

107TH CONGRESS
1ST SESSION

S. 1602

To help protect the public against the threat of chemical attacks.

IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2001

Mr. CORZINE (for himself, Mr. JEFFORDS, Mrs. BOXER, and Mrs. CLINTON)
introduced the following bill; which was read twice and referred to the
Committee on Environment and Public Works

A BILL

To help protect the public against the threat of chemical
attacks.

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 Security Act
5 of 2001”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the possibility of accidents at, and terrorist
9 and criminal attacks on, chemical sources (such as
10 industrial facilities) poses a serious threat to public

1 health, safety, and welfare, critical infrastructure,
2 national security, and the environment;

3 (2) the possibility of theft of dangerous chemi-
4 cals from chemical sources for use in terrorist at-
5 tacks poses a further threat to public health, safety,
6 and welfare, critical infrastructure, national security,
7 and the environment; and

8 (3) there are significant opportunities to pre-
9 vent theft from, and criminal attack on, chemical
10 sources and reduce the harm that such acts would
11 produce by—

12 (A)(i) reducing usage and storage of
13 chemicals by changing production methods and
14 processes; and

15 (ii) employing inherently safer technologies
16 in the manufacture, transport, and use of
17 chemicals;

18 (B) enhancing secondary containment and
19 other existing mitigation measures; and

20 (C) improving security.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) ACCIDENTAL RELEASE.—The term “acci-
24 dental release” means an unanticipated release of a
25 substance of concern from a chemical source.

1 (2) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Environ-
3 mental Protection Agency.

4 (3) CHEMICAL SOURCE.—The term “chemical
5 source” means—

6 (A) a stationary source (as defined in sec-
7 tion 112(r)(2) of the Clean Air Act (42 U.S.C.
8 7412(r)(2)));

9 (B) a vessel;

10 (C) a motor vehicle;

11 (D) rolling stock; and

12 (E) a container;

13 that contains a substance of concern.

14 (4) COVERED SUBSTANCE OF CONCERN.—The
15 term “covered substance of concern” means a sub-
16 stance of concern that, in combination with a chem-
17 ical source, is designated as a high priority category
18 by the Administrator under section 4(a)(1).

19 (5) CRIMINAL RELEASE.—The term “criminal
20 release” means—

21 (A) a release from a chemical source into
22 the environment of a substance of concern that
23 is caused, in whole or in part, by a criminal act;

24 (B) a release into the environment of a
25 substance of concern that has been removed

1 from a chemical source, in whole or in part, by
2 a criminal act; and

3 (C) the unauthorized removal from a
4 chemical source of a substance of concern.

5 (6) PERSON.—The term “person” has the
6 meaning given the term in section 101 of the Com-
7 prehensive Environmental Response, Compensation,
8 and Liability Act of 1980 (42 U.S.C. 9601).

9 (7) SAFER DESIGN AND MAINTENANCE.—The
10 term “safer design and maintenance” includes, with
11 respect to a chemical source that is within a high
12 priority category designated under section 4(a)(1),
13 implementation, to the extent practicable, of the
14 practices of—

15 (A) preventing or reducing the vulner-
16 ability of the chemical source to a release of a
17 covered substance of concern through use of in-
18 herently safer technology;

19 (B) reducing any vulnerability of the chem-
20 ical source to a release of a covered substance
21 of concern that remains after taking the meas-
22 ures described in subparagraph (A) through use
23 of well-maintained secondary containment, con-
24 trol, or mitigation equipment;

1 (C) reducing any vulnerability of the chem-
2 ical source to a release of a covered substance
3 of concern that remains after taking the meas-
4 ures described in subparagraphs (A) and (B)
5 by—

6 (i) making the chemical source highly
7 resistant to intruders; and

8 (ii) improving security and employee
9 training, including personnel background
10 checks; and

11 (D) reducing the potential consequences of
12 any vulnerability of the chemical source to a re-
13 lease of a covered substance of concern through
14 the use of buffer zones between the chemical
15 source and surrounding populations (including
16 buffer zones between the chemical source and
17 residences, schools, hospitals, senior centers,
18 shopping centers and malls, sports and enter-
19 tainment arenas, public roads and transpor-
20 tation routes, and other population centers).

21 (8) SUBSTANCE OF CONCERN.—The term “sub-
22 stance of concern” means—

23 (A) any hazardous substance (as defined in
24 section 101 of the Comprehensive Environ-

1 mental Response, Compensation, and Liability
2 Act of 1980 (42 U.S.C. 9601));

3 (B) any pollutant or contaminant (as de-
4 fined in section 101 of the Comprehensive Envi-
5 ronmental Response, Compensation, and Liabil-
6 ity Act of 1980 (42 U.S.C. 9601)); and

7 (C) petroleum, including crude oil and any
8 fraction of crude oil.

9 (9) USE OF INHERENTLY SAFER TECH-
10 NOLOGY.—

11 (A) IN GENERAL.—The term “use of in-
12 herently safer technology”, with respect to a
13 chemical source, means use of a technology,
14 product, raw material, or practice that, as com-
15 pared with the technologies, products, raw ma-
16 terials, or practices currently in use—

17 (i) reduces or eliminates the possi-
18 bility of a release of a substance of concern
19 from the chemical source prior to sec-
20 ondary containment, control, or mitigation;
21 and

22 (ii) reduces or eliminates the threats
23 to public health and the environment asso-
24 ciated with a release or potential release of

1 a substance of concern from the chemical
2 source.

3 (B) INCLUSIONS.—The term “use of inher-
4 ently safer technology” includes input substi-
5 tution, catalyst or carrier substitution, process
6 redesign (including reuse or recycling of a sub-
7 stance of concern), product reformulation, pro-
8 cedure simplification, and technology modifica-
9 tion so as to—

10 (i) use less hazardous substances or
11 benign substances;

12 (ii) use a smaller quantity of covered
13 substances of concern;

14 (iii) reduce hazardous pressures or
15 temperatures;

16 (iv) reduce the possibility and poten-
17 tial consequences of equipment failure and
18 human error;

19 (v) improve inventory control and
20 chemical use efficiency; and

21 (vi) reduce or eliminate storage,
22 transportation, handling, disposal, and dis-
23 charge of substances of concern.

1 **SEC. 4. PREVENTION OF CRIMINAL RELEASES.**

2 (a) DESIGNATION AND REGULATION OF HIGH PRI-
3 ORITY COMBINATIONS BY THE ADMINISTRATOR.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of enactment of this Act, the Administrator,
6 in consultation with the Attorney General and State
7 and local agencies responsible for planning for and
8 responding to accidental releases and criminal re-
9 leases and providing emergency health care, shall
10 promulgate regulations to designate certain com-
11 binations of chemical sources and substances of con-
12 cern as high priority categories based on the severity
13 of the threat posed by an accidental release or crimi-
14 nal release from the chemical sources.

15 (2) FACTORS TO BE CONSIDERED.—In desig-
16 nating high priority categories under paragraph (1),
17 the Administrator, in consultation with the Attorney
18 General, shall consider—

19 (A) the severity of the harm that could be
20 caused by an accidental release or a criminal re-
21 lease;

22 (B) the proximity to population centers;

23 (C) the threats to national security;

24 (D) the threats to critical infrastructure;

25 (E) threshold quantities of substances of
26 concern that pose a serious threat; and

1 (F) such other safety or security factors as
2 the Administrator, in consultation with the At-
3 torney General, determines to be appropriate.

4 (3) REQUIREMENTS FOR HIGH PRIORITY CAT-
5 EGORIES.—Not later than 1 year after the date of
6 promulgation of regulations under paragraph (1),
7 the Administrator, in consultation with the Attorney
8 General and State and local agencies responsible for
9 responding to accidental releases and emergency
10 health care, shall promulgate regulations to require
11 each owner and each operator of a chemical source
12 that is within a high priority category designated
13 under paragraph (1) to take adequate actions, in-
14 cluding safer design and maintenance of the chem-
15 ical source, to prevent, control, and minimize the po-
16 tential consequences of an accidental release or a
17 criminal release of a covered substance of concern.

18 (4) REVIEW AND REVISIONS.—Not later than 5
19 years after the date of promulgation of regulations
20 under each of paragraphs (1) and (3), the Adminis-
21 trator, in consultation with the Attorney General,
22 shall review the regulations and make any necessary
23 revisions.

24 (b) ESTABLISHMENT OF DUTY TO PREVENT CRIMI-
25 NAL RELEASES.—Each owner and each operator of a

1 chemical source that is within a high priority category des-
2 ignated under subsection (a) has a general duty with re-
3 spect to covered substances of concern in the same manner
4 and to the same extent as the duty imposed under section
5 5 of the Occupational Safety and Health Act of 1970 (29
6 U.S.C. 654)—

7 (1) to identify hazards that may result from an
8 accidental release or a criminal release using appro-
9 priate hazard assessment techniques;

10 (2) to ensure safer design and maintenance of
11 the chemical source by taking such actions as are
12 necessary to prevent accidental releases and criminal
13 releases; and

14 (3) to minimize the consequences of any acci-
15 dental release or criminal release that does occur.

16 **SEC. 5. ABATEMENT ACTION.**

17 In addition to any other action taken by a State or
18 local government, if the Administrator or the Attorney
19 General determines that there may be an imminent and
20 substantial endangerment to the public health or welfare
21 or the environment because of a potential accidental re-
22 lease or criminal release from a chemical source, or a fail-
23 ure to provide information or access requested under sec-
24 tion 6, the Administrator or the Attorney General may—

1 (1) secure such relief as is necessary to abate
2 such danger or threat, and the district court of the
3 United States for the district in which the threat oc-
4 curs shall have jurisdiction to grant such relief as
5 the public interest and the equities of the case may
6 require; or

7 (2) after notice to the affected State, take other
8 action under this section, including issuing such or-
9 ders as are necessary to protect public health or wel-
10 fare or the environment.

11 **SEC. 6. RECORDKEEPING AND ENTRY.**

12 (a) AUTHORITY OF THE ADMINISTRATOR AND AT-
13 TORNEY GENERAL.—

14 (1) RECORDS, REPORTS, AND INFORMATION.—

15 In carrying out this Act, the Administrator or the
16 Attorney General may require any person that the
17 Administrator or the Attorney General believes may
18 have information relating to a potential accidental
19 release or criminal release from a chemical source,
20 or any person that is subject to any requirement of
21 this Act, on a 1-time, periodic, or continuing basis
22 to—

23 (A) establish and maintain such records;

24 (B) make such reports; and

25 (C) provide such other information;

1 as the Administrator or the Attorney General may
2 reasonably require.

3 (2) RIGHT OF ENTRY.—In carrying out this
4 Act, the Administrator or the Attorney General (or
5 an authorized representative of the Administrator or
6 the Attorney General), on presentation of
7 credentials—

8 (A) shall have a right of entry to, on, or
9 through any premises of an owner or operator
10 of a chemical source described in paragraph (1)
11 or any premises in which any records required
12 to be maintained under paragraph (1) are lo-
13 cated; and

14 (B) may at reasonable times have access
15 to, and may copy, any records, reports, or other
16 information required under paragraph (1).

17 (b) AVAILABILITY OF RECORDS, REPORTS, AND IN-
18 FORMATION TO PUBLIC; DISCLOSURE OF NATIONAL SE-
19 CURITY SECRETS OR TRADE SECRETS.—

20 (1) IN GENERAL.—Except as provided in para-
21 graphs (2) and (3), any record, report, or other in-
22 formation obtained under subsection (a) shall be
23 available to the public.

24 (2) NATIONAL SECURITY.—The Administrator
25 or the Attorney General may not disclose to the pub-

1 lic any matter or information authorized to be kept
2 secret in the interest of national defense or national
3 security under section 552 of title 5, United States
4 Code.

5 (3) TRADE SECRETS.—

6 (A) IN GENERAL.—On a showing satisfac-
7 tory to the Administrator or the Attorney Gen-
8 eral by any person that the making public of
9 any record, report, or other information, or par-
10 ticular portion thereof, to which the Adminis-
11 trator or the Attorney General has access under
12 subsection (a), would divulge any method or
13 process entitled to protection as a trade secret
14 of the person, the Administrator or the Attor-
15 ney General shall consider the record, report, or
16 other information or particular portion thereof
17 to be confidential in accordance with section
18 1905 of title 18, United States Code.

19 (B) DISCLOSURE FOR PURPOSES OF THIS
20 ACT.—Notwithstanding subparagraph (A), the
21 Administrator or the Attorney General may dis-
22 close any record, report, or other information
23 considered to be confidential under subpara-
24 graph (A) to any other officer, employee, or au-
25 thorized representative of the United States

1 that is concerned with carrying out this Act or
2 when relevant in any proceeding under this Act.

3 (c) COMPLIANCE ORDERS.—

4 (1) IN GENERAL.—If a person does not consent
5 to any request made by the Administrator or the At-
6 torney General (or an authorized representative of
7 the Administrator or the Attorney General) under
8 subsection (a), the Administrator or the Attorney
9 General may issue an order directing compliance
10 with the request.

11 (2) NOTICE AND OPPORTUNITY FOR HEAR-
12 ING.—An order under paragraph (1) may be issued
13 after such notice and opportunity for hearing as are
14 reasonably appropriate under the circumstances.

15 **SEC. 7. PENALTIES.**

16 (a) CIVIL PENALTIES.—Any owner or operator of a
17 chemical source that violates, or fails to comply with, any
18 order issued or any regulation promulgated under this Act
19 may, in an action brought in United States district court,
20 be subject to a civil penalty of not more than \$25,000 for
21 each day in which such violation occurs or such failure
22 to comply continues.

23 (b) CRIMINAL PENALTIES.—Any owner or operator
24 of a chemical source that knowingly violates, or fails to

1 comply with, any order issued or any regulation promul-
2 gated under this Act shall—

3 (1) in the case of a first violation or failure to
4 comply, be fined not less than \$2,500 nor more than
5 \$25,000 per day of violation, imprisoned not more
6 than 1 year, or both; and

7 (2) in the case of a subsequent violation or fail-
8 ure to comply, be fined not more than \$50,000 per
9 day of violation, imprisoned not more than 2 years,
10 or both.

11 **SEC. 8. NO EFFECT ON REQUIREMENTS UNDER OTHER**
12 **LAW.**

13 Nothing in this Act affects any duty or other require-
14 ment imposed under any other Federal or State law.

15 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated such sums
17 as are necessary to carry out this Act.

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