; and
3 (IV) describing any security
4 measures being implemented by the
5 chemical source.

6 (2) *CERTIFICATION OF COMPLIANCE.*—When the
7 Secretary determines that a chemical source is in
8 compliance with the requirements of this Act, the Sec-
9 retary shall issue a certificate of approval that con-
10 tains the following statement: “_____ (chemical
11 source name) _____ is in compliance with the
12 Chemical Facility Anti-Terrorism Act of 2006.”.

13 (3) *REPORT TO CONGRESS.*—Not less frequently
14 than once each year, the Secretary shall submit to
15 Congress a public report on the performance of chem-
16 ical sources under the Act, in the aggregate, including
17 a description of common problems, solutions, and in-
18 dustry best practices.

19 (c) *DEVELOPMENT OF PROTOCOLS.*—

20 (1) *IN GENERAL.*—The Secretary, in consultation
21 with the Director of the Office of Management and
22 Budget and appropriate Federal law enforcement and
23 intelligence officials and in a manner consistent with
24 existing protections for sensitive or classified informa-
25 tion, shall, by regulation, establish confidentiality

1 *protocols for maintenance and use of records con-*
2 *taining protected information.*

3 (2) *REQUIREMENTS FOR PROTOCOLS.—The pro-*
4 *ocols established under paragraph (1) shall ensure, to*
5 *the maximum extent practicable, that—*

6 (A) *the records shall be maintained in a se-*
7 *crete location; and*

8 (B) *access to records shall be limited—*

9 (i) *as may be necessary to—*

10 (I) *enable enforcement of this Act;*

11 *or*

12 (II) *address an imminent and*
13 *substantial threat to security, health,*
14 *safety, or the environment;*

15 (ii) *to State or local law enforcement*
16 *officials, first responders, or other State or*
17 *local government officials granted access to*
18 *records for the purpose of carrying out this*
19 *Act, including providing such officials and*
20 *first responders with information on the ex-*
21 *tent to which security of chemical sources in*
22 *the State or local area is being achieved;*
23 *and*

24 (iii) *to other persons granted access for*
25 *the purpose of carrying out this Act.*

1 (3) *OTHER PROCEDURES IN PROTOCOLS.*—*The*
2 *protocols established under paragraph (1) shall also—*

3 (A) *provide for the labeling of any record*
4 *containing protected information to enable the*
5 *sensitive information in such record to be traced*
6 *back to the specific document from which the in-*
7 *formation was derived;*

8 (B) *accommodate the making of disclosures*
9 *under sections 2302(b)(8) and 7211 of title 5,*
10 *United States Code, and provide guidance to em-*
11 *ployees as to how to make such disclosures with-*
12 *out compromising security;*

13 (C) *include procedures applicable to a re-*
14 *quest under section 552 of title 5, United States*
15 *Code, requiring that any portion of a record that*
16 *reasonably may be separated shall be provided to*
17 *a person requesting the record after redaction of*
18 *any portion that is exempt from disclosure; and*

19 (D) *establish procedures by which a record*
20 *containing protected information may become*
21 *subject to the requirements regarding public dis-*
22 *closure under section 552 of title 5, United*
23 *States Code, when, because of changed cir-*
24 *cumstances or the passage of time, disclosure of*

1 *the record would not be detrimental to the secu-*
2 *rity of a chemical source.*

3 *(d) PROCESS FOR REPORTING PROBLEMS.—*

4 *(1) ESTABLISHMENT OF A REPORTING PROC-*
5 *ESS.—The Secretary shall establish, and provide in-*
6 *formation to the public regarding, a process by which*
7 *any person may submit a report to the Secretary re-*
8 *garding problems, deficiencies, or vulnerabilities at a*
9 *chemical source.*

10 *(2) CONFIDENTIALITY.—The Secretary shall keep*
11 *confidential the identity of a person who submits a*
12 *report under paragraph (1) and any such report shall*
13 *be treated as a record containing protected informa-*
14 *tion to the extent that it does not consist of publicly*
15 *available information.*

16 *(3) ACKNOWLEDGMENT OF RECEIPT.—If a report*
17 *submitted under paragraph (1) identifies the person*
18 *making the report, the Secretary shall respond*
19 *promptly to such person and acknowledge receipt of*
20 *the report.*

21 *(4) STEPS TO ADDRESS PROBLEMS.—The Sec-*
22 *retary shall review and consider the information pro-*
23 *vided in any report submitted under paragraph (1)*
24 *and shall take appropriate steps under this Act to ad-*
25 *dress any problems or deficiencies identified.*

1 (5) *RETALIATION PROHIBITED.*—No employer
2 may discharge any employee or otherwise discrimi-
3 nate against any employee with respect to the com-
4 pensation to, or terms, conditions, or privileges of the
5 employment of, such employee because the employee
6 (or a person acting pursuant to a request of the em-
7 ployee) made a report under paragraph (1).

8 (6) *GAO REPORTING.*—The Comptroller General
9 of the United States shall, in the reports under section
10 12—

11 (A) describe the number and type of prob-
12 lems, deficiencies, and vulnerabilities reported on
13 under this subsection; and

14 (B) evaluate the Secretary's efforts in ad-
15 dressing such problems, deficiencies, and
16 vulnerabilities.

17 (e) *PROTECTED DISCLOSURES.*—Nothing in this Act
18 shall be construed to limit the right of an individual to
19 make any disclosure—

20 (1) protected or authorized under section
21 2302(b)(8) or 7211 of title 5, United States Code;

22 (2) protected under any other Federal or State
23 law that shields the disclosing individual against re-
24 taliation or discrimination for having made the dis-
25 closure in the public interest; or

1 (3) *to the Special Counsel, the inspector general*
2 *of an agency, or any other employee designated by the*
3 *head of an agency to receive similar disclosures.*

4 (f) *MATERIALS NOT HELD BY AGENCIES.—Nothing in*
5 *this Act shall be construed to limit the rights or obligations*
6 *of any chemical source, any entity that is not a Federal,*
7 *State, or local government agency in possession of a record*
8 *containing protected information, or any individual, with*
9 *respect to the withholding or disclosure of any information*
10 *or record held by the chemical source, entity, or individual,*
11 *regardless of whether or not the Department has received*
12 *or possesses similar or identical information or a similar*
13 *or identical record.*

14 (g) *DISCLOSURE OF INDEPENDENTLY FURNISHED IN-*
15 *FORMATION.—*

16 (1) *IN GENERAL.—Nothing in this Act shall be*
17 *construed to affect the handling, treatment, or disclo-*
18 *sure of a record or information obtained from a chem-*
19 *ical source under any other law.*

20 (2) *OTHER AUTHORITY.—Nothing in this Act*
21 *shall be construed to affect any authority or obliga-*
22 *tion of an agency to disclose any record that the agen-*
23 *cy receives independently of a record that is exempt*
24 *under this section from the public disclosure require-*
25 *ments under section 552 of title 5, United States*

1 *Code, regardless of whether or not the Department has*
2 *an identical or similar record that is so exempt.*

3 *(h) OTHER OBLIGATIONS UNAFFECTED.—*

4 *(1) IN GENERAL.—Nothing in this section affects*
5 *any obligation of the owner or operator of a chemical*
6 *source to submit or make available information to a*
7 *Federal, State, or local government agency under, or*
8 *otherwise to comply with, any other law.*

9 *(2) NO USE OF INFORMATION TO GAIN GOVERN-*
10 *MENTAL BENEFIT.—The owner or operator of a chem-*
11 *ical source may not use any record containing pro-*
12 *tected information to satisfy any legal requirement or*
13 *obligation other than a requirement under this Act or*
14 *to obtain any grant, permit, contract, benefit (includ-*
15 *ing agency forbearance, loans, or deduction or modi-*
16 *fications of agency penalties or rulings), or other gov-*
17 *ernmental approval.*

18 *(i) AVAILABILITY OF INFORMATION TO CONGRESS.—*
19 *Nothing in this Act shall be construed to authorize informa-*
20 *tion to be withheld from Congress.*

21 *(j) PENALTIES FOR UNAUTHORIZED DISCLOSURE.—*
22 *Any officer or employee of a Federal, State, or local govern-*
23 *ment agency who, in a manner or to an extent not author-*
24 *ized by law, knowingly discloses any record containing pro-*
25 *tected information shall—*

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

4 (2) *if an officer or employee of the Government,*
5 *be removed from Federal office or employment.*

6 (k) *PUBLIC AVAILABILITY OF INFORMATION IN RE-*
7 *PORTS.—The Government Accountability Office shall not*
8 *make any protected information available to the public in*
9 *any report under section 12, except as provided under sub-*
10 *section (b)(1) of this section.*

11 **SEC. 10. STATE AND OTHER LAWS.**

12 (a) *IN GENERAL.—Nothing in this Act shall preclude*
13 *or deny any right of any State or political subdivision*
14 *thereof to adopt or enforce any regulation, requirement, or*
15 *standard of performance respecting chemical facility secu-*
16 *rity that is more stringent than a regulation, requirement,*
17 *or standard of performance in effect under this Act, or shall*
18 *otherwise impair any right or jurisdiction of the States*
19 *with respect to chemical facilities within such States unless*
20 *there is an actual conflict between a provision of this Act*
21 *and the law of the State.*

22 (b) *OTHER REQUIREMENTS.—Nothing in this Act*
23 *shall preclude or deny the right of any State or political*
24 *subdivision thereof to adopt or enforce any regulation, re-*
25 *quirement, or standard of performance, including air or*

1 *water pollution requirements, that are directed at problems*
2 *other than reducing damage from terrorist attacks.*

3 **SEC. 11. CHEMICAL SECURITY REPORTING.**

4 *Not later than 6 months after the date of enactment*
5 *of this Act, the Secretary shall submit to the Committee on*
6 *Homeland Security and Governmental Affairs of the Senate*
7 *and the Committee on Homeland Security and the Com-*
8 *mittee on Energy and Commerce of the House of Represent-*
9 *atives an update of the national strategy for the chemical*
10 *sector required to be submitted by the Secretary to the Com-*
11 *mittee on Appropriations of the Senate and the Committee*
12 *on Appropriations of the House of Representatives by Feb-*
13 *ruary 10, 2006.*

14 **SEC. 12. REVIEW BY THE GOVERNMENT ACCOUNTABILITY**
15 **OFFICE.**

16 *(a) ACCESSIBILITY.—The Secretary shall provide ac-*
17 *cess to the Government Accountability Office of any docu-*
18 *ment or information required to be submitted to, generated*
19 *by, or otherwise in the possession of the Department under*
20 *this Act.*

21 *(b) REVIEW AND REPORTS.—*

22 *(1) IN GENERAL.—Not later than January 1 of*
23 *the first year following the calendar year in which the*
24 *regulations are promulgated under section 4(a)(1),*
25 *and on January 1 of each year thereafter, the Govern-*

1 *ment Accountability Office shall submit a report de-*
2 *scribed under paragraph (2) to—*

3 *(A) the Committee on Homeland Security*
4 *and Governmental Affairs of the Senate; and*

5 *(B) the Committee on Homeland Security of*
6 *the House of Representatives and the Committee*
7 *on Energy and Commerce of the House of Rep-*
8 *resentatives.*

9 *(2) CONTENTS.—Each report submitted under*
10 *paragraph (1) shall include—*

11 *(A) a review of site security plans, vulner-*
12 *ability assessments, and emergency response*
13 *plans under this Act; and*

14 *(B) a determination of whether such plans*
15 *and assessments are in compliance with this Act.*

16 **SEC. 13. JUDICIAL ACTIONS.**

17 *(a) REGULATIONS.—Not later than 60 days after the*
18 *date of promulgation of a regulation under this Act, any*
19 *person may file a petition for judicial review relating to*
20 *the regulation with the United States Court of Appeals for*
21 *the District of Columbia.*

22 *(b) ORDERS.—*

23 *(1) IN GENERAL.—Except as provided in section*
24 *7(b), not later than 60 days after the date of a final*
25 *agency action under this Act, the owner or operator*

1 of a chemical source affected by such action may file
2 a petition for judicial review of the action or order
3 with the United States district court for the district
4 in which—

5 (A) the chemical source is located; or

6 (B) the owner or operator of the chemical
7 source has a principal place of business.

8 (2) *LIMITATION OF PARTIES.*—The parties in
9 any civil action commenced under paragraph (1)
10 shall be limited to—

11 (A) the owner or operator filing the peti-
12 tion; and

13 (B) the Secretary.

14 (c) *EXCLUSIVITY OF REMEDIES.*—Except as provided
15 in section 7(b) and subsections (a) and (b) of this section,
16 no final agency action by the Secretary (including regula-
17 tions) under this Act shall be subject to judicial review
18 under chapter 7 of title 5, United States Code.

19 (d) *STANDARD OF REVIEW.*—On the filing of a peti-
20 tion under subsection (a) or (b), the court shall review the
21 regulation or other final action or order that is the subject
22 of the petition in accordance with chapter 7 of title 5,
23 United States Code.

24 (e) *PRIVATE ACTIONS.*—Nothing in this Act confers on
25 any private person a right of action against an owner or

1 operator of a chemical source to enforce any provision of
2 this Act.

3 **SEC. 14. AMMONIUM NITRATE.**

4 (a) *SHORT TITLE.*—This section may be cited as the
5 “Secure Handling of Ammonium Nitrate Act of 2006”.

6 (b) *FINDINGS.*—Congress finds that—

7 (1) ammonium nitrate is an important fertilizer
8 used to produce a reliable and affordable food supply
9 for the United States and the world;

10 (2) in the wrong hands, ammonium nitrate may
11 be used for illegal activities;

12 (3) the production, importation, storage, sale,
13 and distribution of ammonium nitrate affects inter-
14 state and intrastate commerce; and

15 (4) it is necessary to regulate the production,
16 storage, sale, and distribution of ammonium nitrate.

17 (c) *DEFINITIONS.*—In this section:

18 (1) *AMMONIUM NITRATE.*—The term “ammo-
19 nium nitrate” means solid ammonium nitrate that is
20 chiefly the ammonium salt of nitric acid and con-
21 tains not less than 33 percent nitrogen by weight.

22 (2) *FACILITY.*—The term “facility” means any
23 site where ammonium nitrate is produced or sold.

24 (3) *HANDLE.*—The term “handle” means to
25 produce or sell ammonium nitrate.

1 (4) *HANDLER*.—*The term “handler” means any*
2 *person that produces or sells ammonium nitrate.*

3 (5) *PURCHASER*.—*The term “purchaser” means*
4 *any person who buys or takes ownership of ammo-*
5 *nium nitrate.*

6 (d) *REGULATION OF HANDLING AND PURCHASE OF*
7 *AMMONIUM NITRATE*.—

8 (1) *IN GENERAL*.—*The Secretary shall regulate*
9 *the handling and purchase of ammonium nitrate to*
10 *prevent the misappropriation or use of ammonium*
11 *nitrate in violation of law.*

12 (2) *REGULATIONS*.—*The Secretary shall promul-*
13 *gate regulations that require—*

14 (A) *handlers—*

15 (i) *to register facilities;*

16 (ii) *to sell or distribute ammonium ni-*
17 *trate only to handlers and purchasers reg-*
18 *istered under this section; and*

19 (iii) *to maintain records of sale or dis-*
20 *tribution that include the name, address,*
21 *telephone number, and registration number*
22 *of the immediate subsequent purchaser of*
23 *ammonium nitrate; and*

24 (B) *purchasers to be registered.*

1 (3) *USE OF PREVIOUSLY SUBMITTED INFORMA-*
2 *TION.—Before requiring a facility or handler to sub-*
3 *mit additional information for registration under this*
4 *subsection, the Secretary shall—*

5 (A) *request from the Attorney General, and*
6 *the Attorney General shall provide, any informa-*
7 *tion previously submitted to the Attorney Gen-*
8 *eral by the facility or handler under section 843*
9 *of title 18, United States Code; and*

10 (B) *at the election of the facility or han-*
11 *dlers—*

12 (i) *use the license issued under that*
13 *section instead of requiring additional in-*
14 *formation for registration under this sub-*
15 *section; and*

16 (ii) *consider the license to fully comply*
17 *with the requirement for registration under*
18 *this subsection.*

19 (4) *CONSULTATION.—In promulgating regula-*
20 *tions under this subsection, the Secretary shall consult*
21 *with the Secretary to Agriculture to ensure that the*
22 *access of agricultural producers to ammonium nitrate*
23 *is not unduly burdened.*

24 (5) *PROTECTION OF INFORMATION.—Notwith-*
25 *standing any other provision of this Act, registration*

1 *information under this section shall be treated as pro-*
2 *TECTED information under this Act.*

3 (e) *ENFORCEMENT.—The Secretary may promulgate*
4 *regulations that establish a process for periodic monitoring*
5 *or auditing of handler records pertaining to the sale or*
6 *transfer of ownership of ammonium nitrate to determine*
7 *compliance with the requirements established under this sec-*
8 *tion.*

9 (f) *ADMINISTRATIVE PROVISIONS.—*

10 (1) *COOPERATIVE AGREEMENTS.—The Sec-*
11 *retary—*

12 (A) *may enter into a cooperative agreement*
13 *with the Secretary of Agriculture, or the head of*
14 *any State department of agriculture or its des-*
15 *ignee involved in agricultural regulation, in con-*
16 *sultation with the State agency responsible for*
17 *homeland security, to carry out this section; and*

18 (B) *wherever possible, should seek to use co-*
19 *operation of State agricultural entities or their*
20 *designees that oversee handler operations when*
21 *seeking cooperative agreements to implement the*
22 *registration and enforcement provisions of this*
23 *section.*

24 (2) *DELEGATION.—*

1 (A) *IN GENERAL.*—*The Secretary may dele-*
2 *gate to a State the authority to assist the Sec-*
3 *retary in the administration and enforcement of*
4 *this section.*

5 (B) *DELEGATION REQUIRED.*—*On the re-*
6 *quest of the Governor of a State, the Secretary*
7 *shall delegate to the State the authority to carry*
8 *out actions under subsection (d) or (e), on a de-*
9 *termination by the Secretary that the State is*
10 *capable of satisfactorily carrying out that sub-*
11 *section.*

12 (C) *FUNDING.*—*If the Secretary enters into*
13 *an agreement with a State under this subsection*
14 *to delegate functions to the State, the Secretary*
15 *shall provide to the State adequate funds to en-*
16 *able the State to carry out the functions.*

17 (g) *CIVIL LIABILITY.*—

18 (1) *UNLAWFUL ACTS.*—*It is unlawful for any*
19 *person to—*

20 (A) *fail to perform any duty required by*
21 *this section;*

22 (B) *violate the terms of registration under*
23 *this section;*

1 (C) fail to keep any record, make any re-
2 port, or allow any inspection required by this
3 section; or

4 (D) violate any sale or distribution order
5 issued under this section.

6 (2) *PENALTIES.*—

7 (A) *IN GENERAL.*—A person that violates
8 this section may be assessed a civil penalty by
9 the Secretary of not more than \$50,000 for each
10 violation.

11 (B) *NOTICE AND OPPORTUNITY FOR A*
12 *HEARING.*—No civil penalty shall be assessed
13 under this subsection unless the person charged
14 has been given notice and opportunity for a
15 hearing on the charge in the county, parish, or
16 incorporated city of residence of the person
17 charged.

18 (3) *JURISDICTION OVER ACTIONS FOR CIVIL DAM-*
19 *AGES.*—The district courts of the United States shall
20 have exclusive jurisdiction over any action for civil
21 damages against a handler for any harm or damage
22 that is alleged to have resulted from the use of ammo-
23 nium nitrate in violation of law that occurred on or
24 after the date of enactment of this Act.

1 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

2 *There are authorized to be appropriated such sums as*

3 *are necessary to carry out this Act.*

Calendar No. 495

109TH CONGRESS
2^D SESSION

S. 2145

A BILL

To enhance security and protect against terrorist attacks at chemical facilities.

JUNE 26, 2006

Reported with an amendment