

109TH CONGRESS
1ST 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, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

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

5 (3) DEPARTMENT.—The term “Department”
6 means the Department of Homeland Security.

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

11 (5) HIGHER RISK TIER.—The term “higher risk
12 tier” means a tier designated by the Secretary as a
13 higher risk tier under section 3(e)(3).

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

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

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

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

3 (10) SECURITY MEASURE.—

4 (A) IN GENERAL.—The term “security
5 measure” means an action to ensure or enhance
6 the security of a chemical source against a ter-
7 rorist incident.

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

11 (i) employee training and background
12 and identification authentication checks;

13 (ii) the limitation and prevention of
14 access to controls of the chemical source;

15 (iii) the protection of the perimeter of
16 the chemical source;

17 (iv) the installation and operation of
18 intrusion detection sensors;

19 (v) the implementation of measures to
20 increase computer or computer network se-
21 curity;

22 (vi) the implementation of other secu-
23 rity-related measures to ensure or enhance
24 the security of a chemical source from a
25 terrorist incident;

1 (vii) the implementation of measures
2 and controls to prevent, protect against, or
3 reduce the consequences of a terrorist inci-
4 dent, including—

5 (I) contingency and evacuation
6 plans;

7 (II) early warning systems; and

8 (III) the relocation, hardening of
9 the storage or containment, modifica-
10 tion, processing, substitution, or re-
11 duction of substances of concern; and

12 (viii) the conduct of any similar secu-
13 rity-related activity, as determined by the
14 Secretary.

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

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

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

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

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

15 (13) **TERRORIST INCIDENT.**—The term “ter-
16 rorist incident” means—

17 (A) a terrorist attack against a chemical
18 source;

19 (B) a release from a chemical source into
20 the environment of a substance of concern that
21 is caused by an act of terrorism; and

22 (C) the theft of a substance of concern by
23 a person for off-site release in furtherance of an
24 act of terrorism.

1 **SEC. 3. DESIGNATION AND TIERING OF CHEMICAL**
2 **SOURCES.**

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

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

11 (2) designate chemical sources in existence as
12 of that date.

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

16 (1) the perceived threat to a facility, including
17 a consideration of adversary capabilities and intent,
18 preparedness, target attractiveness, and deterrence
19 capabilities;

20 (2) the potential extent and likelihood of death,
21 injury, or serious adverse effects to human health
22 and safety or to the environment caused by a ter-
23 rorist incident at a facility;

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

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

7 (5) the proximity of a facility to population cen-
8 ters;

9 (6) the nature and quantity of substances of
10 concern at a facility; and

11 (7) such other security-related factors as the
12 Secretary determines to be appropriate and nec-
13 essary to protect the public health and safety, crit-
14 ical infrastructure, and national and economic secu-
15 rity.

16 (c) CRITERIA FOR FACILITIES.—In establishing cri-
17 teria under subsection (a)(1) for designating chemical
18 sources, the Secretary shall—

19 (1) consider any facility that is a stationary
20 source (as defined in section 112(r)(2) of the Clean
21 Air Act (42 U.S.C. 7412(r)(2)) for which the owner
22 or operator is required to complete a risk manage-
23 ment plan in accordance with section
24 112(r)(7)(B)(ii) of the Clean Air Act (42 U.S.C.
25 7412(r)(7)(B)(ii));

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

3 (3) determine whether any additional facility
4 (including, as of the date of the determination, any
5 facility that is operational and any facility that will
6 become operational in the future) shall be designated
7 chemical sources under this Act.

8 (d) EXCLUSIONS.—In designating facilities as chem-
9 ical sources, the Secretary shall not include any facility
10 owned or operated by the Department of Defense or the
11 Department of Energy.

12 (e) TIERED SECURITY SYSTEM.—

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

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

19 (B) consists of several tiers of chemical
20 sources;

21 (C) to the maximum extent practicable, en-
22 ables a chemical source to develop appropriate
23 site-specific measures to meet the security per-
24 formance standards established under sub-

1 section (f) for the tier applicable to the chem-
2 ical source; and

3 (D) provides guidance to the owner or op-
4 erator of a chemical source regarding the steps
5 that would enable the chemical source to move
6 to a lower risk tier, if the owner or operator
7 seeks to move to a lower risk tier.

8 (2) DETERMINATION OF TIER.—Not later than
9 1 year after the date of enactment of this Act, the
10 Secretary shall determine the tier applicable to each
11 chemical source designated under subsection (a)(2).

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

15 (f) SECURITY PERFORMANCE STANDARDS.—

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

19 (2) CONTENTS.—The security performance
20 standards established under paragraph (1) shall—

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

23 (B) enable a chemical source to select se-
24 curity measures that, in combination, satisfy

1 the security performance standards established
2 by the Secretary; and

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

5 (3) GUIDANCE.—

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

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

18 (g) NOTICE TO FACILITIES.—Not later than 180
19 days after the date of enactment of this Act, the Secretary
20 shall notify facilities that may be designated as chemical
21 sources regarding the review of facilities and designation
22 of chemical sources to be conducted under this Act, includ-
23 ing the timeline for such review and designation.

24 (h) SUBSEQUENT DETERMINATIONS.—

1 (1) PERIODIC REVIEW OF DETERMINATIONS.—
2 Not later than 3 years after the designation of
3 chemical sources under subsection (a)(2), and every
4 3 years thereafter, the Secretary shall, after consid-
5 ering the criteria established under subsection (a)(1)
6 and the exclusions under subsection (d), determine
7 whether to designate any additional facility as a
8 chemical source or remove the designation of any
9 particular facility as a chemical source.

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

17 (3) DUTY TO REPORT.—

18 (A) FACILITIES BECOMING OPER-
19 ATIONAL.—

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

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

4 (II) the date that facility be-
5 comes operational.

6 (ii) FACILITIES COVERED.—A facility
7 described in this clause is a facility—

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

12 (II) at which a threshold quan-
13 tity of a substance of concern is
14 present.

15 (B) EXISTING FACILITIES.—

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

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

1 (II) the date on which the
2 threshold quantity of a substance of
3 concern is first present at that facil-
4 ity.

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

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

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

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

20 (C) CONSULTATION.—The Secretary, in
21 consultation with the Administrator of the En-
22 vironmental Protection Agency, shall establish a
23 mechanism for the Secretary to receive notice in
24 a timely fashion of a facility required by the
25 Administrator to complete a risk management

1 plan in accordance with section 112(r)(7)(B)(ii)
2 of the Clean Air Act (42 U.S.C.
3 7412(r)(7)(B)(ii)).

4 (D) REGULATIONS.—The Secretary may
5 promulgate regulations to carry out this para-
6 graph.

7 (i) DESIGNATION, EXEMPTION, AND ADJUSTMENT
8 OF THRESHOLD QUANTITIES OF SUBSTANCES OF CON-
9 CERN.—

10 (1) IN GENERAL.—The Secretary may, by regu-
11 lation—

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

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

18 (C) establish or revise the threshold quan-
19 tity for a chemical substance to be designated
20 a substance of concern.

21 (2) CONSIDERATIONS.—In designating or ex-
22 emptioning a chemical substance or establishing or re-
23 vising the threshold quantity of a chemical substance
24 under paragraph (1), the Secretary shall consider
25 the potential extent of death, injury, or serious ad-

1 verse effects to human health and safety or the envi-
2 ronment and the potential impact on national secu-
3 rity, the economy, or critical infrastructure that
4 would result from a terrorist incident involving the
5 chemical substance.

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

10 **SEC. 4. VULNERABILITY ASSESSMENTS, SITE SECURITY**
11 **PLANS, AND EMERGENCY RESPONSE PLANS.**

12 (a) REQUIREMENT.—

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

17 (A) to conduct a vulnerability assessment,
18 evaluating the vulnerability of the chemical
19 source to a terrorist incident;

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

23 (C) to prepare and implement an emer-
24 gency response plan or prepare and implement
25 an addendum to an existing emergency re-

1 sponse plan to include response planning for a
2 terrorist incident.

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

5 (A) shall be risk-based, performance based,
6 and flexible; and

7 (B) shall include consideration of—

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

10 (ii) cost and technical feasibility; and

11 (iii) scale of operations.

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

21 (4) SHARING OF THREAT INFORMATION.—To
22 the maximum extent practicable under applicable au-
23 thority and in the interests of national security, the
24 Secretary shall provide State and local government
25 officials and an owner or operator of a chemical

1 source with threat information that is relevant to the
2 chemical source in particular or to the chemical sec-
3 tor in general.

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

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

8 (B) incorporate any threat information
9 provided under paragraph (4);

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

13 (D) include an analysis of—

14 (i) physical security;

15 (ii) communication systems;

16 (iii) electronic, computer, or other
17 automated systems which are utilized by
18 the chemical source;

19 (iv) the sufficiency of security meas-
20 ures relative to the threats and con-
21 sequences of a terrorist incident, including
22 vulnerabilities at the chemical source aris-
23 ing from the nature and quantities of sub-
24 stances of concern and the use, storage, or
25 handling of substances of concern; and

1 (v) other areas, as determined by the
2 Secretary.

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

5 (A) indicate the tier applicable to the
6 chemical source, as determined by the Secretary
7 under section 3(e)(2);

8 (B) address the risks identified in the vul-
9 nerability assessment;

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

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

19 (E) include security measures to mitigate
20 the consequences of a terrorist incident;

21 (F) describe, at a minimum, particular
22 plans, processes, or procedures that could be
23 used by or at the chemical source in the event
24 of a terrorist incident;

1 (G) identify the roles and responsibilities
2 of employees at the chemical source;

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

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

18 (7) CONTENTS OF EMERGENCY RESPONSE
19 PLAN.—

20 (A) IN GENERAL.—An emergency response
21 plan shall—

22 (i) specifically address the con-
23 sequences of a terrorist incident identified
24 in the vulnerability assessment prepared
25 under paragraph (4);

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

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

5 (B) RELATIONSHIP TO THE NATIONAL
6 CONTINGENCY PLAN.—

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

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

20 (II) modified to satisfy the re-
21 quirements of subparagraph (A).

22 (ii) NO EXISTING PLAN.—The owner
23 or operator of a chemical source that does
24 not have a Federally approved or certified
25 emergency response plan in effect on the

1 date of enactment of this Act shall follow
2 the guidance provided by the National Re-
3 sponse Team established under the Na-
4 tional Contingency Plan created under sec-
5 tion 105 of the Comprehensive Environ-
6 mental Response, Compensation, and Li-
7 ability Act of 1980 (42 U.S.C. 9605) in
8 developing an emergency response plan to
9 meet the specific considerations of that
10 chemical source.

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

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

1 compliance with this Act that may be unique to
2 small business concerns.

3 (b) CERTIFICATION AND SUBMISSION.—

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

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

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

1 ability assessment, site security plan, or emergency
2 response plan in accordance with this section.

3 (c) REVIEW BY THE SECRETARY.—

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

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

18 (3) COMPLIANCE.—

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

24 (i) shall provide the owner or operator
25 of the chemical source a written notifica-

1 tion of the determination that includes a
2 clear explanation of deficiencies in the vul-
3 nerability assessment, site security plan,
4 emergency response plan, or implementa-
5 tion of the site security plan;

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

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

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

20 (B) COMPLIANCE FOR HIGHER RISK
21 TIERS.—

22 (i) IN GENERAL.—Not later than 1
23 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 Sec-
2 retary shall—

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

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

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

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

24 (II) determines that a chemical
25 source in a higher risk tier is not op-

1 erating in compliance with the site se-
2 curity plan or emergency response
3 plan submitted by the chemical source
4 under subsection (b)(2).

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

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

20 (d) SUBMISSION AND CERTIFICATION OF
21 CHANGES.—

22 (1) IN GENERAL.—Not later than 60 days after
23 the date on which a change is made to a chemical
24 source that affects the security of the chemical

1 source, the owner or operator of the chemical source
2 shall—

3 (A) notify the Secretary in writing;

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

6 (C) either—

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

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

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

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

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

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

7 (e) MTSA-REGULATED FACILITIES.—

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

11 (2) COMPLIANCE.—

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

21 (B) SUBMISSION.—Not later than 180
22 days after the date on which the Secretary pro-
23 mulgates regulations under subsection (a)(1),
24 the owner or operator of a chemical source that
25 is 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
6 Security Coordinator for the area in which
7 the chemical source is located and the Sec-
8 retary 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 assess-
14 ment and facility security plan for the
15 facility are in compliance with the se-
16 curity performance standards for the
17 tier applicable to the chemical source
18 under section 3(f) and the require-
19 ments under 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 accord-
4 ance with the procedures under subsection (c), the
5 Secretary, in consultation with the Federal Maritime
6 Security Coordinator for the area in which a chem-
7 ical source that is also a MTSA-regulated facility is
8 located, shall determine whether a facility security
9 assessment and facility security plan submitted
10 under paragraph (2)(B) meets the security perform-
11 ance standards established by the Secretary under
12 section 3(f) and the requirements under subsection
13 (a)(1).

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

17 (5) INTEGRATION AND COORDINATION.—

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

22 (B) COAST GUARD.—The Secretary shall
23 ensure coordination between the Under Sec-
24 retary for Preparedness and the Coast Guard
25 Commandant in carrying out this Act.

1 (f) ALTERNATIVE SECURITY PROGRAMS.—

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

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

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

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

19 (3) DETERMINATION.—

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

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

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

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

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

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

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

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

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

14 (g) PERIODIC REVIEW.—

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

18 (A) review the adequacy of the vulner-
19 ability assessment, site security plan, and emer-
20 gency response plan for the chemical source;

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

1 (C) provide to the Secretary a description
2 of any changes to the vulnerability assessment,
3 site security plan, or emergency response plan.

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

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

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

18 **SEC. 5. RECORDKEEPING; SITE INSPECTIONS; PRODUCTION**
19 **OF INFORMATION.**

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

1 (b) RIGHT OF ENTRY.—

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

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

7 (B) any premises on which any record re-
8 quired to be maintained under subsection (a) is
9 located.

10 (2) AUDITS AND INSPECTIONS.—

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

17 (B) SCOPE.—Audits and inspections under
18 subparagraph (A) shall ensure and evaluate
19 compliance with this Act.

20 (c) REQUESTS FOR RECORDS.—In carrying out this
21 Act, the Secretary may require the submission of, or, on
22 presentation of credentials, may at reasonable times seek
23 access to and copy—

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

1 (2) any other documentation necessary for
2 the—

3 (A) review or analysis of a vulnerability as-
4 essment or security plan; or

5 (B) implementation of a security plan.

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

12 **SEC. 6. INFRASTRUCTURE PROTECTION AND IMPLEMENTA-**
13 **TION.**

14 (a) COORDINATION.—

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

21 (2) WITH OTHER LAW.—The Secretary shall
22 model the regulations promulgated, organizations es-
23 tablished, and actions taken under this section on
24 the requirements of sections 70102, 70103, 70104,
25 and 70112 of title 46, United States Code.

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

11 (b) COMPLIANCE OFFICE.—

12 (1) ESTABLISHMENT.—Not later than 3
13 months after the date of enactment of this Act, the
14 Secretary shall establish an office under the Assist-
15 ant Secretary for Infrastructure Protection that
16 shall be responsible for implementing and enforcing
17 this Act.

18 (2) ACTIVITIES.—The Secretary, acting
19 through the Assistant Secretary for Infrastructure
20 Protection, shall—

21 (A) provide leadership, guidance, planning,
22 technical assistance, resources, and conduct
23 oversight activities to establish an effective
24 chemical security planning and response infra-
25 structure for the Nation;

1 (B) provide leadership, personnel, training,
2 equipment, other resources as necessary, and
3 technical assistance to—

4 (i) Federal, State and local govern-
5 ment agencies;

6 (ii) Infrastructure Protection Regional
7 Security Offices; and

8 (iii) Area Security Committees, as re-
9 quested by the Federal Area Security Co-
10 ordinator;

11 (C) coordinate with law enforcement agen-
12 cies, first responders, and chemical sources re-
13 garding the response to a potential or actual
14 terrorist incident at a chemical source;

15 (D) review and approve each Area Security
16 Plan submitted under subsection (d); and

17 (E) coordinate with the Office of State and
18 Local Government Coordination and Prepared-
19 ness of the Department, to ensure some home-
20 land security grants administered by the De-
21 partment support the plans required under this
22 section.

23 (c) INFRASTRUCTURE PROTECTION REGIONAL SECU-
24 RITY OFFICES.—

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

8 (2) MEMBERSHIP AND DUTIES.—Each Infra-
9 structure Protection Regional Security Office shall—

10 (A) consist of—

11 (i) the personnel of the Infrastructure
12 Protection Office of the Department within
13 the region; and

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

16 (B) review and approve each Area Security
17 Plan for the region to ensure coordination be-
18 tween regions and States;

19 (C) oversee implementation of this Act to
20 ensure consistent implementation within the re-
21 gion, in conjunction with the strategic mission
22 and policies of, and guidance from, the Depart-
23 ment; and

24 (D) perform other functions as assigned by
25 the Secretary necessary to implement the re-

1 requirements of this Act or help protect other
2 critical infrastructure.

3 (d) AREA SECURITY COMMITTEES AND PLANS.—

4 (1) DESIGNATION OF AREAS AND FEDERAL
5 AREA SECURITY COORDINATORS.—

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

11 (B) REQUIREMENTS.—In designating
12 areas under subparagraph (A), the Secretary
13 shall ensure that—

14 (i) except as provided in subparagraph
15 (C), all parts of the United States are in-
16 cluded in an area; and

17 (ii) no area is larger than a single
18 State, although an area may incorporate
19 portions of more than 1 State, based on
20 the organization and number of chemical
21 sources in a geographic area.

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

1 (2) ESTABLISHMENT AND DESIGNATION.—

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

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

19 (3) DUTIES.—

20 (A) COMMITTEES.—Each Area Security
21 Committee, under the direction of the Federal
22 Area Security Coordinator for the area assigned
23 to such Area Security Committee, shall—

24 (i) meet not less frequently than twice
25 per year;

1 (ii) prepare the Area Security Plan
2 described in paragraph (4) for that area
3 and submit the Area Security Plan to the
4 Secretary for approval; and

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

13 (B) COORDINATOR.—Each Federal Area
14 Security Coordinator shall, for the area as-
15 signed to such official—

16 (i) conduct audits and inspections of
17 chemical sources under this Act;

18 (ii) provide appropriate guidance and
19 support to chemical sources; and

20 (iii) perform such other duties as are
21 required by the Area Security Committee
22 or the Secretary.

23 (4) AREA SECURITY PLANS.—

24 (A) IN GENERAL.—Not later than 2 years
25 after the date of enactment of this Act, each

1 Area Security Committee shall prepare and sub-
2 mit to the Secretary for approval an Area Secu-
3 rity Plan for the area assigned to such Area Se-
4 curity Committee.

5 (B) PLAN REQUIREMENTS.—The Area Se-
6 curity Plan shall—

7 (i) coordinate the resources of the
8 area assigned to the Area Security Com-
9 mittee to deter a potential or actual ter-
10 rorist incident at a chemical source in that
11 area, or to respond to a terrorist incident
12 at a chemical source in that area;

13 (ii) coordinate with the National In-
14 frastructure Protection Plan, the National
15 Response Plan, the site security plan of
16 any chemical source located in the area as-
17 signed to the Area Security Committee,
18 other appropriate national security and re-
19 sponse plans, and the Area Security Plans
20 for contiguous areas;

21 (iii) reflect security and response post-
22 incident investigative reports, as deter-
23 mined by the Secretary;

24 (iv) describe in detail the responsibil-
25 ities of an owner or operator of a chemical

1 source (based upon the approved site secu-
2 rity plan for the chemical source) and of
3 Federal, State, and local government agen-
4 cies in responding to potential or actual
5 terrorist incident at a chemical source op-
6 erating in the area assigned to the Area
7 Security Committee;

8 (v) describe the area covered by the
9 plan, list the assets and resources available
10 to respond to a terrorist incident, and in-
11 clude any other information the Secretary
12 requires;

13 (vi) be updated periodically by the
14 Area Security Committee; and

15 (vii) provide for coordination with the
16 appropriate Federal, State and local gov-
17 ernment agencies or members of local enti-
18 ties that plan for emergency releases from
19 chemical sources regarding how local popu-
20 lations that may be affected by a release
21 are provided with information, including
22 evacuation planning, sheltering in place,
23 and areas of refuge.

1 (5) REVIEW.—Not later than 24 months after
2 the date of enactment of this Act, the Secretary
3 shall—

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

6 (B) require amendments to any plan that
7 does not meet the requirements of this section;
8 and

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

11 (e) AREA EXERCISES AND DRILLS.—

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

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

23 (A) Federal, State, and local government
24 agencies, including law enforcement and first
25 responders;

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

3 (C) members of local entities that plan for
4 emergency releases;

5 (D) representatives of other critical infra-
6 structure; and

7 (E) other participants as determined ap-
8 propriate by the Secretary or the designee of
9 the Secretary.

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

17 **SEC. 7. HEIGHTENED SECURITY MEASURES.**

18 (a) IN GENERAL.—If the Secretary determines that
19 additional security measures are necessary to respond to
20 a threat assessment or to a specific threat against the
21 chemical sector, the Secretary may issue an order to the
22 owner or operator of a chemical source setting forth man-
23 datory security measures. Only the Secretary or the des-
24 ignee of the Secretary may issue an order under this sec-
25 tion.

1 (b) PERIOD OF ORDER.—

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

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

15 **SEC. 8. PENALTIES.**

16 (a) ADMINISTRATIVE PENALTIES.—

17 (1) PENALTIES.—The Secretary may impose an
18 administrative penalty of not more than \$25,000 per
19 day, and not more than a maximum of \$1,000,000
20 per year, for failure to comply with an order or di-
21 rective issued by the Secretary under this Act.

22 (2) NOTICE AND HEARING.—Before imposing a
23 penalty under paragraph (1), the Secretary shall
24 provide to the person against which the penalty is to
25 be assessed—

1 (A) a written notice of the proposed pen-
2 alty; and

3 (B) not later than 30 days after the date
4 on which the person receives the notice, the op-
5 portunity to request a hearing on the proposed
6 penalty.

7 (3) PROCEDURES.—The Secretary shall promul-
8 gate regulations establishing procedures for adminis-
9 trative hearings and appropriate review, including
10 necessary deadlines.

11 (b) CIVIL PENALTIES.—

12 (1) IN GENERAL.—The Secretary may bring an
13 action in a United States district court against any
14 owner or operator of a chemical source that violates
15 or fails to comply with any order or directive issued
16 by the Secretary under this Act or a site security
17 plan approved by the Secretary under this Act.

18 (2) RELIEF.—In any action under paragraph
19 (1), a court may issue an order for injunctive relief
20 and may award a civil penalty of not more than
21 \$50,000 for each day on which a violation occurs or
22 a failure to comply continues.

23 (c) CRIMINAL PENALTIES.—An owner or operator of
24 a chemical source who knowingly violates any order issued
25 by the Secretary under this Act or knowingly fails to com-

1 ply with a site security plan approved by the Secretary
2 under this Act shall be fined not more than \$50,000 for
3 each day of such violation, imprisoned not more than 2
4 years, or both.

5 **SEC. 9. PROTECTION OF INFORMATION.**

6 (a) DISCLOSURE EXEMPTIONS.—

7 (1) RECORDS OF THE DEPARTMENT.—

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

13 (B) RECORDS NOT DISCLOSED.—A record
14 described in this subparagraph is—

15 (i) a vulnerability assessment, site se-
16 curity plan, or a security addendum to an
17 emergency response plan obtained by the
18 Department under section 4;

19 (ii) an area security plan required
20 under section 6(d)(4);

21 (iii) materials developed or produced
22 by a chemical source exclusively in prepa-
23 ration of documents referred to in clause
24 (i) and obtained by the Department under
25 section 4; or

1 (iv) any record developed exclusively
2 for the purposes of this Act by the Depart-
3 ment, or produced exclusively for the pur-
4 poses of this Act by a chemical source and
5 obtained by the Department under section
6 4, to the extent that the record contains
7 information that—

8 (I) describes a specific chemical
9 source or the specific vulnerabilities of
10 a chemical source;

11 (II) was taken from a record de-
12 scribed in clause (i) or (ii) or from a
13 copy of such record in possession of
14 the chemical source; and

15 (III) would, if disclosed, be detri-
16 mental to the security of a chemical
17 source.

18 (2) RECORDS OF OTHER AGENCIES.—

19 (A) IN GENERAL.—A Federal agency other
20 than the Department shall not be required
21 under section 552 of title 5, United States
22 Code, to make available to the public a record
23 described in subparagraph (C).

24 (B) REFERRAL OF REQUESTS.—If a Fed-
25 eral agency other than the Department receives

1 a request under section 552 of title 5, United
2 States Code, for a record described in clause (i)
3 or clause (ii)(I) of subparagraph (C), the agen-
4 cy, without consideration by the agency of
5 whether subparagraph (C)(ii)(II) is satisfied—

6 (i) shall not disclose the record; and

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

9 (C) RECORDS NOT DISCLOSED.—A record
10 described in this subparagraph is any record—

11 (i) described in paragraph (1)(B) that
12 was shared by the Department with the
13 agency under this section; and

14 (ii) produced exclusively for the pur-
15 poses of this Act by the agency, to the ex-
16 tent that the record contains information
17 that—

18 (I) describes a specific chemical
19 source or the specific vulnerabilities of
20 a chemical source;

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

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

1 (3) RECORDS OF STATE OR LOCAL GOVERN-
2 MENT AGENCIES.—

3 (A) IN GENERAL.—A State or local gov-
4 ernment agency shall not be required under any
5 State or local law providing for public access to
6 information to make available to the public a
7 record described in subparagraph (B).

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

10 (i) described in paragraph (1)(B) that
11 was shared by the Department with the
12 State or local government agency under
13 section 6; and

14 (ii) produced exclusively for the pur-
15 poses of this Act by the State or local gov-
16 ernment agency, to the extent that the
17 record contains information that—

18 (I) describes a specific chemical
19 source or the specific vulnerabilities of
20 a chemical source; and

21 (II) was taken from a record de-
22 scribed in clause (i) or (ii) or from a
23 copy of such document in possession
24 of the chemical source.

25 (b) PUBLIC INFORMATION.—

1 (1) IN GENERAL.—

2 (A) INFORMATION DISCLOSED.—Except as
3 provided in subparagraph (B), the following
4 records shall be made available to the public
5 under section 552 of title 5, United States
6 Code:

7 (i) CERTIFICATIONS.—A certification
8 under section 4(b)(1).

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

11 (iii) COMPLIANCE CERTIFICATES.—A
12 certificate of compliance under paragraph
13 (2).

14 (iv) OTHER ORDERS.—The identity of
15 any chemical source and the owner or op-
16 erator of the chemical source for which any
17 other order or any approval or disapproval
18 is issued under this Act, together with in-
19 formation identifying the applicable order,
20 approval, or disapproval.

21 (B) EXCEPTION.—

22 (i) IN GENERAL.—If the Secretary
23 makes a specific finding and determination
24 with respect to a particular chemical
25 source that releasing any record described

1 in subparagraph (A) regarding that chem-
2 ical source would increase the risk to the
3 security of any chemical source, the Sec-
4 retary may establish a period, not to ex-
5 ceed 6 months, during which the record
6 shall not be made available to the public
7 under section 552 of title 5, United States
8 Code.

9 (ii) EXTENSION.—Not more than 60
10 days before to the expiration of a period
11 established under clause (i) (or an exten-
12 sion of such period under this clause), the
13 Secretary may extend the period for an ad-
14 ditional period not to exceed 6 months if
15 the Secretary makes a specific finding and
16 determination with respect to a particular
17 chemical source that releasing any record
18 described in subparagraph (A) regarding
19 that chemical source would increase the
20 risk to the security of any chemical source.

21 (iii) NOTICE TO GAO.—If the Sec-
22 retary determines not to allow a record to
23 be made available to the public under
24 clause (i) or extends the period of non-
25 disclosure under clause (ii), the Secretary

1 shall submit to the Comptroller General of
2 the United States, for inclusion and eval-
3 uation in the reports under section 12, a
4 detailed statement—

5 (I) identifying the chemical
6 source;

7 (II) describing the record;

8 (III) explaining the basis for the
9 Secretary's determination; and

10 (IV) describing any security
11 measures being implemented by the
12 chemical source.

13 (2) CERTIFICATION OF COMPLIANCE.—When
14 the Secretary determines that a chemical source is
15 in compliance with the requirements of this Act, the
16 Secretary shall issue and make available for public
17 inspection a certificate of approval that contains the
18 following statement: “_____ (chemical source
19 name) _____ is in compliance with the Chemical
20 Facility Anti-Terrorism Act of 2005.”.

21 (3) REPORT TO CONGRESS.—Not less fre-
22 quently than once each year, the Secretary shall sub-
23 mit to Congress a public report on the performance
24 of chemical sources under the Act, in the aggregate,

1 including a description of common problems, solu-
2 tions, and industry best practices.

3 (c) DEVELOPMENT OF PROTOCOLS.—

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

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

16 (A) the records shall be maintained in a
17 secure location; and

18 (B) access to records shall be limited—

19 (i) as may be necessary to—

20 (I) enable enforcement of this
21 Act; or

22 (II) address an imminent and
23 substantial threat to security, health,
24 safety, or the environment;

1 (ii) to State or local law enforcement
2 officials, first responders, or other State or
3 local government officials granted access to
4 records for the purpose of carrying out this
5 Act; and

6 (iii) to other persons granted access
7 for the purpose of carrying out this Act.

8 (3) OTHER PROCEDURES IN PROTOCOLS.—The
9 protocols established under paragraph (1) shall
10 also—

11 (A) provide for the labeling of any record
12 described in paragraph (1)(B), (2)(C), or
13 (3)(B) of subsection (a), to enable the sensitive
14 information in such record to be traced back to
15 the specific document from which the informa-
16 tion was derived;

17 (B) accommodate the making of disclo-
18 sures under sections 2302(b)(8) and 7211 of
19 title 5, United States Code, and provide guid-
20 ance to employees as to how to make such dis-
21 closures without compromising security;

22 (C) include procedures applicable to a re-
23 quest under section 552 of title 5, United
24 States Code, requiring that any portion of a
25 record that reasonably may be separated shall

1 be provided to a person requesting the record
2 after redaction of any portion that is exempt
3 from disclosure;

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

13 (d) PROCESS FOR REPORTING PROBLEMS.—

14 (1) ESTABLISHMENT OF A REPORTING PROC-
15 ESS.—The Secretary shall establish, and provide in-
16 formation to the public regarding, a process by
17 which any person may submit a report to the Sec-
18 retary regarding problems, deficiencies, or
19 vulnerabilities at a chemical source.

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

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

6 (4) STEPS TO ADDRESS PROBLEMS.—The Sec-
7 retary shall review and consider the information pro-
8 vided in any report submitted under paragraph (1)
9 and shall take whatever steps the Secretary deter-
10 mines appropriate to address any problems, defi-
11 ciencies, or vulnerabilities identified.

12 (5) RETALIATION PROHIBITED.—No employer
13 may discharge any employee or otherwise discrimi-
14 nate against any employee with respect to the com-
15 pensation to, or terms, conditions, or privileges of
16 the employment of, such employee because the em-
17 ployee (or a person acting pursuant to a request of
18 the employee) made a report under paragraph (1).

19 (6) GAO REPORTING.—The Comptroller Gen-
20 eral of the United States shall, in the reports under
21 section 12—

22 (A) describe the number and type of prob-
23 lems, deficiencies, and vulnerabilities reported
24 on under this subsection; and

1 (B) evaluate the Secretary's efforts in ad-
2 dressing such problems, deficiencies, and
3 vulnerabilities.

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

6 (1) the right of an individual to make any dis-
7 closure—

8 (A) protected or authorized under section
9 2302(b)(8) or 7211 of title 5, United States
10 Code; or

11 (B) to the Special Counsel, the inspector
12 general of an agency, or any other employee
13 designated by the head of an agency to receive
14 similar disclosures; or

15 (2) the applicability or enforcement of sections
16 818 and 820 of the Transportation, Treasury, Hous-
17 ing and Urban Development, the Judiciary, and
18 Independent Agencies Appropriations Act, 2006
19 (Public Law 109–115).

20 (f) MATERIALS NOT HELD BY AGENCIES.—Nothing
21 in this Act shall be construed to limit the rights or obliga-
22 tions of any chemical source, any entity that is not a Fed-
23 eral, State, or local government agency in possession of
24 a record described in paragraphs (1)(B), (2)(C), and
25 (3)(B) of subsection (a), or any individual, with respect

1 to the withholding or disclosure of any information or
2 record held by the chemical source, entity, or individual,
3 regardless of whether or not the Department has received
4 or possesses similar or identical information or a similar
5 or identical record.

6 (g) DISCLOSURE OF INDEPENDENTLY FURNISHED
7 INFORMATION.—

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

12 (2) OTHER AUTHORITY.—Nothing in this Act
13 shall be construed to affect any authority or obliga-
14 tion of an agency to disclose any record that the
15 agency receives independently of a record that is ex-
16 empt under this section from the public disclosure
17 requirements under section 552 of title 5, United
18 States Code, regardless of whether or not the De-
19 partment has an identical or similar record that is
20 so exempt.

21 (h) OTHER OBLIGATIONS UNAFFECTED.—

22 (1) IN GENERAL.—Nothing in this section af-
23 fects any obligation of the owner or operator of a
24 chemical source to submit or make available infor-
25 mation to a Federal, State, or local government

1 agency under, or otherwise to comply with, any
2 other law.

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

13 (i) AVAILABILITY OF INFORMATION TO CONGRESS.—
14 Nothing in this Act shall be construed to authorize infor-
15 mation to be withheld from Congress.

16 (j) PENALTIES FOR UNAUTHORIZED DISCLOSURE.—
17 Any officer or employee of a Federal, State, or local gov-
18 ernment agency who, in a manner or to an extent not au-
19 thorized by law, knowingly discloses any record described
20 in paragraph (1)(B), (2)(C), or (3)(B) of subsection (a)
21 shall—

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

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

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

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

15 (2) OTHER REQUIREMENTS.—Nothing in this
16 Act shall preclude or deny the right of any State or
17 political subdivision thereof to adopt or enforce any
18 regulation, requirement, or standard of performance,
19 including air or water pollution requirements, that
20 are directed at problems other than reducing dam-
21 age from terrorist attacks.

22 **SEC. 11. CHEMICAL SECURITY REPORTING.**

23 Not later than 6 months after the date of enactment
24 of this Act, the Secretary shall submit to the Committee
25 on Homeland Security and Governmental Affairs of the

1 Senate and the Committee on Homeland Security and the
2 Committee on Energy and Commerce of the House of
3 Representatives an update of the national strategy for the
4 chemical sector required to be submitted by the Secretary
5 to the Committee on Appropriations of the Senate and the
6 Committee on Appropriations of the House of Representa-
7 tives by February 10, 2006.

8 **SEC. 12. REVIEW BY THE GOVERNMENT ACCOUNTABILITY**
9 **OFFICE.**

10 (a) ACCESSIBILITY.—The Secretary shall provide ac-
11 cess to the Government Accountability Office of any docu-
12 ment or information required to be submitted to, gen-
13 erated by, or otherwise in the possession of the Depart-
14 ment under this Act.

15 (b) REVIEW AND REPORTS.—

16 (1) IN GENERAL.—Not later than January 1 of
17 the first year following the calendar year in which
18 the regulations are promulgated under section
19 4(a)(1), and on January 1 of each year thereafter,
20 the Government Accountability Office shall submit a
21 report described under paragraph (2) to—

22 (A) the Committee on Homeland Security
23 and Governmental Affairs of the Senate; and

24 (B) the Committee on Homeland Security
25 of the House of Representatives and the Com-

1 mittee on Energy and Commerce of the House
2 of Representatives.

3 (2) CONTENTS.—Each report submitted under
4 paragraph (1) shall include—

5 (A) a review of site security plans, vulner-
6 ability assessments, and emergency response
7 plans under this Act; and

8 (B) a determination of whether such plans
9 and assessments are in compliance with this
10 Act.

11 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated such sums
13 as are necessary to carry out this Act.

○