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107TH CONGRESS
2^D SESSION**S. 1602****[Report No. 107-342]**

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, Mrs. CLINTON, and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

NOVEMBER 15, 2002

Reported by Mr. JEFFORDS, with an amendment

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

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”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the possibility of accidents at, and terrorist
4 and criminal attacks on, chemical sources (such as
5 industrial facilities) poses a serious threat to public
6 health, safety, and welfare, critical infrastructure,
7 national security, and the environment;

8 (2) the possibility of theft of dangerous chemi-
9 cals from chemical sources for use in terrorist at-
10 tacks poses a further threat to public health, safety,
11 and welfare, critical infrastructure, national security,
12 and the environment; and

13 (3) there are significant opportunities to pre-
14 vent theft from, and criminal attack on, chemical
15 sources and reduce the harm that such acts would
16 produce by—

17 (A)(i) reducing usage and storage of
18 chemicals by changing production methods and
19 processes; and

20 (ii) employing inherently safer technologies
21 in the manufacture, transport, and use of
22 chemicals;

23 (B) enhancing secondary containment and
24 other existing mitigation measures; and

25 (C) improving security.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) **ACCIDENTAL RELEASE.**—The term “acci-
4 dental release” means an unanticipated release of a
5 substance of concern from a chemical source.

6 (2) **ADMINISTRATOR.**—The term “Adminis-
7 trator” means the Administrator of the Environ-
8 mental Protection Agency.

9 (3) **CHEMICAL SOURCE.**—The term “chemical
10 source” means—

11 (A) a stationary source (as defined in sec-
12 tion 112(r)(2) of the Clean Air Act (42 U.S.C.
13 7412(r)(2)));

14 (B) a vessel;

15 (C) a motor vehicle;

16 (D) rolling stock; and

17 (E) a container;

18 that contains a substance of concern.

19 (4) **COVERED SUBSTANCE OF CONCERN.**—The
20 term “covered substance of concern” means a sub-
21 stance of concern that, in combination with a chem-
22 ical source, is designated as a high priority category
23 by the Administrator under section 4(a)(1).

24 (5) **CRIMINAL RELEASE.**—The term “criminal
25 release” means—

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

4 (B) a release into the environment of a
5 substance of concern that has been removed
6 from a chemical source, in whole or in part, by
7 a criminal act; and

8 (C) the unauthorized removal from a
9 chemical source of a substance of concern.

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

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

20 (A) preventing or reducing the vulner-
21 ability of the chemical source to a release of a
22 covered substance of concern through use of in-
23 herently safer technology;

24 (B) reducing any vulnerability of the chem-
25 ical source to a release of a covered substance

1 of concern that remains after taking the meas-
2 ures described in subparagraph (A) through use
3 of well-maintained secondary containment, con-
4 trol, or mitigation equipment;

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

10 (i) making the chemical source highly
11 resistant to intruders; and

12 (ii) improving security and employee
13 training, including personnel background
14 checks; and

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

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

3 (A) any hazardous substance (as defined in
4 section 101 of the Comprehensive Environ-
5 mental Response, Compensation, and Liability
6 Act of 1980 (42 U.S.C. 9601));

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

11 (C) petroleum, including crude oil and any
12 fraction of crude oil.

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

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

21 (i) reduces or eliminates the possi-
22 bility of a release of a substance of concern
23 from the chemical source prior to sec-
24 ondary containment, control, or mitigation;
25 and

1 (ii) reduces or eliminates the threats
2 to public health and the environment asso-
3 ciated with a release or potential release of
4 a substance of concern from the chemical
5 source.

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

13 (i) use less hazardous substances or
14 benign substances;

15 (ii) use a smaller quantity of covered
16 substances of concern;

17 (iii) reduce hazardous pressures or
18 temperatures;

19 (iv) reduce the possibility and poten-
20 tial consequences of equipment failure and
21 human error;

22 (v) improve inventory control and
23 chemical use efficiency; and

1 (vi) reduce or eliminate storage,
 2 transportation, handling, disposal, and dis-
 3 charge of substances of concern.

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

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

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

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

22 (A) the severity of the harm that could be
 23 caused by an accidental release or a criminal re-
 24 lease;

25 (B) the proximity to population centers;

(C) the threats to national security;

(D) the threats to critical infrastructure;

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

(F) such other safety or security factors as the Administrator, in consultation with the Attorney General, determines to be appropriate.

(3) REQUIREMENTS FOR HIGH PRIORITY CATEGORIES.—Not later than 1 year after the date of promulgation of regulations under paragraph (1), the Administrator, in consultation with the Attorney General and State and local agencies responsible for responding to accidental releases and emergency health care, shall promulgate regulations to require each owner and each operator of a chemical source that is within a high priority category designated under paragraph (1) to take adequate actions, including safer design and maintenance of the chemical source, to prevent, control, and minimize the potential consequences of an accidental release or a criminal release of a covered substance of concern.

(4) REVIEW AND REVISIONS.—Not later than 5 years after the date of promulgation of regulations under each of paragraphs (1) and (3), the Administrator, in consultation with the Attorney General,

1 shall review the regulations and make any necessary
2 revisions.

3 ~~(b) ESTABLISHMENT OF DUTY TO PREVENT CRIMINAL~~
4 ~~RELEASES.~~—Each owner and each operator of a
5 chemical source that is within a high priority category des-
6 ignated under subsection (a) has a general duty with re-
7 spect to covered substances of concern in the same manner
8 and to the same extent as the duty imposed under section
9 5 of the Occupational Safety and Health Act of 1970 (29
10 U.S.C. 654)—

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

14 (2) to ensure safer design and maintenance of
15 the chemical source by taking such actions as are
16 necessary to prevent accidental releases and criminal
17 releases; and

18 ~~(3) to minimize the consequences of any acci-~~
19 dental release or criminal release that does occur.

20 **SEC. 5. ABATEMENT ACTION.**

21 In addition to any other action taken by a State or
22 local government, if the Administrator or the Attorney
23 General determines that there may be an imminent and
24 substantial endangerment to the public health or welfare
25 or the environment because of a potential accidental re-

1 lease or criminal release from a chemical source, or a fail-
 2 ure to provide information or access requested under sec-
 3 tion 6, the Administrator or the Attorney General may—

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

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

14 **SEC. 6. RECORDKEEPING AND ENTRY.**

15 (a) **AUTHORITY OF THE ADMINISTRATOR AND AT-**
 16 **TORNEY GENERAL.—**

17 (1) **RECORDS, REPORTS, AND INFORMATION.—**

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

1 (A) establish and maintain such records;
2 (B) make such reports; and
3 (C) provide such other information;
4 as the Administrator or the Attorney General may
5 reasonably require.

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

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

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

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

23 (1) IN GENERAL.—Except as provided in para-
24 graphs (2) and (3), any record, report, or other in-

1 formation obtained under subsection (a) shall be
2 available to the public.

3 ~~(2) NATIONAL SECURITY.~~—The Administrator
4 or the Attorney General may not disclose to the pub-
5 lic any matter or information authorized to be kept
6 secret in the interest of national defense or national
7 security under section 552 of title 5, United States
8 Code.

9 ~~(3) TRADE SECRETS.~~—

10 ~~(A) IN GENERAL.~~—On a showing satisfac-
11 tory to the Administrator or the Attorney Gen-
12 eral by any person that the making public of
13 any record, report, or other information, or par-
14 ticular portion thereof, to which the Adminis-
15 trator or the Attorney General has access under
16 subsection (a), would divulge any method or
17 process entitled to protection as a trade secret
18 of the person, the Administrator or the Attor-
19 ney General shall consider the record, report, or
20 other information or particular portion thereof
21 to be confidential in accordance with section
22 1905 of title 18, United States Code.

23 ~~(B) DISCLOSURE FOR PURPOSES OF THIS~~
24 ~~ACT.~~—Notwithstanding subparagraph (A), the
25 Administrator or the Attorney General may dis-

1 close any record, report, or other information
2 considered to be confidential under subpara-
3 graph (A) to any other officer, employee, or au-
4 thorized representative of the United States
5 that is concerned with carrying out this Act or
6 when relevant in any proceeding under this Act.

7 **(c) COMPLIANCE ORDERS.—**

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

15 (2) **NOTICE AND OPPORTUNITY FOR HEAR-**
16 **ING.**—An order under paragraph (1) may be issued
17 after such notice and opportunity for hearing as are
18 reasonably appropriate under the circumstances.

19 **SEC. 7. PENALTIES.**

20 (a) **CIVIL PENALTIES.**—Any owner or operator of a
21 chemical source that violates, or fails to comply with, any
22 order issued or any regulation promulgated under this Act
23 may, in an action brought in United States district court,
24 be subject to a civil penalty of not more than \$25,000 for

1 each day in which such violation occurs or such failure
2 to comply continues.

3 (b) ~~CRIMINAL PENALTIES.~~—Any owner or operator
4 of a chemical source that knowingly violates, or fails to
5 comply with, any order issued or any regulation promul-
6 gated under this Act shall—

7 (1) in the case of a first violation or failure to
8 comply, be fined not less than \$2,500 nor more than
9 \$25,000 per day of violation, imprisoned not more
10 than 1 year, or both; and

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

15 **SEC. 8. NO EFFECT ON REQUIREMENTS UNDER OTHER**
16 **LAW.**

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

19 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated such sums
21 as are necessary to carry out this Act.

22 **SECTION 1. SHORT TITLE.**

23 *This Act may be cited as the “Chemical Security Act*
24 *of 2002”.*

1 **SEC. 2. FINDINGS.**

2 *Congress finds that—*

3 *(1) the chemical industry is a crucial part of the*
4 *critical infrastructure of the United States—*

5 *(A) in its own right; and*

6 *(B) because that industry supplies resources*
7 *essential to the functioning of other critical in-*
8 *frastructures;*

9 *(2) the possibility of terrorist and criminal at-*
10 *tacks on chemical sources (such as industrial facili-*
11 *ties) poses a serious threat to public health, safety,*
12 *and welfare, critical infrastructure, national security,*
13 *and the environment;*

14 *(3) the possibility of theft of dangerous chemicals*
15 *from chemical sources for use in terrorist attacks*
16 *poses a further threat to public health, safety, and*
17 *welfare, critical infrastructure, national security, and*
18 *the environment; and*

19 *(4) there are significant opportunities to prevent*
20 *theft from, and criminal attack on, chemical sources*
21 *and reduce the harm that such acts would produce*
22 *by—*

23 *(A)(i) reducing usage and storage of chemi-*
24 *cals by changing production methods and proc-*
25 *esses; and*

1 (ii) employing inherently safer technologies
 2 in the manufacture, transport, and use of chemi-
 3 cals;

4 (B) enhancing secondary containment and
 5 other existing mitigation measures; and

6 (C) improving security.

7 **SEC. 3. DEFINITIONS.**

8 *In this Act:*

9 (1) *ADMINISTRATOR.*—The term “Adminis-
 10 trator” means the Administrator of the Environ-
 11 mental Protection Agency.

12 (2) *CHEMICAL SOURCE.*—The term “chemical
 13 source” means a stationary source (as defined in sec-
 14 tion 112(r)(2) of the Clean Air Act (42 U.S.C.
 15 7412(r)(2))) that contains a substance of concern.

16 (3) *COVERED SUBSTANCE OF CONCERN.*—The
 17 term “covered substance of concern” means a sub-
 18 stance of concern that, in combination with a chem-
 19 ical source and other factors, is designated as a high
 20 priority category by the Administrator under section
 21 4(a)(1).

22 (4) *EMPLOYEE.*—The term “employee” means—
 23 (A) a duly recognized collective bargaining
 24 representative at a chemical source; or

1 (B) *in the absence of such a representative,*
2 *other appropriate personnel.*

3 (5) *HEAD OF THE OFFICE.*—*The term “head of*
4 *the Office” means the head of the Office of Homeland*
5 *Security (or a successor agency).*

6 (6) *SAFER DESIGN AND MAINTENANCE.*—*The*
7 *term “safer design and maintenance” includes, with*
8 *respect to a chemical source that is within a high pri-*
9 *ority category designated under section 4(a)(1), im-*
10 *plementation, to the extent practicable, of the prac-*
11 *tices of—*

12 (A) *preventing or reducing the vulnerability*
13 *of the chemical source to a release of a covered*
14 *substance of concern through use of inherently*
15 *safer technology;*

16 (B) *reducing any vulnerability of the chem-*
17 *ical source to a release of a covered substance of*
18 *concern through use of well-maintained sec-*
19 *ondary containment, control, or mitigation*
20 *equipment;*

21 (C) *reducing any vulnerability of the chem-*
22 *ical source to a release of a covered substance of*
23 *concern by implementing security measures; and*

24 (D) *reducing the potential consequences of*
25 *any vulnerability of the chemical source to a re-*

1 *lease of a covered substance of concern through*
 2 *the use of buffer zones between the chemical*
 3 *source and surrounding populations (including*
 4 *buffer zones between the chemical source and*
 5 *residences, schools, hospitals, senior centers, shop-*
 6 *ping centers and malls, sports and entertainment*
 7 *arenas, public roads and transportation routes,*
 8 *and other population centers).*

9 (7) *SECURITY MEASURE.—*

10 (A) *IN GENERAL.—The term “security*
 11 *measure” means an action carried out to in-*
 12 *crease the security of a chemical source.*

13 (B) *INCLUSIONS.—The term “security meas-*
 14 *ure”, with respect to a chemical source,*
 15 *includes—*

16 (i) *employee training and background*
 17 *checks;*

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

20 (iii) *protection of the perimeter of the*
 21 *chemical source;*

22 (iv) *the installation and operation of*
 23 *an intrusion detection sensor; and*

24 (v) *a measure to increase computer or*
 25 *computer network security.*

1 (8) *SUBSTANCE OF CONCERN.*—*The term “sub-*
2 *stance of concern” means—*

3 (A) *any regulated substance (as defined in*
4 *section 112(r) of the Clean Air Act (42 U.S.C.*
5 *7412(r)); and*

6 (B) *any substance designated by the Admin-*
7 *istrator under section 4(a).*

8 (9) *UNAUTHORIZED RELEASE.*—*The term “un-*
9 *authorized release” means—*

10 (A) *a release from a chemical source into*
11 *the environment of a covered substance of con-*
12 *cern that is caused, in whole or in part, by a*
13 *criminal act;*

14 (B) *a release into the environment of a cov-*
15 *ered substance of concern that has been removed*
16 *from a chemical source, in whole or in part, by*
17 *a criminal act; and*

18 (C) *a release or removal from a chemical*
19 *source of a covered substance of concern that is*
20 *unauthorized by the owner or operator of the*
21 *chemical source.*

22 (10) *USE OF INHERENTLY SAFER TECH-*
23 *NOLOGY.*—

24 (A) *IN GENERAL.*—*The term “use of inher-*
25 *ently safer technology”, with respect to a chem-*

1 *ical source, means use of a technology, product,*
2 *raw material, or practice that, as compared with*
3 *the technologies, products, raw materials, or*
4 *practices currently in use—*

5 *(i) reduces or eliminates the possibility*
6 *of a release of a substance of concern from*
7 *the chemical source prior to secondary con-*
8 *tainment, control, or mitigation; and*

9 *(ii) reduces or eliminates the threats to*
10 *public health and the environment associ-*
11 *ated with a release or potential release of a*
12 *substance of concern from the chemical*
13 *source.*

14 *(B) INCLUSIONS.—The term “use of inher-*
15 *ently safer technology” includes input substi-*
16 *tution, catalyst or carrier substitution, process*
17 *redesign (including reuse or recycling of a sub-*
18 *stance of concern), product reformulation, proce-*
19 *dure simplification, and technology modification*
20 *so as to—*

21 *(i) use less hazardous substances or be-*
22 *nign substances;*

23 *(ii) use a smaller quantity of covered*
24 *substances of concern;*

- 1 (iii) reduce hazardous pressures or
- 2 temperatures;
- 3 (iv) reduce the possibility and poten-
- 4 tial consequences of equipment failure and
- 5 human error;
- 6 (v) improve inventory control and
- 7 chemical use efficiency; and
- 8 (vi) reduce or eliminate storage, trans-
- 9 portation, handling, disposal, and discharge
- 10 of substances of concern.

11 **SEC. 4. DESIGNATION OF AND REQUIREMENTS FOR HIGH**
 12 **PRIORITY CATEGORIES.**

13 (a) *DESIGNATION AND REGULATION OF HIGH PRI-*
 14 *ORITY CATEGORIES BY THE ADMINISTRATOR.—*

15 (1) *IN GENERAL.*—Not later than 1 year after
 16 the date of enactment of this Act, the Administrator,
 17 in consultation with the head of the Office and State
 18 and local agencies responsible for planning for and
 19 responding to unauthorized releases and providing
 20 emergency health care, shall promulgate regulations to
 21 designate certain combinations of chemical sources
 22 and substances of concern as high priority categories
 23 based on the severity of the threat posed by an unau-
 24 thorized release from the chemical sources.

1 (2) *FACTORS TO BE CONSIDERED.*—*In design-*
 2 *ating high priority categories under paragraph (1),*
 3 *the Administrator, in consultation with the head of*
 4 *the Office, shall consider—*

5 (A) *the severity of the harm that could be*
 6 *caused by an unauthorized release;*

7 (B) *the proximity to population centers;*

8 (C) *the threats to national security;*

9 (D) *the threats to critical infrastructure;*

10 (E) *threshold quantities of substances of*
 11 *concern that pose a serious threat; and*

12 (F) *such other safety or security factors as*
 13 *the Administrator, in consultation with the head*
 14 *of the Office, determines to be appropriate.*

15 (3) *REQUIREMENTS FOR HIGH PRIORITY CAT-*
 16 *EGORIES.*—

17 (A) *IN GENERAL.*—*Not later than 1 year*
 18 *after the date of enactment of this Act, the Ad-*
 19 *ministrator, in consultation with the head of the*
 20 *Office, the United States Chemical Safety and*
 21 *Hazard Investigation Board, and State and*
 22 *local agencies described in paragraph (1), shall*
 23 *promulgate regulations to require each owner*
 24 *and each operator of a chemical source that is*
 25 *within a high priority category designated under*

1 paragraph (1), in consultation with local law
2 enforcement, first responders, and employees,
3 to—

4 (i) conduct an assessment of the vul-
5 nerability of the chemical source to a ter-
6 rorist attack or other unauthorized release;

7 (ii) using appropriate hazard assess-
8 ment techniques, identify hazards that may
9 result from an unauthorized release of a
10 covered substance of concern; and

11 (iii) prepare a prevention, prepared-
12 ness, and response plan that incorporates
13 the results of those vulnerability and hazard
14 assessments.

15 (B) ACTIONS AND PROCEDURES.—A preven-
16 tion, preparedness, and response plan required
17 under subparagraph (A)(iii) shall include ac-
18 tions and procedures, including safer design and
19 maintenance of the chemical source, to eliminate
20 or significantly lessen the potential consequences
21 of an unauthorized release of a covered substance
22 of concern.

23 (C) THREAT INFORMATION.—To the max-
24 imum extent permitted by applicable authorities
25 and the interests of national security, the head of

1 *the Office, in consultation with the Adminis-*
2 *trator, shall provide owners and operators of*
3 *chemical sources with threat information rel-*
4 *evant to the assessments and plans required*
5 *under subsection (b).*

6 *(4) REVIEW AND REVISIONS.—Not later than 5*
7 *years after the date of promulgation of regulations*
8 *under each of paragraphs (1) and (3), the Adminis-*
9 *trator, in consultation with the head of the Office,*
10 *shall review the regulations and make any necessary*
11 *revisions.*

12 *(5) ADDITION OF SUBSTANCES OF CONCERN.—*
13 *For the purpose of designating high priority cat-*
14 *egories under paragraph (1) or any subsequent revi-*
15 *sion of the regulations promulgated under paragraph*
16 *(1), the Administrator, in consultation with the head*
17 *of the Office, may designate additional substances*
18 *that pose a serious threat as substances of concern.*

19 *(b) CERTIFICATION.—*

20 *(1) VULNERABILITY AND HAZARD ASSESS-*
21 *MENTS.—Not later than 1 year after the date of pro-*
22 *mulgation of regulations under subsection (a)(3), each*
23 *owner and each operator of a chemical source that is*
24 *within a high priority category designated under sub-*
25 *section (a)(1) shall—*

1 (A) *certify to the Administrator that the*
2 *chemical source has conducted assessments in ac-*
3 *cordance with the regulations; and*

4 (B) *submit to the Administrator written*
5 *copies of the assessments.*

6 (2) *PREVENTION, PREPAREDNESS, AND RE-*
7 *SPONSE PLANS.—Not later than 18 months after the*
8 *date of promulgation of regulations under subsection*
9 *(a)(3), the owner or operator shall—*

10 (A) *certify to the Administrator that the*
11 *chemical source has completed a prevention, pre-*
12 *paredness, and response plan that incorporates*
13 *the results of the assessments and complies with*
14 *the regulations; and*

15 (B) *submit to the Administrator a written*
16 *copy of the plan.*

17 (3) *5-YEAR REVIEW.—Not later than 5 years*
18 *after each of the date of submission of a copy of an*
19 *assessment under paragraph (1) and a plan under*
20 *paragraph (2), and not less often than every 3 years*
21 *thereafter, the owner or operator of the chemical*
22 *source covered by the assessment or plan, in coordina-*
23 *tion with local law enforcement and first responders,*
24 *shall—*

1 (A) review the adequacy of the assessment
2 or plan, as the case may be; and

3 (B)(i) certify to the Administrator that the
4 chemical source has completed the review; and

5 (ii) as appropriate, submit to the Adminis-
6 trator any changes to the assessment or plan.

7 (4) *PROTECTION OF INFORMATION.*—

8 (A) *DISCLOSURE EXEMPTION.*—*Except with*
9 *respect to certifications specified in paragraphs*
10 *(1) through (3) of this subsection and section*
11 *5(a), all information provided to the Adminis-*
12 *trator under this subsection, and all information*
13 *derived from that information, shall be exempt*
14 *from disclosure under section 552 of title 5,*
15 *United States Code.*

16 (B) *DEVELOPMENT OF PROTOCOLS.*—

17 (i) *IN GENERAL.*—*The Administrator,*
18 *in consultation with the head of the Office,*
19 *shall develop such protocols as are necessary*
20 *to protect the copies of the assessments and*
21 *plans required to be submitted under this*
22 *subsection (including the information con-*
23 *tained in those assessments and plans) from*
24 *unauthorized disclosure.*

1 (ii) *REQUIREMENTS.*—*The protocols*
2 *developed under clause (i) shall ensure*
3 *that—*

4 (I) *each copy of an assessment or*
5 *plan, and all information contained in*
6 *or derived from the assessment or plan,*
7 *is maintained in a secure location;*

8 (II) *except as provided in sub-*
9 *paragraph (C), only individuals des-*
10 *ignated by the Administrator may*
11 *have access to the copies of the assess-*
12 *ments and plans; and*

13 (III) *no copy of an assessment or*
14 *plan or any portion of an assessment*
15 *or plan, and no information contained*
16 *in or derived from an assessment or*
17 *plan, shall be available to any person*
18 *other than an individual designated by*
19 *the Administrator.*

20 (iii) *DEADLINE.*—*As soon as prac-*
21 *ticable, but not later than 1 year after the*
22 *date of enactment of this Act, the Adminis-*
23 *trator shall complete the development of*
24 *protocols under clause (i) so as to ensure*
25 *that the protocols are in place before the*

1 *date on which the Administrator receives*
 2 *any assessment or plan under this sub-*
 3 *section.*

4 (C) *FEDERAL OFFICERS AND EMPLOYEES.—*
 5 *An individual referred to in subparagraph*
 6 *(B)(ii) who is an officer or employee of the*
 7 *United States may discuss with a State or local*
 8 *official the contents of an assessment or plan de-*
 9 *scribed in that subparagraph.*

10 **SEC. 5. ENFORCEMENT.**

11 (a) *REVIEW OF PLANS.—*

12 (1) *IN GENERAL.—The Administrator, in con-*
 13 *sultation with the head of the Office, shall review each*
 14 *assessment and plan submitted under section 4(b) to*
 15 *determine the compliance of the chemical source cov-*
 16 *ered by the assessment or plan with regulations pro-*
 17 *mulgated under paragraphs (1) and (3) of section*
 18 *4(a).*

19 (2) *CERTIFICATION OF COMPLIANCE.—*

20 (A) *IN GENERAL.—The Administrator shall*
 21 *certify in writing each determination of the Ad-*
 22 *ministrator under paragraph (1).*

23 (B) *INCLUSIONS.—A certification of the Ad-*
 24 *ministrator shall include a checklist indicating*
 25 *consideration by a chemical source of the use of*

1 4 elements of safer design and maintenance de-
 2 scribed in subparagraphs (A) through (D) of sec-
 3 tion 3(6).

4 (C) *EARLY COMPLIANCE.*—

5 (i) *IN GENERAL.*—*The Administrator,*
 6 *in consultation with the head of the Office,*
 7 *shall—*

8 (I) *before the date of publication*
 9 *of proposed regulations under section*
 10 *4(a)(3), review each assessment or plan*
 11 *submitted to the Administrator under*
 12 *section 4(b); and*

13 (II) *before the date of promulga-*
 14 *tion of final regulations under section*
 15 *4(a)(3), determine whether each such*
 16 *assessment or plan meets the consulta-*
 17 *tion, planning, and assessment require-*
 18 *ments applicable to high priority cat-*
 19 *egories under section 4(a)(3).*

20 (ii) *AFFIRMATIVE DETERMINATION.*—*If*
 21 *the Administrator, in consultation with the*
 22 *head of the Office, makes an affirmative de-*
 23 *termination under clause (i)(II), the Ad-*
 24 *ministrator shall certify compliance of an*
 25 *assessment or plan described in that clause*

1 *without requiring any revision of the assess-*
 2 *ment or plan.*

3 *(D) SCHEDULE FOR REVIEW AND CERTIFI-*
 4 *CATION.—*

5 *(i) IN GENERAL.—The Administrator,*
 6 *after taking into consideration the factors*
 7 *described in section 4(a)(2), shall establish*
 8 *a schedule for the review and certification of*
 9 *assessments and plans submitted under sec-*
 10 *tion 4(b).*

11 *(ii) DEADLINE FOR COMPLETION.—Not*
 12 *later than 3 years after the deadlines for the*
 13 *submission of assessments and plans under*
 14 *paragraph (1) or (2), respectively, of section*
 15 *4(b), the Administrator shall complete the*
 16 *review and certification of all assessments*
 17 *and plans submitted under those sections.*

18 *(b) COMPLIANCE ASSISTANCE.—*

19 *(1) DEFINITION OF DETERMINATION.—In this*
 20 *subsection, the term “determination” means a deter-*
 21 *mination by the Administrator that, with respect to*
 22 *an assessment or plan described in section 4(b)—*

23 *(A) the assessment or plan does not comply*
 24 *with regulations promulgated under paragraphs*
 25 *(1) and (3) of section 4(a); or*

1 (B)(i) a threat exists beyond the scope of the
2 submitted plan; or

3 (ii) current implementation of the plan is
4 insufficient to address—

5 (I) the results of an assessment of a
6 source; or

7 (II) a threat described in clause (i).

8 (2) DETERMINATION BY ADMINISTRATOR.—If the
9 Administrator, after consultation with the head of the
10 Office, makes a determination, the Administrator
11 shall—

12 (A) notify the chemical source of the deter-
13 mination; and

14 (B) provide such advice and technical as-
15 sistance, in coordination with the head of the Of-
16 fice and the United States Chemical Safety and
17 Hazard Investigation Board, as is
18 appropriate—

19 (i) to bring the assessment or plan of
20 a chemical source described in section 4(b)
21 into compliance; or

22 (ii) to address any threat described in
23 clause (i) or (ii) of paragraph (1)(B).

24 (c) COMPLIANCE ORDERS.—

1 (1) *IN GENERAL.*—If, after the date that is 30
 2 days after the later of the date on which the Adminis-
 3 trator first provides assistance, or a chemical source
 4 receives notice, under subsection (b)(2)(B), a chemical
 5 source has not brought an assessment or plan for
 6 which the assistance is provided into compliance with
 7 regulations promulgated under paragraphs (1) and
 8 (3) of section 4(a), or the chemical source has not
 9 complied with an entry or information request under
 10 section 6, the Administrator may issue an order di-
 11 recting compliance by the chemical source.

12 (2) *NOTICE AND OPPORTUNITY FOR HEARING.*—
 13 An order under paragraph (1) may be issued only
 14 after notice and opportunity for a hearing.

15 (d) *ABATEMENT ACTION.*—

16 (1) *IN GENERAL.*—Notwithstanding a certifi-
 17 cation under section 5(a)(2), if the head of the Office,
 18 in consultation with local law enforcement officials
 19 and first responders, determines that a threat of a ter-
 20 rorist attack exists that is beyond the scope of a sub-
 21 mitted prevention, preparedness, and response plan of
 22 1 or more chemical sources, or current implementa-
 23 tion of the plan is insufficient to address the results
 24 of an assessment of a source or a threat described in

1 subsection (b)(1)(B)(i), the head of the Office shall no-
 2 tify each chemical source of the elevated threat.

3 (2) *INSUFFICIENT RESPONSE.*—If the head of the
 4 Office determines that a chemical source has not
 5 taken appropriate action in response to a notification
 6 under paragraph (1), the head of the Office shall no-
 7 tify the chemical source, the Administrator, and the
 8 Attorney General that actions taken by the chemical
 9 source in response to the notification are insufficient.

10 (3) *RELIEF.*—

11 (A) *IN GENERAL.*—On receipt of a notifica-
 12 tion under paragraph (2), the Administrator or
 13 the Attorney General may secure such relief as is
 14 necessary to abate a threat described in para-
 15 graph (1), including such orders as are necessary
 16 to protect public health or welfare.

17 (B) *JURISDICTION.*—The district court of
 18 the United States for the district in which a
 19 threat described in paragraph (1) occurs shall
 20 have jurisdiction to grant such relief as the Ad-
 21 ministrator or Attorney General requests under
 22 subparagraph (A).

23 **SEC. 6. RECORDKEEPING AND ENTRY.**

24 (a) *RECORDS MAINTENANCE.*—A chemical source that
 25 is required to certify to the Administrator assessments and

1 *plans under section 4 shall maintain on the premises of*
 2 *the chemical source a current copy of those assessments and*
 3 *plans.*

4 *(b) RIGHT OF ENTRY.—In carrying out this Act, the*
 5 *Administrator (or an authorized representative of the Ad-*
 6 *ministrator), on presentation of credentials—*

7 *(1) shall have a right of entry to, on, or through*
 8 *any premises of an owner or operator of a chemical*
 9 *source described in subsection (a) or any premises in*
 10 *which any records required to be maintained under*
 11 *subsection (a) are located; and*

12 *(2) may at reasonable times have access to, and*
 13 *may copy, any records, reports, or other information*
 14 *described in subsection (a).*

15 *(c) INFORMATION REQUESTS.—In carrying out this*
 16 *Act, the Administrator may require any chemical source*
 17 *to provide such information as is necessary to—*

18 *(1) enforce this Act; and*

19 *(2) promulgate or enforce regulations under this*
 20 *Act.*

21 **SEC. 7. PENALTIES.**

22 *(a) CIVIL PENALTIES.—Any owner or operator of a*
 23 *chemical source that violates, or fails to comply with, any*
 24 *order issued may, in an action brought in United States*
 25 *district court, be subject to a civil penalty of not more than*

1 \$25,000 for each day in which such violation occurs or such
 2 failure to comply continues.

3 (b) *CRIMINAL PENALTIES.*—Any owner or operator of
 4 a chemical source that knowingly violates, or fails to com-
 5 ply with, any order issued shall—

6 (1) in the case of a first violation or failure to
 7 comply, be fined not less than \$2,500 nor more than
 8 \$25,000 per day of violation, imprisoned not more
 9 than 1 year, or both; and

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

14 (c) *ADMINISTRATIVE PENALTIES.*—

15 (1) *PENALTY ORDERS.*—If the amount of a civil
 16 penalty determined under subsection (a) does not ex-
 17 ceed \$125,000, the penalty may be assessed in an
 18 order issued by the Administrator.

19 (2) *NOTICE AND HEARING.*—Before issuing an
 20 order described in paragraph (1), the Administrator
 21 shall provide to the person against which the penalty
 22 is to be assessed—

23 (A) written notice of the proposed order;
 24 and

1 (B) the opportunity to request, not later
2 than 30 days after the date on which the notice
3 is received by the person, a hearing on the pro-
4 posed order.

5 **SEC. 8. NO EFFECT ON REQUIREMENTS UNDER OTHER LAW.**

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

8 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated such sums as
10 are necessary to carry out this Act.

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S. 1602

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A BILL

To help the public against the threat of chemical
attacks.

NOVEMBER 15, 2002

Reported with an amendment