

1           **TITLE \_\_ —SECURITY AT**  
2           **COVERED WATER SYSTEMS**

3   **SEC. \_\_01. SHORT TITLE.**

4           This title may be cited as the “Drinking Water Sys-  
5   tem Security Act of 2009”.

6   **SEC. \_\_01. INTENTIONAL ACTS AFFECTING THE SECURITY**  
7           **OF COVERED WATER SYSTEMS.**

8           (a) AMENDMENT OF SAFE DRINKING WATER ACT.—  
9   Section 1433 of the Safe Drinking Water Act (42 U.S.C.  
10 300i–2) is amended to read as follows:

11   **“SEC. 1433. INTENTIONAL ACTS.**

12           “(a) RISK-BASED PERFORMANCE STANDARDS; VUL-  
13   NERABILITY ASSESSMENTS; SITE SECURITY PLANS;  
14   EMERGENCY RESPONSE PLANS.—

15           “(1) IN GENERAL.—The Administrator shall  
16   issue regulations—

17           “(A) establishing risk-based performance  
18   standards for the security of covered water sys-  
19   tems; and

20           “(B) establishing requirements and dead-  
21   lines for each covered water system—

22           “(i) to conduct a vulnerability assess-  
23   ment or, if the system already has a vul-

1                   nerability assessment, to revise the assess-  
2                   ment to be in accordance with this section;

3                   “ (ii) to update the vulnerability as-  
4                   sessment not less than every 5 years and  
5                   promptly after any change at the system  
6                   that could cause the reassignment of the  
7                   system to a different risk-based tier under  
8                   subsection (d);

9                   “ (iii) to develop, implement, and, as  
10                  appropriate, revise a site security plan not  
11                  less than every 5 years and promptly after  
12                  a revision to the vulnerability assessment;

13                  “ (iv) to develop an emergency re-  
14                  sponse plan (or, if the system has already  
15                  developed an emergency response plan, to  
16                  revise the plan to be in accordance with  
17                  this section) and revise the plan not less  
18                  than every 5 years thereafter; and

19                  “ (v) to provide annual training to em-  
20                  ployees and contractor employees of cov-  
21                  ered water systems on implementing site  
22                  security plans and emergency response  
23                  plans.

1           “(2) COVERED WATER SYSTEMS.—For purposes  
2 of this section, the term ‘covered water system’  
3 means a public water system that—

4                   “(A) is a community water system serving  
5 a population greater than 3,300; or

6                   “(B) in the discretion of the Adminis-  
7 trator, presents a security risk making regula-  
8 tion under this section appropriate.

9           “(3) CONSULTATION WITH STATE AUTHORI-  
10 TIES.—In developing and carrying out the regula-  
11 tions under paragraph (1), the Administrator shall  
12 consult with States exercising primary enforcement  
13 responsibility for public water systems.

14           “(4) CONSULTATION WITH OTHER PERSONS.—  
15 In developing and carrying out the regulations under  
16 paragraph (1), the Administrator shall consult with  
17 the Secretary of Homeland Security, and, as appro-  
18 priate, other persons regarding—

19                   “(A) provision of threat-related and other  
20 baseline information to covered water systems;

21                   “(B) designation of substances of concern;

22                   “(C) development of risk-based perform-  
23 ance standards;

1           “(D) establishment of risk-based tiers and  
2 process for the assignment of covered water  
3 systems to risk-based tiers;

4           “(E) process for the development and eval-  
5 uation of vulnerability assessments, site security  
6 plans, and emergency response plans;

7           “(F) treatment of protected information;

8           “(G) security at co-managed drinking  
9 water and wastewater facilities; and

10           “(H) such other matters as the Adminis-  
11 trator determines necessary.

12           “(5) SUBSTANCES OF CONCERN.—For purposes  
13 of this section, the Administrator, in consultation  
14 with the Secretary of Homeland Security—

15           “(A) may designate any chemical sub-  
16 stance as a substance of concern;

17           “(B) at the time any substance is des-  
18 igned pursuant to subparagraph (A), shall es-  
19 tablish by rule a threshold quantity for the re-  
20 lease or theft of the substance, taking into ac-  
21 count the toxicity, reactivity, volatility,  
22 dispersability, combustibility, and flammability  
23 of the substance and the amount of the sub-  
24 stance that, as a result of a release, is known  
25 to cause or may be reasonably anticipated to

1 cause death, injury, or serious adverse effects to  
2 human health or the environment; and

3 “(C) in making such a designation, shall  
4 take into account Appendix A to part 27 of title  
5 6, Code of Federal Regulations (or any suc-  
6 cessor regulations).

7 “(6) BASELINE INFORMATION.—The Adminis-  
8 trator, after consultation with appropriate depart-  
9 ments and agencies of the Federal Government and  
10 with State, local, and tribal governments, shall, for  
11 purposes of facilitating compliance with the require-  
12 ments of this section, promptly after the effective  
13 date of the regulations under subsection (a)(1) and  
14 as appropriate thereafter, provide baseline informa-  
15 tion to covered water systems regarding which kinds  
16 of intentional acts are the probable threats to—

17 “(A) substantially disrupt the ability of the  
18 system to provide a safe and reliable supply of  
19 drinking water;

20 “(B) cause the release of a substance of  
21 concern at the covered water system; or

22 “(C) cause the theft, misuse, or misappro-  
23 priation of a substance of concern.

24 “(b) RISK-BASED PERFORMANCE STANDARDS.—The  
25 regulations under subsection (a)(1) shall set forth risk-

1 based performance standards for site security plans re-  
2 quired by this section. The standards shall be separate  
3 and, as appropriate, increasingly stringent based on the  
4 level of risk associated with the covered water system's  
5 risk-based tier assignment under subsection (d). In devel-  
6 oping such standards, the Administrator shall take into  
7 account section 27.230 of title 6, Code of Federal Regula-  
8 tions (or any successor regulations).

9       “(c) VULNERABILITY ASSESSMENT.—The regula-  
10 tions under subsection (a)(1) shall require each covered  
11 water system to assess the system's vulnerability to a  
12 range of intentional acts, including an intentional act that  
13 results in a release of a substance of concern that is known  
14 to cause or may be reasonably anticipated to cause death,  
15 injury, or serious adverse effects to human health or the  
16 environment. At a minimum, the vulnerability assessment  
17 shall include a review of—

18               “(1) pipes and constructed conveyances;

19               “(2) physical barriers;

20               “(3) water collection, pretreatment, treatment,  
21 storage, and distribution facilities;

22               “(4) electronic, computer, and other automated  
23 systems that are used by the covered water system;

24               “(5) the use, storage, or handling of various  
25 chemicals, including substances of concern;

1           “(6) the operation and maintenance of the cov-  
2           ered water system; and

3           “(7) the covered water system’s resiliency and  
4           ability to ensure continuity of operations in the  
5           event of a disruption caused by an intentional act.

6           “(d) RISK-BASED TIERS.—The regulations under  
7           subsection (a)(1) shall provide for 4 risk-based tiers appli-  
8           cable to covered water systems, with tier one representing  
9           the highest degree of security risk.

10           “(1) ASSIGNMENT OF RISK-BASED TIERS.—

11           “(A) SUBMISSION OF INFORMATION.—The  
12           Administrator may require a covered water sys-  
13           tem to submit information in order to deter-  
14           mine the appropriate risk-based tier for the cov-  
15           ered water system.

16           “(B) FACTORS TO CONSIDER.—The Ad-  
17           ministrators shall assign (and reassign when ap-  
18           propriate) each covered water system to one of  
19           the risk-based tiers established pursuant to this  
20           subsection. In assigning a covered water system  
21           to a risk-based tier, the Administrator shall  
22           consider the potential consequences (such as  
23           death, injury, or serious adverse effects to  
24           human health, the environment, critical infra-

1 structure, national security, and the national  
2 economy) from—

3 “(i) an intentional act to cause a re-  
4 lease, including a worst-case release, of a  
5 substance of concern at the covered water  
6 system;

7 “(ii) an intentional act to introduce a  
8 contaminant into the drinking water sup-  
9 ply or disrupt the safe and reliable supply  
10 of drinking water; and

11 “(iii) an intentional act to steal, mis-  
12 appropriate, or misuse substances of con-  
13 cern.

14 “(2) EXPLANATION FOR RISK-BASED TIER AS-  
15 SIGNMENT.—The Administrator shall provide each  
16 covered water system assigned to a risk-based tier  
17 with the reasons for the tier assignment and whether  
18 such system is required to submit an assessment  
19 under subsection (g)(2).

20 “(e) DEVELOPMENT AND IMPLEMENTATION OF SITE  
21 SECURITY PLANS.—The regulations under subsection  
22 (a)(1) shall permit each covered water system, in devel-  
23 oping and implementing its site security plan required by  
24 this section, to select layered security and preparedness  
25 measures that, in combination, appropriately—

1           “(1) address the security risks identified in its  
2 vulnerability assessment; and

3           “(2) comply with the applicable risk-based per-  
4 formance standards required under this section.

5           “(f) ROLE OF EMPLOYEES.—

6           “(1) DESCRIPTION OF ROLE.—Site security  
7 plans and emergency response plans required under  
8 this section shall describe the appropriate roles or  
9 responsibilities that employees and contractor em-  
10 ployees are expected to perform to deter or respond  
11 to the intentional acts described in subsection  
12 (d)(1)(B).

13           “(2) TRAINING FOR EMPLOYEES.—Each cov-  
14 ered water system shall annually provide employees  
15 and contractor employees with roles or responsibil-  
16 ities described in paragraph (1) with a minimum of  
17 8 hours of training on carrying out those roles or re-  
18 sponsibilities.

19           “(3) EMPLOYEE PARTICIPATION.—In devel-  
20 oping, revising, or updating the vulnerability assess-  
21 ment, site security plan, and emergency response  
22 plan required under this section, a covered water  
23 system shall include—

1           “(A) at least one supervisory and at least  
2 one non-supervisory employee of the covered  
3 water system; and

4           “(B) at least one representative of each  
5 certified or recognized bargaining agent rep-  
6 resenting facility employees or contractor em-  
7 ployees with roles or responsibilities described  
8 in paragraph (1), if any, in a collective bar-  
9 gaining relationship with the private or public  
10 owner or operator of the system or with a con-  
11 tractor to that system.

12           “(g) METHODS TO REDUCE THE CONSEQUENCES OF  
13 A CHEMICAL RELEASE FROM AN INTENTIONAL ACT.—

14           “(1) DEFINITION.—In this section, the term  
15 ‘method to reduce the consequences of a chemical re-  
16 lease from an intentional act’ means a measure at  
17 a covered water system that reduces or eliminates  
18 the potential consequences of a release of a sub-  
19 stance of concern from an intentional act such as—

20           “(A) the elimination or reduction in the  
21 amount of a substance of concern possessed or  
22 planned to be possessed by a covered water sys-  
23 tem through the use of alternate substances,  
24 formulations, or processes;

1           “(B) the modification of pressures, tem-  
2           peratures, or concentrations of a substance of  
3           concern; and

4           “(C) the reduction or elimination of onsite  
5           handling of a substance of concern through im-  
6           provement of inventory control or chemical use  
7           efficiency.

8           “(2) ASSESSMENT.—For each covered water  
9           system that possesses or plans to possess a sub-  
10          stance of concern in excess of the release threshold  
11          set by the Administrator under subsection (a)(5),  
12          the regulations under subsection (a)(1) shall require  
13          the covered water system to include in its site secu-  
14          rity plan an assessment of methods to reduce the  
15          consequences of a chemical release from an inten-  
16          tional act at the covered water system. The covered  
17          water system shall provide such assessment to the  
18          Administrator and the State exercising primary en-  
19          forcement responsibility for the covered water sys-  
20          tem, if any. The regulations under subsection (a)(1)  
21          shall require the system, in preparing the assess-  
22          ment, to consider factors appropriate to the system’s  
23          security, public health, or environmental mission,  
24          and include—

1           “(A) a description of the methods to re-  
2           duce the consequences of a chemical release  
3           from an intentional act;

4           “(B) how each described method to reduce  
5           the consequences of a chemical release from an  
6           intentional act could, if applied, reduce the po-  
7           tential extent of death, injury, or serious ad-  
8           verse effects to human health resulting from a  
9           chemical release;

10          “(C) how each described method to reduce  
11          the consequences of a chemical release from an  
12          intentional act could, if applied, affect the pres-  
13          ence of contaminants in treated water, human  
14          health, or the environment;

15          “(D) whether each described method to re-  
16          duce the consequences of a chemical release  
17          from an intentional act at the covered water  
18          system is technically feasible, as defined in sec-  
19          tion 1412(b)(4)(D), but not including cost cal-  
20          culations under subparagraph (E);

21          “(E) the costs (including capital and oper-  
22          ational costs) and avoided costs (including sav-  
23          ings and liabilities) associated with applying  
24          each described method to reduce the con-

1 sequences of a chemical release from an inten-  
2 tional act at the covered water system;

3 “(F) any other relevant information that  
4 the covered water system relied on in con-  
5 ducting the assessment; and

6 “(G) a statement of whether the covered  
7 water system has implemented or plans to im-  
8 plement one or more methods to reduce the  
9 consequences of a chemical release from an in-  
10 tentional act, a description of any such meth-  
11 ods, and, in the case of a covered water system  
12 described in paragraph (3)(A), an explanation  
13 of the reasons for any decision not to imple-  
14 ment any such methods.

15 “(3) REQUIRED METHODS.—

16 “(A) APPLICATION.—This paragraph ap-  
17 plies to a covered water system—

18 “(i) that is assigned to one of the two  
19 highest risk-based tiers under subsection  
20 (d); and

21 “(ii) that possesses or plans to possess  
22 a substance of concern in excess of the re-  
23 lease threshold set by the Administrator  
24 under subsection (a)(5).

1           “(B) HIGHEST-RISK SYSTEMS.—If, on the  
2 basis of its assessment under paragraph (2), a  
3 covered water system described in subparagraph  
4 (A) decides not to implement methods to reduce  
5 the consequences of a chemical release from an  
6 intentional act, the State exercising primary en-  
7 forcement responsibility for the covered water  
8 system, if the system is located in such a State,  
9 or the Administrator, if the covered water sys-  
10 tem is not located in such a State, shall, in ac-  
11 cordance with a timeline set by the Adminis-  
12 trator—

13                   “(i) determine whether to require the  
14 covered water system to implement the  
15 methods; and

16                   “(ii) for States exercising primary en-  
17 forcement responsibility, report such deter-  
18 mination to the Administrator.

19           “(C) STATE OR ADMINISTRATOR’S CONSID-  
20 ERATIONS.—Before requiring, pursuant to sub-  
21 paragraph (B), the implementation of a method  
22 to reduce the consequences of a chemical re-  
23 lease from an intentional act, the State exer-  
24 cising primary enforcement responsibility for  
25 the covered water system, if the system is lo-

1 cated in such a State, or the Administrator, if  
2 the covered water system is not located in such  
3 a State, shall consider factors appropriate to  
4 the security, public health, and environmental  
5 missions of covered water systems, including an  
6 examination of whether the method—

7 “(i) would significantly reduce the  
8 risk of death, injury, or serious adverse ef-  
9 fects to human health resulting directly  
10 from a chemical release from an inten-  
11 tional act at the covered water system;

12 “(ii) would not increase the interim  
13 storage of a substance of concern by the  
14 covered water system;

15 “(iii) would not render the covered  
16 water system unable to comply with other  
17 requirements of this Act or drinking water  
18 standards established by the State or polit-  
19 ical subdivision in which the system is lo-  
20 cated; and

21 “(iv) is feasible, as defined in section  
22 1412(b)(4)(D), to be incorporated into the  
23 operation of the covered water system.

24 “(4) INCOMPLETE OR LATE ASSESSMENTS.—

1           “(A) INCOMPLETE ASSESSMENTS.—If the  
2 Administrator finds that the covered water sys-  
3 tem, in conducting its assessment under para-  
4 graph (2), did not meet the requirements of  
5 paragraph (2) and the applicable regulations,  
6 the Administrator shall, after notifying the cov-  
7 ered water system and the State exercising pri-  
8 mary enforcement responsibility for that sys-  
9 tem, if any, require the covered water system to  
10 submit a revised assessment not later than 60  
11 days after the Administrator notifies such sys-  
12 tem. The Administrator may require such addi-  
13 tional revisions as are necessary to ensure that  
14 the system meets the requirements of para-  
15 graph (2) and the applicable regulations.

16           “(B) LATE ASSESSMENTS.—If the Admin-  
17 istrator finds that a covered water system, in  
18 conducting its assessment under paragraph (2),  
19 did not complete such assessment in accordance  
20 with the deadline set by the Administrator, the  
21 Administrator may, after notifying the covered  
22 water system and the State exercising primary  
23 enforcement responsibility for that system, if  
24 any, take appropriate enforcement action under  
25 subsection (p).

1           “(C) REVIEW.—The State exercising pri-  
2           mary enforcement responsibility for the covered  
3           water system, if the system is located in such  
4           a State, or the Administrator, if the system is  
5           not located in such a State, shall review a re-  
6           vised assessment that meets the requirements  
7           of paragraph (2) and applicable regulations to  
8           determine whether the covered water system  
9           will be required to implement methods to reduce  
10          the consequences of an intentional act pursuant  
11          to paragraph (3).

12          “(5) ENFORCEMENT.—

13                 “(A) FAILURE BY STATE TO MAKE DETER-  
14                 MINATION.—Whenever the Administrator finds  
15                 that a State exercising primary enforcement re-  
16                 sponsibility for a covered water system has  
17                 failed to determine whether to require the cov-  
18                 ered water system to implement methods to re-  
19                 duce the consequences of a chemical release  
20                 from an intentional act, as required by para-  
21                 graph (3)(B), the Administrator shall so notify  
22                 the State and covered water system. If, beyond  
23                 the thirtieth day after the Administrator’s noti-  
24                 fication under the preceding sentence, the State  
25                 has failed to make the determination described

1 in such sentence, the Administrator shall so no-  
2 tify the State and covered water system and  
3 shall determine whether to require the covered  
4 water system to implement methods to reduce  
5 the consequences of a chemical release from an  
6 intentional act based on the factors described in  
7 paragraph (3)(C).

8 “(B) FAILURE BY STATE TO BRING EN-  
9 FORCEMENT ACTION.—If the Administrator  
10 finds, with respect to a period in which a State  
11 has primary enforcement responsibility for a  
12 covered water system, that the system has  
13 failed to implement methods to reduce the con-  
14 sequences of a chemical release from an inten-  
15 tional act (as required by the State or the Ad-  
16 ministrator under paragraph (3)(B) or the Ad-  
17 ministrator under subparagraph (A)), the Ad-  
18 ministrator shall so notify the State and the  
19 covered water system. If, beyond the thirtieth  
20 day after the Administrator’s notification under  
21 the preceding sentence, the State has not com-  
22 menced appropriate enforcement action, the Ad-  
23 ministrator shall so notify the State and may  
24 commence an enforcement action against the  
25 system, including by seeking or imposing civil

1 penalties under subsection (p), to require imple-  
2 mentation of such methods.

3 “(C) CONSIDERATION OF CONTINUED PRI-  
4 MARY ENFORCEMENT RESPONSIBILITY.—For a  
5 State with primary enforcement responsibility  
6 for a covered water system, the Administrator  
7 may consider the failure of such State to make  
8 a determination as described under subpara-  
9 graph (A) or to bring enforcement action as de-  
10 scribed under subparagraph (B) when deter-  
11 mining whether a State may retain primary en-  
12 forcement responsibility under this Act.

13 “(h) REVIEW BY ADMINISTRATOR.—

14 “(1) IN GENERAL.—The regulations under sub-  
15 section (a)(1) shall require each covered water sys-  
16 tem to submit its vulnerability assessment and site  
17 security plan to the Administrator for review accord-  
18 ing to deadlines set by the Administrator. The Ad-  
19 ministrator shall review each vulnerability assess-  
20 ment and site security plan submitted under this  
21 section and—

22 “(A) if the assessment or plan has any sig-  
23 nificant deficiency described in paragraph (2),  
24 require the covered water system to correct the  
25 deficiency; or

1                   “(B) approve such assessment or plan.

2                   “(2) SIGNIFICANT DEFICIENCIES.—A vulner-  
3                   ability assessment or site security plan of a covered  
4                   water system has a significant deficiency under this  
5                   subsection if the Administrator, in consultation, as  
6                   appropriate, with the State exercising primary en-  
7                   forcement responsibility for such system, if any, de-  
8                   termines that—

9                   “(A) such assessment does not comply with  
10                  the regulations established under section (a)(1);

11                  or

12                  “(B) such plan—

13                         “(i) fails to address vulnerabilities  
14                         identified in a vulnerability assessment; or

15                         “(ii) fails to meet applicable risk-  
16                         based performance standards.

17                  “(3) STATE, REGIONAL, OR LOCAL GOVERN-  
18                  MENTAL ENTITIES.—No covered water system shall  
19                  be required under State, local, or tribal law to pro-  
20                  vide a vulnerability assessment or site security plan  
21                  described in this section to any State, regional, local,  
22                  or tribal governmental entity solely by reason of the  
23                  requirement set forth in paragraph (1) that the sys-  
24                  tem submit such an assessment and plan to the Ad-  
25                  ministrator.

1 “(i) EMERGENCY RESPONSE PLAN.—

2 “(1) IN GENERAL.—Each covered water system  
3 shall prepare or revise, as appropriate, an emergency  
4 response plan that incorporates the results of the  
5 system’s most current vulnerability assessment and  
6 site security plan.

7 “(2) CERTIFICATION.—Each covered water sys-  
8 tem shall certify to the Administrator that the sys-  
9 tem has completed an emergency response plan. The  
10 system shall submit such certification to the Admin-  
11 istrator not later than 6 months after the system’s  
12 first completion or revision of a vulnerability assess-  
13 ment under this section and shall submit an addi-  
14 tional certification following any update of the emer-  
15 gency response plan.

16 “(3) CONTENTS.—A covered water system’s  
17 emergency response plan shall include—

18 “(A) plans, procedures, and identification  
19 of equipment that can be implemented or used  
20 in the event of an intentional act at the covered  
21 water system; and

22 “(B) actions, procedures, and identification  
23 of equipment that can obviate or significantly  
24 lessen the impact of intentional acts on public

1 health and the safety and supply of drinking  
2 water provided to communities and individuals.

3 “(4) COORDINATION.—As part of its emergency  
4 response plan, each covered water system shall pro-  
5 vide appropriate information to any local emergency  
6 planning committee, local law enforcement officials,  
7 and emergency response providers to ensure an ef-  
8 fective, collective response.

9 “(j) MAINTENANCE OF RECORDS.—Each covered  
10 water system shall maintain an updated copy of its vulner-  
11 ability assessment, site security plan, and emergency re-  
12 sponse plan.

13 “(k) AUDIT; INSPECTION.—

14 “(1) IN GENERAL.—Notwithstanding section  
15 1445(b)(2), the Administrator, or duly designated  
16 representatives of the Administrator, shall audit and  
17 inspect covered water systems, as necessary, for pur-  
18 poses of determining compliance with this section.

19 “(2) ACCESS.—In conducting an audit or in-  
20 spection of a covered water system, the Adminis-  
21 trator or duly designated representatives of the Ad-  
22 ministrator, as appropriate, shall have access to the  
23 owners, operators, employees and contractor employ-  
24 ees, and employee representatives, if any, of such  
25 covered water system.

1       “(1) ASSISTANCE.—The Administrator may make  
2 funds available to covered water systems to defray the cost  
3 of complying with the requirements of this section and im-  
4 plementing other security reviews and enhancements.  
5 Such funding shall be available for such purposes as—

6           “(1) defraying costs associated with the adop-  
7 tion or use of a method to reduce the consequences  
8 of a chemical release from an intentional act;

9           “(2) completing the covered water system’s first  
10 vulnerability assessment (or update thereof), site se-  
11 curity plan, or emergency response plan (or update  
12 thereof) required under this section; or

13           “(3) implementing any other security enhance-  
14 ment necessary to comply with this section.

15       “(m) PROTECTION OF INFORMATION.—

16           “(1) PROHIBITION OF PUBLIC DISCLOSURE OF  
17 PROTECTED INFORMATION.—Protected information  
18 shall—

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

21           “(B) not be made available pursuant to  
22 any State, local, or tribal law requiring disclo-  
23 sure of information or records.

24       “(2) INFORMATION SHARING.—

1           “(A) SHARING OF PROTECTED INFORMA-  
2           TION.—The Administrator shall provide stand-  
3           ards for and facilitate the appropriate sharing  
4           of protected information with and between Fed-  
5           eral, State, local, and tribal authorities, first re-  
6           sponders, law enforcement officials, designated  
7           supervisory and non-supervisory covered water  
8           system personnel with security, operational, or  
9           fiduciary responsibility for the system, and des-  
10          ignated facility employee representatives, if any.  
11          Such standards shall include procedures for the  
12          sharing of all portions of a covered water sys-  
13          tem’s vulnerability assessment and site security  
14          plan relating to the roles and responsibilities of  
15          system employees or contractor employees  
16          under subsection (f)(1) with a representative of  
17          each certified or recognized bargaining agent  
18          representing such employees, if any, or, if none,  
19          with at least one supervisory and at least one  
20          non-supervisory employee with roles and re-  
21          sponsibilities under subsection (f)(1).

22          “(B) PENALTIES.—Protected information,  
23          as described in paragraph (7), shall not be  
24          shared except in accordance with the standards  
25          created under subparagraph (A). Any person

1           who purposefully publishes, divulges, discloses,  
2           or makes known protected information in any  
3           manner or to any extent not authorized by the  
4           standards set by the Administrator under sub-  
5           paragraph (A), shall, upon conviction, be im-  
6           prisoned for not more than one year or fined in  
7           accordance with the provisions of chapter 227  
8           of title 18, United States Code, applicable to  
9           class A misdemeanors, or both, and, in the case  
10          of Federal employees or officeholders, shall be  
11          removed from Federal office or employment.

12           “(3) TREATMENT OF INFORMATION IN ADJU-  
13          DICATIVE PROCEEDINGS.—In any judicial or admin-  
14          istrative proceeding, protected information, as de-  
15          scribed in paragraph (7), shall be treated in a man-  
16          ner consistent with the treatment of Sensitive Secu-  
17          rity Information under section 525 of the Depart-  
18          ment of Homeland Security Appropriations Act,  
19          2007 (Public Law 109–295; 120 Stat. 1321).

20           “(4) OTHER OBLIGATIONS UNAFFECTED.—  
21          Nothing in this section amends or affects an obliga-  
22          tion of a covered water system—

23                   “(A) to submit or make available informa-  
24          tion to system employees, employee organiza-

1           tions, or a Federal, State, tribal, or local gov-  
2           ernment agency under any other law; or

3                   “(B) to comply with any other law.

4                   “(5) CONGRESSIONAL OVERSIGHT.—Nothing in  
5           this section permits or authorizes the withholding of  
6           information from Congress or any committee or sub-  
7           committee thereof.

8                   “(6) DISCLOSURE OF INDEPENDENTLY FUR-  
9           NISHED INFORMATION.—Nothing in this section  
10          amends or affects any authority or obligation of a  
11          Federal, State, local, or tribal agency to protect or  
12          disclose any record or information that the Federal,  
13          State, local, or tribal agency obtains from a covered  
14          water system or the Administrator under any other  
15          law except as provided in subsection (h)(3).

16                   “(7) PROTECTED INFORMATION.—

17                   “(A) IN GENERAL.—For purposes of this  
18          section, protected information is any of the fol-  
19          lowing:

20                           “(i) Vulnerability assessments and  
21                           site security plans under this section, in-  
22                           cluding any assessment developed pursuant  
23                           to subsection (g)(2).

24                           “(ii) Documents directly related to the  
25                           Administrator’s review of assessments and

1 plans described in clause (i) and, as appli-  
2 cable, the State's review of an assessment  
3 prepared under subsection (g)(2).

4 “(iii) Documents directly related to  
5 inspections and audits under this section.

6 “(iv) Orders, notices, or letters re-  
7 garding the compliance of a covered water  
8 system with the requirements of this sec-  
9 tion.

10 “(v) Information required to be pro-  
11 vided to, or documents and records created  
12 by, the Administrator under subsection  
13 (d).

14 “(vi) Other documents and records  
15 developed exclusively for the purposes of  
16 this section that the Administrator deter-  
17 mines would be detrimental to the security  
18 of one or more covered water systems if  
19 disclosed.

20 “(B) DETRIMENT REQUIREMENT.—For  
21 purposes of clauses (ii), (iii), (iv), and (v) of  
22 subparagraph (A), the only portions of docu-  
23 ments, records, orders, notices, and letters that  
24 shall be considered protected information are  
25 those portions that—

1           “(i) would be detrimental to the secu-  
2           rity of one or more covered water systems  
3           if disclosed; and

4           “(ii) are developed by the Adminis-  
5           trator, the State, or the covered water sys-  
6           tem exclusively for the purposes of this  
7           section.

8           “(C) EXCLUSIONS.—For purposes of this  
9           section, protected information does not in-  
10          clude—

11           “(i) information that is otherwise pub-  
12           licly available, including information that is  
13           required to be made publicly available  
14           under any law;

15           “(ii) information that a covered water  
16           system has lawfully disclosed other than in  
17           accordance with this section; and

18           “(iii) information that, if disclosed,  
19           would not be detrimental to the security of  
20           one or more covered water systems, includ-  
21           ing aggregate regulatory data that the Ad-  
22           ministrator determines appropriate to de-  
23           scribe system compliance with the require-  
24           ments of this section and the Administra-  
25           tor’s implementation of such requirements.

1           “(n) RELATION TO CHEMICAL FACILITY SECURITY  
2 REQUIREMENTS.—The following provisions (and any reg-  
3 ulations promulgated thereunder) shall not apply to any  
4 public water system subject to this Act:

5           “(1) Title XXI of the Homeland Security Act  
6 of 2002 (as proposed to be added by H.R. 2868, the  
7 Chemical Facility Anti-Terrorism Act of 2009).

8           “(2) Section 550 of the Department of Home-  
9 land Security Appropriations Act, 2007 (Public Law  
10 109–295).

11           “(3) The Chemical Facility Anti-Terrorism Act  
12 of 2009.

13           “(o) PREEMPTION.—This section does not preclude  
14 or deny the right of any State or political subdivision  
15 thereof to adopt or enforce any regulation, requirement,  
16 or standard of performance with respect to a covered  
17 water system that is more stringent than a regulation, re-  
18 quirement, or standard of performance under this section.

19           “(p) VIOLATIONS.—

20           “(1) IN GENERAL.—A covered water system  
21 that violates any requirement of this section, includ-  
22 ing by not implementing all or part of its site secu-  
23 rity plan by such date as the Administrator requires,  
24 shall be liable for a civil penalty of not more than

1       \$25,000 for each day on which the violation oc-  
2       curs.

3           “(2) PROCEDURE.—When the Administrator  
4       determines that a covered water system is subject to  
5       a civil penalty under paragraph (1), the Adminis-  
6       trator, after consultation with the State, for covered  
7       water systems located in a State exercising primary  
8       responsibility for the covered water system, and,  
9       after considering the severity of the violation or defi-  
10      ciency and the record of the covered water system in  
11      carrying out the requirements of this section, may—

12           “(A) after notice and an opportunity for  
13      the covered water system to be heard, issue an  
14      order assessing a civil penalty under such para-  
15      graph for any past or current violation, requir-  
16      ing compliance immediately or within a speci-  
17      fied time period; or

18           “(B) commence a civil action in the United  
19      States district court in the district in which the  
20      violation occurred for appropriate relief, includ-  
21      ing temporary or permanent injunction.

22           “(3) METHODS TO REDUCE THE CON-  
23      SEQUENCES OF A CHEMICAL RELEASE FROM AN IN-  
24      TENTIONAL ACT.—Except as provided in subsections  
25      (g)(4) and (g)(5), if a covered water system is lo-

1 cated in a State exercising primary enforcement re-  
2 sponsibility for the system, the Administrator may  
3 not issue an order or commence a civil action under  
4 this section for any deficiency in the content or im-  
5 plementation of the portion of the system's site secu-  
6 rity plan relating to methods to reduce the con-  
7 sequences of a chemical release from an intentional  
8 act (as defined in subsection (g)(1)).

9 “(q) REPORT TO CONGRESS.—

10 “(1) PERIODIC REPORT.—Not later than 3  
11 years after the effective date of the regulations  
12 under subsection (a)(1), and every 3 years there-  
13 after, the Administrator shall transmit to the Com-  
14 mittee on Energy and Commerce of the House of  
15 Representatives and the Committee on Environment  
16 and Public Works of the Senate a report on progress  
17 in achieving compliance with this section. Each such  
18 report shall include, at a minimum, the following:

19 “(A) A generalized summary of measures  
20 implemented by covered water systems in order  
21 to meet each risk-based performance standard  
22 established by this section.

23 “(B) A summary of how the covered water  
24 systems, differentiated by risk-based tier as-  
25 signment, are complying with the requirements

1 of this section during the period covered by the  
2 report and how the Administrator is imple-  
3 menting and enforcing such requirements dur-  
4 ing such period including—

5 “(i) the number of public water sys-  
6 tems that provided the Administrator with  
7 information pursuant to subsection (d)(1);

8 “(ii) the number of covered water sys-  
9 tems assigned to each risk-based tier;

10 “(iii) the number of vulnerability as-  
11 sessments and site security plans sub-  
12 mitted by covered water systems;

13 “(iv) the number of vulnerability as-  
14 sessments and site security plans approved  
15 and disapproved by the Administrator;

16 “(v) the number of covered water sys-  
17 tems without approved vulnerability assess-  
18 ments or site security plans;

19 “(vi) the number of covered water sys-  
20 tems that have been assigned to a different  
21 risk-based tier due to implementation of a  
22 method to reduce the consequences of a  
23 chemical release from an intentional act  
24 and a description of the types of such im-  
25 plemented methods;

1           “(vii) the number of audits and in-  
2           spections conducted by the Administrator  
3           or duly designated representatives of the  
4           Administrator;

5           “(viii) the number of orders for com-  
6           pliance issued by the Administrator;

7           “(ix) the administrative penalties as-  
8           sessed by the Administrator for non-com-  
9           pliance with the requirements of this sec-  
10          tion;

11          “(x) the civil penalties assessed by  
12          courts for non-compliance with the require-  
13          ments of this section; and

14          “(xi) any other regulatory data the  
15          Administrator determines appropriate to  
16          describe covered water system compliance  
17          with the requirements of this section and  
18          the Administrator’s implementation of  
19          such requirements.

20          “(2) PUBLIC AVAILABILITY.—A report sub-  
21          mitted under this section shall be made publicly  
22          available.

23          “(r) GRANT PROGRAMS.—

24          “(1) IMPLEMENTATION GRANTS TO STATES.—

25          The Administrator may award grants to, or enter

1 into cooperative agreements with, States, based on  
2 an allocation formula established by the Adminis-  
3 trator, to assist the States in implementing this sec-  
4 tion.

5 “(2) RESEARCH, TRAINING, AND TECHNICAL  
6 ASSISTANCE GRANTS.—The Administrator may  
7 award grants to, or enter into cooperative agree-  
8 ments with, non-profit organizations to provide re-  
9 search, training, and technical assistance to covered  
10 water systems to assist them in carrying out their  
11 responsibilities under this section.

12 “(3) PREPARATION GRANTS.—The Adminis-  
13 trator may award grants to, or enter into coopera-  
14 tive agreements with, covered water systems to as-  
15 sist such systems in preparing vulnerability assess-  
16 ments, site security plans, emergency response plans,  
17 and assessment and implementation of methods to  
18 reduce the consequences of a release of a substance  
19 of concern from an intentional act.

20 “(4) WORKING TRAINING GRANTS PROGRAM AU-  
21 THORITY.—

22 “(A) IN GENERAL.—The Administrator  
23 shall establish a grant program to award grants  
24 to eligible entities to provide for training and  
25 education of employees and contractor employ-

1           ees with roles or responsibilities described in  
2           subsection (f)(1) and first responders and emer-  
3           gency response providers who would respond to  
4           an intentional act at a covered water system.

5           “(B) ADMINISTRATION.—The Adminis-  
6           trator shall enter into an agreement with the  
7           National Institute of Environmental Health  
8           Sciences to make and administer grants or co-  
9           operative agreements under this section.

10          “(C) USE OF FUNDS.—The recipient of a  
11          grant under this subsection shall use the grant  
12          to provide for—

13                 “(i) training and education of employ-  
14                 ees and contractor employees with roles or  
15                 responsibilities described in subsection  
16                 (f)(1), including the annual mandatory  
17                 training specified in subsection (f)(2) or  
18                 training for first responders in protecting  
19                 nearby persons, property, or the environ-  
20                 ment from the effects of a release of a sub-  
21                 stance of concern at the covered water sys-  
22                 tem, with priority given to covered water  
23                 systems in the top two risk-based tiers;  
24                 and

1                   “(ii) appropriate training for first re-  
2                   sponders and emergency response pro-  
3                   viders who would respond to an intentional  
4                   act at a covered water system.

5                   “(D) ELIGIBLE ENTITIES.—For purposes  
6                   of this subsection, an eligible entity is a non-  
7                   profit organization with demonstrated experi-  
8                   ence in implementing and operating successful  
9                   worker or first responder health and safety or  
10                  security training programs.

11               “(s) AUTHORIZATION OF APPROPRIATIONS.—To  
12               carry out this section, there are authorized to be appro-  
13               priated—

14               “(1) \$315,000,000 for fiscal year 2011, of  
15               which up to—

16               “(A) \$30,000,000 may be used for admin-  
17               istrative costs incurred by the Administrator or  
18               the States, as appropriate, and

19               “(B) \$125,000,000 may be used to imple-  
20               ment methods to reduce the consequences of a  
21               chemical release from an intentional act at cov-  
22               ered water systems with priority given to cov-  
23               ered water systems assigned to tier one or tier  
24               two under subsection (d); and

1           “(2) such sums as may be necessary for fiscal  
2 years 2012 through 2015.”.

3           (b) REGULATIONS; TRANSITION.—

4           (1) REGULATIONS.—Not later than 2 years  
5 after the date of the enactment of this title, the Ad-  
6 ministrator of the Environmental Protection Agency  
7 shall promulgate final regulations to carry out sec-  
8 tion 1433 of the Safe Drinking Water Act, as  
9 amended by subsection (a).

10           (2) EFFECTIVE DATE.—Until the effective date  
11 of the regulations promulgated under paragraph (1),  
12 section 1433 of the Safe Drinking Water Act, as in  
13 effect on the day before the date of the enactment  
14 of this title, shall continue to apply.

15           (3) SAVINGS PROVISION.—Nothing in this sec-  
16 tion or the amendment made by this section shall af-  
17 fect the application of section 1433 of the Safe  
18 Drinking Water Act, as in effect before the effective  
19 date of the regulations promulgated under para-  
20 graph (1), to any violation of such section 1433 oc-  
21 ccurring before such effective date, and the require-  
22 ments of such section 1433 shall remain in force and  
23 effect with respect to such violation until the viola-  
24 tion has been corrected or enforcement proceedings  
25 completed, whichever is later.