

Calendar No. 509

108TH CONGRESS
2D SESSION

S. 994

[Report No. 108-261]

To protect human health and the environment from the release of hazardous substances by acts of terrorism.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2003

Mr. INHOFE (for himself and Mr. MILLER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

MAY 11, 2004

Reported by Mr. INHOFE, with an amendment

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

A BILL

To protect human health and the environment from the release of hazardous substances by acts of terrorism.

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 Facilities Se-
5 ~~curity Act of 2003~~”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) industries that manufacture, distribute, and
4 process chemicals are crucial components of the na-
5 tional economy and the critical infrastructure of the
6 United States—

7 (A) in their own right; and

8 (B) because those industries supply re-
9 sources essential to the functioning of other
10 critical infrastructure;

11 (2) a terrorist attack on a facility that manu-
12 factures, processes, or uses potentially dangerous
13 chemicals, or a theft of those chemicals from such
14 a facility for use in a terrorist attack, could pose a
15 serious threat to—

16 (A) public health, safety, and welfare;

17 (B) critical infrastructure; and

18 (C) national security;

19 (3) to protect public health, safety, and welfare,
20 critical infrastructure, and national security, every
21 reasonable effort should be made to ensure the secu-
22 rity of sources of potentially dangerous chemicals
23 against acts of terrorism; and

24 (4) while programs to protect the health and
25 safety of workers, the public, and the environment
26 by reducing the potential for accidental releases of

1 potentially dangerous chemicals, including the con-
2 sequences of worst-case releases of those chemicals,
3 are in place as required by numerous Federal and
4 State laws, the events of September 11, 2001, dem-
5 onstrate the need to ensure that appropriate security
6 measures are taken to address the threat of acts of
7 terrorism against facilities that manufacture, use, or
8 process potentially dangerous chemicals.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) **CHEMICAL SOURCE.**—The term “chemical
12 source” means a non-Federal stationary source (as
13 defined in section 112(r)(2) of the Clean Air Act (42
14 U.S.C. 7412(r)(2))) for which—

15 (A) the owner or operator is required to
16 complete a risk management plan in accordance
17 with section 112(r)(7)(B)(ii) of the Clean Air
18 Act (42 U.S.C. 7412(r)(7)(B)(ii)); and

19 (B) the Secretary is required to promul-
20 gate implementing regulations under section
21 4(a) of this Act.

22 (2) **DEPARTMENT.**—The term “Department”
23 means the Department of Homeland Security.

24 (3) **ENVIRONMENT.**—The term “environment”
25 has the meaning given the term in section 101 of the

1 Comprehensive Environmental Response, Compensation,
2 tion, and Liability Act of 1980 (42 U.S.C. 9601).

3 (4) OWNER OR OPERATOR.—The term “owner
4 or operator” has the meaning given the term in sec-
5 tion 112(a) of the Clean Air Act (42 U.S.C.
6 7412(a)).

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

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

13 (7) SECURITY MEASURE.—

14 (A) IN GENERAL.—The term “security
15 measure” means an action carried out to ensure
16 or enhance the security of a chemical source.

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

20 (i) an employee training and back-
21 ground check;

22 (ii) the limitation and prevention of
23 access to controls of the chemical source;

24 (iii) the protection of the perimeter of
25 the chemical source;

1 (iv) the installation and operation of
2 intrusion detection sensors;

3 (v) the implementation of measures to
4 increase computer or computer network se-
5 curity;

6 (vi) the implementation of other secu-
7 rity-related measures to protect against or
8 reduce the threat of—

9 (I) a terrorist attack on the
10 chemical source; or

11 (II) the theft of a substance of
12 concern for offsite release in further-
13 ance of an act of terrorism; and

14 (vii) conduct of any similar security-
15 related activity, as determined by the Sec-
16 retary.

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

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

1 ~~(B)~~ such other chemical substance as the
2 Secretary may designate under section 4(g).

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

6 ~~(10)~~ **TERRORIST RELEASE.**—The term “ter-
7 rorist release” means—

8 (A) a release from a chemical source into
9 the environment of a substance of concern that
10 is caused by an act of terrorism; and

11 (B) the theft of a substance of concern by
12 a person for off-site release in furtherance of an
13 act of terrorism.

14 **SEC. 4. VULNERABILITY ASSESSMENTS AND SITE SECURITY**
15 **PLANS.**

16 ~~(a)~~ **REQUIREMENT.**—

17 ~~(1)~~ **IN GENERAL.**—Not later than 1 year after
18 the date of enactment of this Act, the Secretary
19 shall promulgate regulations that require the owner
20 or operator of each chemical source included on the
21 list described in subsection (f)(1)—

22 (A) to conduct an assessment of the vul-
23 nerability of the chemical source to a terrorist
24 release, including identifying hazards that may
25 result from a terrorist release;

1 (B) to prepare and implement a site secu-
2 rity plan that addresses the results of the vul-
3 nerability assessment; and

4 (C) to provide to the Department, on re-
5 quest, copies of the vulnerability assessment
6 and site security plan for review.

7 (2) DEADLINES.—

8 (A) IN GENERAL.—The Secretary shall
9 specify in regulations promulgated under para-
10 graph (1) specific deadlines for the completion
11 and certification of vulnerability assessments
12 and site security plans under subsection (b).

13 (B) ALTERNATIVE DEADLINES.—The Sec-
14 retary may establish deadlines other than dead-
15 lines described in subparagraph (A) for dif-
16 ferent categories of chemical sources based on
17 the regulatory criteria specified in subsection
18 (e).

19 (3) CONTENTS OF SITE SECURITY PLAN.—A
20 site security plan required under the regulations pro-
21 mulgated under paragraph (1)—

22 (A)(i) shall include security measures to
23 reduce the vulnerability of the chemical source
24 covered by the plan to a terrorist release; and

1 (ii) may include other actions and proce-
2 dures appropriate to reduce the vulnerability of
3 the chemical source to a terrorist release; and

4 (B) shall describe, at a minimum, par-
5 ticular equipment, plans, and procedures that
6 could be implemented or used by or at the
7 chemical source in the event of a terrorist re-
8 lease.

9 (4) THREAT INFORMATION.—To the maximum
10 extent practicable under applicable authority and in
11 the interests of national security, the Secretary shall
12 provide to an owner or operator of a chemical source
13 required to prepare a vulnerability assessment and
14 site security plan threat information that is relevant
15 to the chemical source.

16 (b) CERTIFICATION AND SUBMISSION.—

17 (1) IN GENERAL.—Each owner or operator of a
18 chemical source shall certify in writing to the Sec-
19 retary that the owner or operator has completed a
20 vulnerability assessment, and has developed and im-
21 plemented or is implementing a site security plan, in
22 accordance with this Act, including—

23 (A) regulations promulgated under sub-
24 section (a)(1); and

1 ~~(B)~~ any applicable procedures, protocols,
 2 or standards endorsed or recognized by the Sec-
 3 retary under subsection ~~(e)(2)~~.

4 ~~(2)~~ COPIES.—An owner or operator of a chem-
 5 ical source shall provide to the Secretary, upon re-
 6 quest, copies of the vulnerability assessment and site
 7 security plan of the chemical source for review.

8 ~~(3)~~ OVERSIGHT.—The Secretary shall, at such
 9 times and places as the Secretary determines to be
 10 appropriate, conduct or require the conduct of vul-
 11 nerability assessments and other activities (including
 12 third-party audits) to ensure and evaluate compli-
 13 ance with—

14 ~~(A)~~ this Act (including regulations promul-
 15 gated under subsection ~~(a)(1)~~); and

16 ~~(B)~~ other applicable procedures, protocols,
 17 or standards endorsed or recognized by the Sec-
 18 retary under subsection ~~(e)(2)~~.

19 ~~(e)~~ SPECIFIED STANDARDS.—

20 ~~(1)~~ IN GENERAL.—The Secretary may—

21 ~~(A)~~ promulgate regulations establishing
 22 procedures, protocols, and standards for vulner-
 23 ability assessments and site security plans; and

24 ~~(B)~~ establish provisions identifying security
 25 measures that, if implemented, would establish

1 the sufficiency of a vulnerability assessment or
2 site security plan.

3 ~~(2) EXISTING PROCEDURES, PROTOCOLS, AND~~
4 STANDARDS.—Upon petition by any person of the
5 Secretary, and after receipt by that person of a writ-
6 ten response from the Secretary, any procedures,
7 protocols, and standards established by the Sec-
8 retary under regulations promulgated under para-
9 graph (1)(A) may—

10 (A) endorse or recognize procedures, proto-
11 cols, and standards—

12 (i) that are established by—

13 (I) industry;

14 (II) Federal, State, or local au-
15 thorities; or

16 (III) other applicable law; and

17 (ii) the requirements of which the Sec-
18 retary determines to be—

19 (I) substantially equivalent to the
20 requirements under subsection (a);
21 and

22 (II) in effect on or after the date
23 of enactment of this Act; and

1 (B) require that a vulnerability assessment
2 and site security plan address a particular
3 threat or type of threat.

4 (3) NO ACTION BY SECRETARY.—If the Sec-
5 retary does not endorse or recognize existing proce-
6 dures, protocols, and standards described in para-
7 graph (2)(A), the Secretary shall provide to each
8 person that submitted a petition under paragraph
9 (2) a written notification that includes a clear expla-
10 nation of the reasons why the endorsement or rec-
11 ognition was not made.

12 (d) PREPARATION OF ASSESSMENTS AND PLANS.—
13 As of the date of endorsement or recognition by the Sec-
14 retary of a particular procedure, protocol, or standard
15 under subsection (c)(1)(A), any vulnerability assessment
16 or site security plan that is prepared by a chemical source
17 before, on, or after the date of endorsement or recognition
18 of, and in accordance with, that procedure, protocol, or
19 standard, shall be exempt from subsection (c) and para-
20 graphs (1) and (3) of subsection (a) (including such a vul-
21 nerability assessment or site security plan prepared before,
22 on, or after the date of enactment of this Act).

23 (e) REGULATORY CRITERIA.—In exercising the au-
24 thority under subsections (a) and (c) with respect to a
25 chemical source, the Secretary shall consider—

1 (1) the likelihood that a chemical source will be
2 the target of terrorism;

3 (2) the nature and quantity of the substances
4 of concern present at a chemical source;

5 (3) the potential extent of death, injury, or seri-
6 ous adverse effects to human health or the environ-
7 ment that would result from a terrorist release;

8 (4) the potential harm to critical infrastructure
9 and national security from a terrorist release;

10 (5) cost and technical feasibility;

11 (6) scale of operations; and

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

16 (f) LIST OF CHEMICAL SOURCES.—

17 (1) IN GENERAL.—Not later than 180 days
18 after the date of enactment of this Act, the Sec-
19 retary develop a list of chemical sources in existence
20 as of that date.

21 (2) CONSIDERATIONS.—In developing the list
22 under paragraph (1), the Secretary shall consider
23 the criteria specified in subsection (e).

24 (3) FUTURE DETERMINATIONS.—Not later than
25 3 years after the date of promulgation of regulations

1 under subsections (a)(1) and (c), and every 3 years
2 thereafter, the Secretary shall, after considering the
3 criteria described in subsection (c)—

4 (A) determine whether facilities not in-
5 cluded in the most recent list under paragraph
6 (1) (including, as of the date of the determina-
7 tion, facilities that are operational and facilities
8 that will become operational in the future) shall
9 be considered to be a chemical source under
10 this Act;

11 (B) determine whether any chemical source
12 identified on the most recent list under para-
13 graph (1) no longer presents a risk sufficient to
14 justify retention of classification as a chemical
15 source under this Act; and

16 (C) update the list as appropriate.

17 (4) REGULATIONS.—The Secretary may make a
18 determination under this subsection in regulations
19 promulgated under subsection (a)(1).

20 (g) DESIGNATION, EXEMPTION, AND ADJUSTMENT
21 OF THRESHOLD QUANTITIES OF SUBSTANCES OF CON-
22 CERN.—

23 (1) IN GENERAL.—The Secretary may, by regu-
24 lation—

1 (A) designate certain chemical substances
2 in particular threshold quantities as substances
3 of concern under this Act;

4 (B) exempt certain chemical substances
5 from designation as substances of concern
6 under this Act; and

7 (C) adjust the threshold quantity of a
8 chemical substance.

9 (2) ~~CONSIDERATIONS.~~—In designating or ex-
10 empting a chemical substance or adjusting the
11 threshold quantity of a chemical substance under
12 paragraph (1), the Secretary shall consider the po-
13 tential extent of death, injury, or serious adverse ef-
14 fects to human health or the environment that would
15 result from a terrorist release of the chemical sub-
16 stance.

17 (3) ~~REGULATIONS.~~—The Secretary may make a
18 designation, exemption, or adjustment under this
19 paragraph (1) in regulations promulgated under
20 subsection (a)(1).

21 (h) ~~5-YEAR REVIEW.~~—Not later than 5 years after
22 the date of certification of a vulnerability assessment and
23 a site security plan under subsection (b)(1), and not less
24 often than every 5 years thereafter (or on such a schedule
25 as the Secretary may establish by regulation), the owner

1 or operator of the chemical source covered by the vulner-
 2 ability assessment or site security plan shall—

3 (1) review the adequacy of the vulnerability as-
 4 assessment and site security plan; and

5 (2)(A) certify to the Secretary that the chemical
 6 source has completed the review and implemented
 7 any modifications to the site security plan; and

8 (B) upon request by the Secretary, submit to
 9 the Secretary a description of any changes to the
 10 vulnerability assessment or site security plan.

11 (i) PROTECTION OF INFORMATION.—

12 (1) DISCLOSURE EXEMPTION.—Except with re-
 13 spect to certifications specified in subsections
 14 (b)(1)(A) and (h)(2)(A), all information obtained in
 15 accordance with this Act, and all information derived
 16 from that information (including information shared
 17 with Federal, State, and local governmental entities
 18 under paragraphs (2) and (3)), shall be exempt from
 19 disclosure under—

20 (A) section 552 of title 5, United States
 21 Code; or

22 (B) any State or local law providing for
 23 public access to information.

24 (2) DEVELOPMENT OF PROTOCOLS.—

1 (A) ~~IN GENERAL.~~—The Secretary, in con-
2 sultation with the Director of the Office of
3 Management and Budget and appropriate Fed-
4 eral law enforcement and intelligence officials,
5 and in a manner consistent with existing pro-
6 tections for sensitive or classified information,
7 shall, by regulation, establish confidentiality
8 protocols for maintenance and use of informa-
9 tion that is obtained from owners or operators
10 of chemical sources and provided to the Sec-
11 retary under this Act.

12 (B) ~~REQUIREMENTS FOR PROTOCOLS.~~—A
13 protocol established under subparagraph (A)
14 shall ensure that—

15 (i) each copy of a vulnerability assess-
16 ment or site security plan submitted to the
17 Secretary, all information contained in or
18 derived from that assessment or plan, and
19 other information obtained under section
20 7, is maintained in a secure location; and

21 (ii) except as provided in paragraph
22 (3)(B), or as necessary for judicial enforce-
23 ment, access to the copies of the vulner-
24 ability assessments and site security plans
25 submitted to the Secretary, and other in-

1 formation obtained under section 7, shall
 2 be limited to persons designated by the
 3 Secretary.

4 ~~(2) PENALTIES FOR UNAUTHORIZED DISCLO-~~
 5 ~~SURE.—~~

6 ~~(A) IN GENERAL.—~~Except as provided in
 7 subparagraph (B), any individual referred to in
 8 paragraph (2)(B)(ii) who acquires any informa-
 9 tion described in paragraph (2)(A) (including
 10 any reproduction of that information or any in-
 11 formation derived from that information), and
 12 who knowingly or recklessly discloses the infor-
 13 mation, shall—

14 ~~(i) be imprisoned not more than 1~~
 15 ~~year, fined in accordance with chapter 227~~
 16 ~~of title 18, United States Code (applicable~~
 17 ~~to class A misdemeanors), or both; and~~

18 ~~(ii) be removed from Federal office or~~
 19 ~~employment.~~

20 ~~(B) EXCEPTIONS.—~~

21 ~~(i) IN GENERAL.—~~Subparagraph (A)
 22 shall not apply to a person described in
 23 that subparagraph that discloses informa-
 24 tion described in paragraph (2)(A)—

1 (I) to an individual designated by
2 the Secretary under paragraph
3 (2)(B)(ii);

4 (H) for the purpose of section 7;
5 or

6 (III) for use in any administra-
7 tive or judicial proceeding to impose a
8 penalty for failure to comply with a
9 requirement of this Act.

10 (ii) LAW ENFORCEMENT OFFICIALS
11 AND FIRST RESPONDERS.—Notwith-
12 standing subparagraph (A), an individual
13 referred to in paragraph (2)(B)(ii) who is
14 an officer or employee of the United States
15 may share with a State or local law en-
16 forcement or other official (including a
17 first responder) the contents of a vulner-
18 ability assessment or site security plan, or
19 other information described in that para-
20 graph, to the extent disclosure is necessary
21 to carry out this Act.

22 **SEC. 5. ENFORCEMENT.**

23 (a) ACTION BY SECRETARY.—

24 (1) IN GENERAL.—The Secretary, in accord-
25 ance with subsection (b), may—

1 (A) disapprove a vulnerability assessment
2 or site security plan submitted under this Act;
3 and

4 (B) order the owner or operator of the
5 chemical source that submitted the vulnerability
6 assessment or site security plan to revise, recer-
7 tify, and submit the assessment or plan to cor-
8 rect deficiencies specified in the order.

9 (2) FAILURE TO COMPLY.—If an owner or oper-
10 ator of a chemical source fails to certify or submit
11 a vulnerability assessment or site security plan in ac-
12 cordance with this Act, the Secretary may issue an
13 order requiring the certification and submission of a
14 vulnerability assessment or site security plan in ac-
15 cordance with section 4(b).

16 (b) DISAPPROVAL.—The Secretary may disapprove
17 under subsection (a) a vulnerability assessment or site se-
18 curity plan submitted under section 4(b) if the Secretary
19 determines that—

20 (1) the vulnerability assessment or site security
21 plan does not comply with regulations promulgated
22 under subsections (a)(1) and (c) of section 4; or

23 (2) the site security plan, or the implementation
24 of the site security plan, is insufficient to address—

1 (A) the results of a vulnerability assess-
2 ment of a chemical source; or

3 (B) a threat of a terrorist release.

4 (c) COMPLIANCE.—If the Secretary disapproves a
5 vulnerability assessment or site security plan of a chemical
6 source under subsection (b), the Secretary shall—

7 (1) provide the owner or operator of the chem-
8 ical source a written notification of the determina-
9 tion that includes a clear explanation of deficiencies
10 in the vulnerability assessment, site security plan, or
11 implementation of the assessment or plan;

12 (2) consult with the owner or operator of the
13 chemical source to identify appropriate steps to
14 achieve compliance; and

15 (3) if, following that consultation, the owner or
16 operator of the chemical source does not achieve
17 compliance in accordance by such date as the Sec-
18 retary determines to be appropriate under the cir-
19 cumstances, issue an order requiring the owner or
20 operator to correct specified deficiencies.

21 (d) PROTECTION OF INFORMATION.—Any determina-
22 tion of disapproval or order made or issued under this sec-
23 tion shall be exempt from disclosure under—

24 (1) section 552 of title 5, United States Code;
25 and

1 (2) any State or local law providing for public
2 access to information.

3 **SEC. 6. INTERAGENCY TECHNICAL SUPPORT AND CO-**
4 **OPERATION.**

5 The Secretary—

6 (1) may request other Federal agencies to pro-
7 vide technical and analytical support (other than
8 field work) in implementing this Act; and

9 (2) may provide reimbursement for such tech-
10 nical and analytical support received as the Sec-
11 retary determines to be appropriate.

12 **SEC. 7. RECORDKEEPING; SITE INSPECTIONS; PRODUCTION**
13 **OF INFORMATION.**

14 (a) **RECORDKEEPING.**—The owner or operator of a
15 chemical source that is required to prepare a vulnerability
16 assessment or site security plan under section 4(a) shall
17 maintain a current copy of those documents.

18 (b) **RIGHT OF ENTRY.**—In carrying out this Act, the
19 Secretary (or a designee), on presentation of credentials,
20 shall have a right of entry to, on, or through—

21 (1) any premises of an owner or operator of a
22 chemical source described in subsection (a); and

23 (2) any premises on which any record required
24 to be maintained under subsection (a) is located.

1 (e) REQUESTS FOR RECORDS.—In carrying out this
2 Act, the Secretary (or a designee) may require the submis-
3 sion of, or, on presentation of credentials, may at reason-
4 able times seek access to and copy—

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

7 (2) any other documentation necessary for—

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

10 (B) implementation of a site security plan.

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

16 **SEC. 8. PENALTIES.**

17 (a) JUDICIAL RELIEF.—Any owner or operator of a
18 chemical source that violates or fails to comply with any
19 order issued by the Secretary under this Act or a site secu-
20 rity plan submitted to the Secretary under this Act (or,
21 in the case of an exemption described in section 4(d), a
22 procedure, protocol, or standard endorsed or recognized
23 by the Secretary under section 4(e)) may, in a civil action
24 brought in United States district court, be subject, for

1 each day on which the violation occurs or the failure to
 2 comply continues, to—

3 (1) an order for injunctive relief; or

4 (2) a civil penalty of not more than \$50,000.

5 (b) ADMINISTRATIVE PENALTIES.—

6 (1) PENALTY ORDERS.—The Secretary may
 7 issue an administrative penalty of not more than
 8 \$250,000 for failure to comply with an order issued
 9 by the Secretary under this Act.

10 (2) NOTICE AND HEARING.—Before issuing an
 11 order described in paragraph (1), the Secretary shall
 12 provide to the person against which the penalty is to
 13 be assessed—

14 (A) written notice of the proposed order;
 15 and

16 (B) the opportunity to request, not later
 17 than 30 days after the date on which the per-
 18 son receives the notice, a hearing on the pro-
 19 posed order.

20 (3) PROCEDURES.—The Secretary may promul-
 21 gate regulations outlining the procedures for admin-
 22 istrative hearings and appropriate review, including
 23 necessary deadlines.

24 (c) TREATMENT OF INFORMATION IN JUDICIAL PRO-
 25 CEEDINGS.—Information submitted or obtained by the

1 Secretary, information derived from that information, and
2 information submitted by the Secretary under this Act
3 shall be treated in any judicial or administrative action
4 as if the information were classified material.

5 **SEC. 9. PROVISION OF TRAINING.**

6 The Secretary may provide training to State and local
7 officials and owners and operators in furtherance of the
8 purposes of this Act.

9 **SEC. 10. NO EFFECT ON REQUIREMENTS UNDER OTHER**
10 **LAW.**

11 Except as provided in section 4(i), nothing in this Act
12 affects any duty or other requirement imposed under any
13 other Federal or State law.

14 **SECTION. 1. SHORT TITLE.**

15 *This Act may be cited as the “Chemical Facilities Se-*
16 *curity Act of 2004”.*

17 **SEC. 2. DEFINITIONS.**

18 *In this Act:*

19 (1) *ALTERNATIVE APPROACHES.*—*The term “al-*
20 *ternative approaches” means ways of reducing the*
21 *threat of a terrorist release, as well as reducing the*
22 *consequences of a terrorist release from a chemical*
23 *source, including approaches that—*

24 (A) *use smaller quantities of substances of*
25 *concern;*

1 (B) replace a substance of concern with a
2 less hazardous substance; or

3 (C) use less hazardous processes.

4 (2) *CHEMICAL SOURCE*.—The term “chemical
5 source” means a non-Federal stationary source (as
6 defined in section 112(r)(2) of the Clean Air Act (42
7 U.S.C. 7412(r)(2))) for which—

8 (A) the owner or operator is required to
9 complete a risk management plan in accordance
10 with section 112(r)(7)(B)(ii) of the Clean Air
11 Act (42 U.S.C. 7412(r)(7)(B)(ii)); and

12 (B) the Secretary is required to promulgate
13 implementing regulations under section 3(a) of
14 this Act.

15 (3) *CONSIDERATION*.—The term “consideration”
16 includes—

17 (A) an analysis of alternative approaches,
18 including the benefits and risks of such ap-
19 proaches;

20 (B) the potential of the alternative ap-
21 proaches to prevent or reduce the threat or con-
22 sequences of a terrorist release;

23 (C) the cost and technical feasibility of al-
24 ternative approaches; and

1 (D) *the effect of alternative approaches on*
2 *product quality, product cost, and employee safe-*
3 *ty.*

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

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

10 (6) *OWNER OR OPERATOR.—The term “owner or*
11 *operator” has the meaning given the term in section*
12 *112(a) of the Clean Air Act (42 U.S.C. 7412(a)).*

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

17 (8) *SECRETARY.—The term “Secretary” means*
18 *the Secretary of Homeland Security.*

19 (9) *SECURITY MEASURE.—*

20 (A) *IN GENERAL.—The term “security*
21 *measure” means an action carried out to ensure*
22 *or enhance the security of a chemical source.*

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

- 1 (i) an employee training and back-
2 ground check;
- 3 (ii) the limitation and prevention of
4 access to controls of the chemical source;
- 5 (iii) the protection of the perimeter of
6 the chemical source;
- 7 (iv) the installation and operation of
8 intrusion detection sensors;
- 9 (v) the implementation of measures to
10 increase computer or computer network se-
11 curity;
- 12 (vi) the implementation of other secu-
13 rity-related measures to protect against or
14 reduce the threat of—
- 15 (I) a terrorist attack on the chem-
16 ical source; or
- 17 (II) the theft of a substance of
18 concern for offsite release in further-
19 ance of an act of terrorism;
- 20 (vii) the installation of measures and
21 controls to protect against or reduce the
22 consequences of a terrorist attack; and
- 23 (viii) the conduct of any similar secu-
24 rity-related activity, as determined by the
25 Secretary.

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

3 (A) *a chemical substance present at a chem-*
4 *ical source in quantities equal to or exceeding the*
5 *threshold quantities for the chemical substance,*
6 *as defined in or established under paragraphs*
7 *(3) and (5) of section 112(r) of the Clean Air Act*
8 *(42 U.S.C. 7412(r)); and*

9 (B) *such other chemical substance as the*
10 *Secretary may designate under section 3(g).*

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

14 (12) *TERRORIST RELEASE.*—*The term “terrorist*
15 *release” means—*

16 (A) *a release from a chemical source into*
17 *the environment of a substance of concern that is*
18 *caused by an act of terrorism; and*

19 (B) *the theft of a substance of concern by a*
20 *person for off-site release in furtherance of an act*
21 *of terrorism.*

22 **SEC. 3. VULNERABILITY ASSESSMENTS AND SITE SECURITY**
23 **PLANS.**

24 (a) *REQUIREMENT.*—

1 (1) *IN GENERAL.*—Not later than 1 year after
2 the date of enactment of this Act, the Secretary shall
3 promulgate regulations that require the owner or op-
4 erator of each chemical source included on the list de-
5 scribed in subsection (f)(1)—

6 (A) to conduct an assessment of the vulner-
7 ability of the chemical source to a terrorist re-
8 lease, including identifying hazards that may re-
9 sult from a terrorist release; and

10 (B) to prepare and implement a site secu-
11 rity plan that addresses the results of the vulner-
12 ability assessment.

13 (2) *CONTENTS OF SITE SECURITY PLAN.*—A site
14 security plan required under the regulations promul-
15 gated under paragraph (1) or any other plan deter-
16 mined to be substantially equivalent by the Secretary
17 under subsection (c)—

18 (A) shall include security measures to sig-
19 nificantly reduce the vulnerability of the chem-
20 ical source covered by the plan to a terrorist re-
21 lease;

22 (B) shall describe, at a minimum, par-
23 ticular equipment, plans, and procedures that
24 could be implemented or used by or at the chem-
25 ical source in the event of a terrorist release; and

1 (C) shall include consideration and, where
2 practicable in the judgment of the owner or oper-
3 ator of the chemical source, implementation of
4 options to reduce the threat of a terrorist release
5 through the use of alternative approaches.

6 (3) *PROMULGATION.*—Not later than 1 year after
7 the date of enactment of this Act, the Secretary shall
8 promulgate regulations establishing procedures, proto-
9 cols, regulations, and standards for vulnerability as-
10 sessments and site security plans.

11 (4) *GUIDANCE TO SMALL ENTITIES.*—Not later
12 than 1 year after the date of enactment of this Act,
13 the Secretary shall publish guidance to assist small
14 entities in complying with paragraph (2)(C).

15 (5) *THREAT INFORMATION.*—To the maximum
16 extent practicable under applicable authority and in
17 the interests of national security, the Secretary shall
18 provide to an owner or operator of a chemical source
19 required to prepare a vulnerability assessment and
20 site security plan threat information that is relevant
21 to the chemical source.

22 (6) *COORDINATED ASSESSMENTS AND PLANS.*—
23 The regulations promulgated under paragraphs (1)
24 and (3) shall permit the development and implemen-
25 tation of coordinated vulnerability assessments and

1 *site security plans in any case in which more than*
2 *1 chemical source is operating at a single location or*
3 *at contiguous locations, including cases in which a*
4 *chemical source is under the control of more than 1*
5 *owner or operator.*

6 *(b) CERTIFICATION AND SUBMISSION.—*

7 *(1) IN GENERAL.—Each owner or operator of a*
8 *chemical source shall certify in writing to the Sec-*
9 *retary that the owner or operator has completed a*
10 *vulnerability assessment and has developed and im-*
11 *plemented or is implementing a site security plan in*
12 *accordance with this Act, including—*

13 *(A) regulations promulgated under para-*
14 *graphs (1) and (3) of subsection (a); and*

15 *(B) any applicable procedures, protocols, or*
16 *standards endorsed or recognized by the Sec-*
17 *retary under subsection (c)(1).*

18 *(2) SUBMISSION.—Not later than 18 months*
19 *after the date of promulgation of regulations under*
20 *paragraphs (1) and (3) of subsection (a), an owner or*
21 *operator of a chemical source shall provide to the Sec-*
22 *retary copies of the vulnerability assessment and site*
23 *security plan of the chemical source for review.*

24 *(3) OVERSIGHT.—The Secretary shall, at such*
25 *times and places as the Secretary determines to be*

1 appropriate, conduct or require the conduct of vulner-
2 ability assessments and other activities (including
3 third-party audits) to ensure and evaluate compliance
4 with—

5 (A) this Act (including regulations promul-
6 gated under paragraphs (1) and (3) of subsection
7 (a)); and

8 (B) other applicable procedures, protocols,
9 or standards endorsed or recognized by the Sec-
10 retary under subsection (c)(1).

11 (4) *SUBMISSION OF CHANGES.*—The owner or
12 operator of a chemical source shall—

13 (A) provide to the Secretary a description of
14 any significant change that is made to the vul-
15 nerability assessment or site security plan re-
16 quired for the chemical source under this section,
17 not later than 90 days after the date the change
18 is made; and

19 (B) update the certification of the vulner-
20 ability assessment or site security plan.

21 (c) *SPECIFIED STANDARDS.*—

22 (1) *EXISTING PROCEDURES, PROTOCOLS, AND*
23 *STANDARDS.*—Upon submission of a petition by any
24 person to the Secretary, and after receipt by that per-
25 son of a written response from the Secretary, any pro-

1 *cedures, protocols, and standards established by the*
2 *Secretary under regulations promulgated under sub-*
3 *section (a)(3) may—*

4 *(A) endorse or recognize procedures, proto-*
5 *cols, regulations, and standards—*

6 *(i) that are established by—*

7 *(I) industry;*

8 *(II) State or local authorities; or*

9 *(III) other applicable law; and*

10 *(ii) the requirements of which the Sec-*
11 *retary determines to be—*

12 *(I) substantially equivalent to the*
13 *requirements under subsections (a)(1),*
14 *(a)(2), and (a)(3); and*

15 *(II) in effect on or after the date*
16 *of enactment of this Act; and*

17 *(B) require that a vulnerability assessment*
18 *and site security plan address a particular*
19 *threat or type of threat.*

20 *(2) NOTIFICATION OF SUBSTANTIAL EQUIVA-*
21 *LENCY.—If the Secretary endorses or recognizes exist-*
22 *ing procedures, protocols, regulations, and standards*
23 *described in paragraph (1)(A), the Secretary shall*
24 *provide to the person that submitted the petition a*
25 *notice that the procedures, protocols, regulations, and*

1 standards are substantially equivalent to the require-
2 ments of paragraph (1) and paragraphs (1) and (3)
3 of subsection (a).

4 (3) *NO ACTION BY SECRETARY.*—If the Secretary
5 does not endorse or recognize existing procedures, pro-
6 tocols, and standards described in paragraph (1)(A),
7 the Secretary shall provide to each person that sub-
8 mitted a petition under paragraph (1) a written noti-
9 fication that includes a clear explanation of the rea-
10 sons why the endorsement or recognition was not
11 made.

12 (d) *PREPARATION OF ASSESSMENTS AND PLANS.*—As
13 of the date of endorsement or recognition by the Secretary
14 of a particular procedure, protocol, or standard under sub-
15 section (c)(1)(A), any vulnerability assessment or site secu-
16 rity plan that is prepared by a chemical source before, on,
17 or after the date of endorsement or recognition of, and in
18 accordance with, that procedure, protocol, or standard,
19 shall, for the purposes of subsection (b)(3) and section 4,
20 be judged by the Secretary against that procedure, protocol,
21 or standard rather than the relevant regulations promul-
22 gated under subsection (c) and paragraphs (1) and (3) of
23 subsection (a) (including such a vulnerability assessment
24 or site security plan prepared before, on, or after the date
25 of enactment of this Act).

1 (e) *REGULATORY CRITERIA.*—*In exercising the author-*
2 *ity under subsections (a) and (c) with respect to a chemical*
3 *source, the Secretary shall consider—*

4 (1) *the likelihood that a chemical source will be*
5 *the target of terrorism;*

6 (2) *the nature and quantity of the substances of*
7 *concern present at a chemical source;*

8 (3) *the potential extent of death, injury, or seri-*
9 *ous adverse effects to human health or the environ-*
10 *ment that would result from a terrorist release;*

11 (4) *the potential harm to critical infrastructure*
12 *and national security from a terrorist release;*

13 (5) *cost and technical feasibility;*

14 (6) *scale of operations; and*

15 (7) *such other security-related factors as the Sec-*
16 *retary determines to be appropriate and necessary to*
17 *protect the public health and welfare, critical infra-*
18 *structure, and national security.*

19 (f) *LIST OF CHEMICAL SOURCES.*—

20 (1) *IN GENERAL.*—*Not later than 180 days after*
21 *the date of enactment of this Act, the Secretary shall*
22 *develop a list of chemical sources in existence as of*
23 *that date.*

1 (2) *CONSIDERATIONS.*—*In developing the list*
2 *under paragraph (1), the Secretary shall consider the*
3 *criteria specified in subsection (e).*

4 (3) *FUTURE DETERMINATIONS.*—*Not later than*
5 *3 years after the date of promulgation of regulations*
6 *under subsection (c) and paragraphs (1) and (3) of*
7 *subsection (a), and every 3 years thereafter, the Sec-*
8 *retary shall, after considering the criteria described in*
9 *subsection (e)—*

10 (A) *determine whether additional facilities*
11 *(including, as of the date of the determination,*
12 *facilities that are operational and facilities that*
13 *will become operational in the future) shall be*
14 *considered to be a chemical source under this*
15 *Act;*

16 (B) *determine whether any chemical source*
17 *identified on the most recent list under para-*
18 *graph (1) no longer presents a risk sufficient to*
19 *justify retention of classification as a chemical*
20 *source under this Act; and*

21 (C) *update the list as appropriate.*

22 (4) *REGULATIONS.*—*The Secretary may make a*
23 *determination under this subsection in regulations*
24 *promulgated under paragraphs (1) and (3) of sub-*
25 *section (a).*

1 (g) *DESIGNATION, EXEMPTION, AND ADJUSTMENT OF*
2 *THRESHOLD QUANTITIES OF SUBSTANCES OF CONCERN.—*

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

5 (A) *designate certain chemical substances in*
6 *particular threshold quantities as substances of*
7 *concerns under this Act;*

8 (B) *exempt certain chemical substances*
9 *from designation as substances of concern under*
10 *this Act; and*

11 (C) *adjust the threshold quantity of a chem-*
12 *ical substance.*

13 (2) *CONSIDERATIONS.—In designating or ex-*
14 *empting a chemical substance or adjusting the thresh-*
15 *old quantity of a chemical substance under paragraph*
16 *(1), the Secretary shall consider the potential extent*
17 *of death, injury, or serious adverse effects to human*
18 *health or the environment that would result from a*
19 *terrorist release of the chemical substance.*

20 (3) *REGULATIONS.—The Secretary may make a*
21 *designation, exemption, or adjustment under para-*
22 *graph (1) in regulations promulgated under para-*
23 *graphs (1) and (3) of subsection (a).*

24 (h) *5-YEAR REVIEW.—Not later than 5 years after the*
25 *date of certification of a vulnerability assessment and a site*

1 *security plan under subsection (b)(1), and not less often*
 2 *than every 5 years thereafter (or on such a schedule as the*
 3 *Secretary may establish by regulation), the owner or oper-*
 4 *ator of the chemical source covered by the vulnerability as-*
 5 *essment or site security plan shall—*

6 *(1) review the adequacy of the vulnerability as-*
 7 *essment and site security plan; and*

8 *(2)(A) certify to the Secretary that the chemical*
 9 *source has completed the review and implemented any*
 10 *modifications to the site security plan; and*

11 *(B) submit to the Secretary a description of any*
 12 *changes to the vulnerability assessment or site secu-*
 13 *rity plan.*

14 *(i) PROTECTION OF INFORMATION.—*

15 *(1) DISCLOSURE EXEMPTION.—Except with re-*
 16 *spect to certifications specified in subsections*
 17 *(b)(1)(A) and (h)(2)(A), vulnerability assessments*
 18 *and site security plans obtained in accordance with*
 19 *this Act, and materials developed or produced exclu-*
 20 *sively in preparation of those documents (including*
 21 *information shared with Federal, State, and local*
 22 *government entities under paragraphs (3) through*
 23 *(5)), shall be exempt from disclosure under—*

24 *(A) section 552 of title 5, United States*
 25 *Code; or*

1 (B) any State or local law providing for
2 public access to information.

3 (2) NO EFFECT ON OTHER DISCLOSURE.—Noth-
4 ing in this Act affects the handling, treatment, or dis-
5 closure of information obtained from chemical sources
6 under any other law.

7 (3) DEVELOPMENT OF PROTOCOLS.—

8 (A) IN GENERAL.—The Secretary, in con-
9 sultation with the Director of the Office of Man-
10 agement and Budget and appropriate Federal
11 law enforcement and intelligence officials, and in
12 a manner consistent with existing protections for
13 sensitive or classified information, shall, by regu-
14 lation, establish confidentiality protocols for
15 maintenance and use of information that is ob-
16 tained from owners or operators of chemical
17 sources and provided to the Secretary under this
18 Act.

19 (B) REQUIREMENTS FOR PROTOCOLS.—A
20 protocol established under subparagraph (A)
21 shall ensure that—

22 (i) each copy of a vulnerability assess-
23 ment or site security plan submitted to the
24 Secretary, all information contained in or
25 derived from that assessment or plan, and

1 *other information obtained under section 6,*
2 *is maintained in a secure location; and*

3 *(ii) except as provided in paragraph*
4 *(5)(B), or as necessary for judicial enforce-*
5 *ment, access to the copies of the vulner-*
6 *ability assessments and site security plans*
7 *submitted to the Secretary, and other infor-*
8 *mation obtained under section 6, shall be*
9 *limited to persons designated by the Sec-*
10 *retary.*

11 *(4) DISCLOSURE IN CIVIL PROCEEDINGS.—In*
12 *any Federal or State civil or administrative pro-*
13 *ceeding in which a person seeks to compel the disclo-*
14 *sure or the submission as evidence of sensitive infor-*
15 *mation contained in a vulnerability assessment or se-*
16 *curity plan required by subsection (a) or (b) and is*
17 *not otherwise subject to disclosure under other provi-*
18 *sions of law—*

19 *(A) the information sought may be sub-*
20 *mitted to the court under seal; and*

21 *(B) the court, or any other person, shall not*
22 *disclose the information to any person until the*
23 *court, in consultation with the Secretary, deter-*
24 *mines that the disclosure of the information does*

1 *not pose a threat to public security or endanger*
2 *the life or safety of any person.*

3 (5) *PENALTIES FOR UNAUTHORIZED DISCLO-*
4 *SURE.—*

5 (A) *IN GENERAL.—Except as provided in*
6 *subparagraph (B), any individual referred to in*
7 *paragraph (3)(B)(ii) who acquires any informa-*
8 *tion described in paragraph (3)(A) (including*
9 *any reproduction of that information or any in-*
10 *formation derived from that information), and*
11 *who knowingly or recklessly discloses the infor-*
12 *mation, shall—*

13 (i) *be imprisoned not more than 1*
14 *year, fined in accordance with chapter 227*
15 *of title 18, United States Code (applicable*
16 *to class A misdemeanors), or both; and*

17 (ii) *be removed from Federal office or*
18 *employment.*

19 (B) *EXCEPTIONS.—*

20 (i) *IN GENERAL.—Subparagraph (A)*
21 *shall not apply to a person described in*
22 *that subparagraph that discloses informa-*
23 *tion described in paragraph (3)(A)—*

1 (I) to an individual designated by
2 the Secretary under paragraph
3 (3)(B)(ii);

4 (II) for the purpose of section 6;
5 or

6 (III) for use in any administra-
7 tive or judicial proceeding to impose a
8 penalty for failure to comply with a
9 requirement of this Act.

10 (ii) *LAW ENFORCEMENT OFFICIALS*
11 *AND FIRST RESPONDERS.*—Notwithstanding
12 subparagraph (A), an individual referred to
13 in paragraph (3)(B)(ii) who is an officer or
14 employee of the United States may share
15 with a State or local law enforcement or
16 other official (including a first responder)
17 the contents of a vulnerability assessment or
18 site security plan, or other information de-
19 scribed in that paragraph, to the extent dis-
20 closure is necessary to carry out this Act.

21 **SEC. 4. ENFORCEMENT.**

22 (a) *FAILURE TO COMPLY.*—If an owner or operator
23 of a chemical source fails to certify or submit a vulner-
24 ability assessment or site security plan in accordance with
25 this Act, the Secretary may issue an order requiring the

1 *certification and submission of a vulnerability assessment*
2 *or site security plan in accordance with section 3(b).*

3 (b) *DISAPPROVAL.—The Secretary may disapprove*
4 *under subsection (a) a vulnerability assessment or site secu-*
5 *rity plan submitted under section 3(b) if the Secretary de-*
6 *termines that—*

7 (1) *the vulnerability assessment or site security*
8 *plan does not comply with regulations promulgated*
9 *under paragraph (1) and (3) of subsection (a) or the*
10 *procedure, protocol, or standard endorsed or recog-*
11 *nized under section 3(c); or*

12 (2) *the site security plan, or the implementation*
13 *of the site security plan, is insufficient to address—*

14 (A) *the results of a vulnerability assessment*
15 *of a chemical source; or*

16 (B) *a threat of a terrorist release.*

17 (c) *COMPLIANCE.—If the Secretary disapproves a vul-*
18 *nerability assessment or site security plan of a chemical*
19 *source under subsection (b), the Secretary shall—*

20 (1) *provide the owner or operator of the chemical*
21 *source a written notification of the determination*
22 *that includes a clear explanation of deficiencies in the*
23 *vulnerability assessment, site security plan, or imple-*
24 *mentation of the assessment or plan;*

1 (2) *consult with the owner or operator of the*
2 *chemical source to identify appropriate steps to*
3 *achieve compliance; and*

4 (3) *if, following that consultation, the owner or*
5 *operator of the chemical source does not achieve com-*
6 *pliance in accordance by such date as the Secretary*
7 *determines to be appropriate under the circumstances,*
8 *issue an order requiring the owner or operator to cor-*
9 *rect specified deficiencies.*

10 *(d) EMERGENCY POWERS.—*

11 (1) *DEFINITION OF EMERGENCY THREAT.—The*
12 *term “emergency threat” means a threat of a terrorist*
13 *act that could result in a terrorist release at a chem-*
14 *ical source—*

15 (A) *that is beyond the scope of the site secu-*
16 *rity plan as implemented at the chemical source;*

17 (B) *the likelihood of the immediate occur-*
18 *rence of which is high;*

19 (C) *the consequences of which would be se-*
20 *vere; and*

21 (D) *based on the factors described in sub-*
22 *paragraphs (A) through (C), would not be appro-*
23 *priately and reasonably addressed, or addressed*
24 *in a timely manner, by the Secretary under sub-*
25 *sections (a) through (c).*

1 (2) *INITIATION OF ACTION.*—

2 (A) *IN GENERAL.*—*If the Secretary (in con-*
3 *sultation with State and local law enforcement*
4 *officials) determines that an emergency threat*
5 *exists, the Secretary may bring a civil action on*
6 *behalf of the United States in United States dis-*
7 *trict court to immediately require each covered*
8 *source potentially subject to the emergency threat*
9 *to take such actions as are necessary to respond*
10 *to the emergency threat.*

11 (B) *NOTICE AND PARTICIPATION.*—*The Sec-*
12 *retary shall provide to each covered source that*
13 *is the subject of a civil action under subpara-*
14 *graph (A)—*

15 (i) *notice of any injunctive relief to*
16 *compel compliance with this subsection that*
17 *is being sought; and*

18 (ii) *an opportunity to participate in*
19 *any proceedings relating to the civil action.*

20 (3) *EMERGENCY ORDERS.*—

21 (A) *IN GENERAL.*—*If the Secretary deter-*
22 *mines that it is not practicable to ensure prompt*
23 *action to protect public safety from an emer-*
24 *gency threat by commencing a civil action under*

1 *paragraph (2), the Secretary may issue such or-*
2 *ders as are necessary to ensure public safety.*

3 *(B) CONSULTATION.—Before issuing an*
4 *order under subparagraph (A), the Secretary*
5 *shall—*

6 *(i) consult with State and local law*
7 *enforcement officials; and*

8 *(ii) attempt to confirm the accuracy of*
9 *the information on which the action pro-*
10 *posed to be taken is based.*

11 *(C) EFFECTIVENESS OF ORDERS.—*

12 *(i) IN GENERAL.—An order issued by*
13 *the Secretary under this paragraph shall be*
14 *effective for the 60-day period beginning on*
15 *the date of issuance of the order unless the*
16 *Secretary files a civil action under para-*
17 *graph (2) before the expiration of that pe-*
18 *riod.*

19 *(ii) EXTENSION OF EFFECTIVE PE-*
20 *RIOD.—With respect to an order issued*
21 *under this paragraph, the Secretary may*
22 *file a civil action before the end of the 60-*
23 *day period described in clause (i) to extend*
24 *the effective period of the order for—*

25 *(I) 14 days; or*

1 (II) such longer period as the
2 court in which the civil action is filed
3 may authorize.

4 (e) *PROTECTION OF INFORMATION.*—Any determina-
5 tion of disapproval or order made or issued under this sec-
6 tion shall be exempt from disclosure—

7 (1) under section 552 of title 5, United States
8 Code;

9 (2) under any State or local law providing for
10 public access to information; and

11 (3) except as provided in section 3(i)(4), in any
12 Federal or State civil or administrative proceeding.

13 **SEC. 5. INTERAGENCY TECHNICAL SUPPORT AND CO-**
14 **OPERATION.**

15 The Secretary—

16 (1) may request other Federal agencies to pro-
17 vide technical and analytical support (other than
18 field work) in implementing this Act; and

19 (2) may provide reimbursement for such tech-
20 nical and analytical support received as the Secretary
21 determines to be appropriate.

22 **SEC. 6. RECORDKEEPING; SITE INSPECTIONS; PRODUCTION**
23 **OF INFORMATION.**

24 (a) *RECORDKEEPING.*—The owner or operator of a
25 chemical source that is required to prepare a vulnerability

1 *assessment or site security plan under section 3(a) shall*
2 *maintain a current copy of those documents.*

3 (b) *RIGHT OF ENTRY.*—*In carrying out this Act, the*
4 *Secretary (or a designee), on presentation of credentials,*
5 *shall have a right of entry to, on, or through—*

6 (1) *any premises of an owner or operator of a*
7 *chemical source described in subsection (a); and*

8 (2) *any premises on which any record required*
9 *to be maintained under subsection (a) is located.*

10 (c) *REQUESTS FOR RECORDS.*—*In carrying out this*
11 *Act, the Secretary (or a designee) may require the submis-*
12 *sion of, or, on presentation of credentials, may at reasonable*
13 *times seek access to and copy—*

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

16 (2) *any other documentation necessary for—*

17 (A) *review or analysis of a vulnerability as-*
18 *essment or site security plan; or*

19 (B) *implementation of a site security plan.*

20 (d) *COMPLIANCE.*—*If the Secretary determines that an*
21 *owner or operator of a chemical source is not maintaining,*
22 *producing, or permitting access to records as required by*
23 *this section, the Secretary may issue an order requiring*
24 *compliance with the relevant provisions of this section.*

1 **SEC. 7. PENALTIES.**

2 (a) *JUDICIAL RELIEF.*—Any owner or operator of a
3 chemical source that violates or fails to comply with any
4 order issued by the Secretary under this Act or a site secu-
5 rity plan submitted to the Secretary under this Act (or, in
6 the case of an exemption described in section 3(d), a proce-
7 dure, protocol, or standard endorsed or recognized by the
8 Secretary under section 3(c)) may, in a civil action brought
9 in United States district court, be subject, for each day on
10 which the violation occurs or the failure to comply con-
11 tinues, to—

12 (1) an order for injunctive relief; or

13 (2) a civil penalty of not more than \$50,000.

14 (b) *ADMINISTRATIVE PENALTIES.*—

15 (1) *PENALTY ORDERS.*—The Secretary may issue
16 an administrative penalty of not more than \$250,000
17 for failure to comply with an order issued by the Sec-
18 retary under this Act.

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

23 (A) written notice of the proposed order;

24 and

25 (B) the opportunity to request, not later
26 than 30 days after the date on which the person

1 receives the notice, a hearing on the proposed
2 order.

3 (3) *PROCEDURES.*—The Secretary may promul-
4 gate regulations outlining the procedures for adminis-
5 trative hearings and appropriate review, including
6 necessary deadlines.

7 (c) *TREATMENT OF INFORMATION IN JUDICIAL PRO-*
8 *CEEDINGS.*—Information submitted or obtained by the Sec-
9 retary, information derived from that information, and in-
10 formation submitted by the Secretary under this Act (except
11 under section 11) shall be treated in any judicial or admin-
12 istrative action as if the information were classified mate-
13 rial.

14 **SEC. 8. PROVISION OF TRAINING.**

15 The Secretary may provide training to State and local
16 officials and owners and operators in furtherance of the
17 purposes of this Act.

18 **SEC. 9. JUDICIAL REVIEW.**

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

23 (1) the United States Court of Appeals for the
24 District of Columbia; or

25 (2) with the United States circuit court—

1 (A) *having jurisdiction over the State in*
2 *which the person resides; or*

3 (B) *for the circuit in which the principal*
4 *place of business of the person is located.*

5 (b) *FINAL AGENCY ACTIONS OR ORDERS.—Not later*
6 *than 60 days after the date on which a covered source re-*
7 *ceives notice of an action or order of the Secretary under*
8 *this Act with respect to the chemical source, the chemical*
9 *source may file a petition for judicial review of the action*
10 *or order with the United States district court for the district*
11 *in which—*

12 (1) *the chemical source is located; or*

13 (2) *the owner or operator of the chemical source*
14 *has a principal place of business.*

15 (c) *STANDARD OF REVIEW.—*

16 (1) *IN GENERAL.—On the filing of a petition*
17 *under subsection (a) or (b), the court of jurisdiction*
18 *shall review the regulation or other final action or*
19 *order that is the subject of the petition in accordance*
20 *with chapter 7 of title 5, United States Code.*

21 (2) *BASIS.—*

22 (A) *IN GENERAL.—Judicial review of a reg-*
23 *ulation, or of a final agency action or order de-*
24 *scribed in paragraph (1) that is based on an ad-*
25 *ministrative hearing held on the record, shall be*

1 based on the record of the proceedings, comments,
2 and other information that the Secretary consid-
3 ered in promulgating the regulation, taking the
4 action, or issuing the order being reviewed.

5 (B) OTHER ACTIONS AND ORDERS.—Judicial
6 review of a final agency action or order de-
7 scribed in paragraph (1) that is not described in
8 subparagraph (A) shall be based on any submis-
9 sions to the Secretary relating to the action or
10 order, and any other information, that the Sec-
11 retary considered in taking the action or issuing
12 the order.

13 **SEC. 10. NO EFFECT ON REQUIREMENTS UNDER OTHER**
14 **LAW.**

15 (a) IN GENERAL.—Except as provided in section 3(i),
16 nothing in this Act affects any duty or other requirement
17 imposed under any other Federal or State law.

18 (b) OTHER FEDERAL LAW.—

19 (1) IN GENERAL.—Notwithstanding subsection
20 (a), a chemical source that is required to prepare a
21 facility vulnerability assessment and implement a fa-
22 cility security plan under any another Federal law
23 may petition the Secretary to be subject to the other
24 Federal law in lieu of this Act.

1 (2) *DETERMINATION OF SUBSTANTIAL EQUIVA-*
 2 *LENCE.—If the Secretary determines that a Federal*
 3 *law covered by a petition submitted by a chemical*
 4 *source under paragraph (1) is substantially equiva-*
 5 *lent to this Act—*

6 (A) *the Secretary may grant the petition;*
 7 *and*

8 (B) *the chemical source shall be subject to*
 9 *the other Federal law in lieu of this Act.*

10 **SEC. 11. AGRICULTURAL BUSINESS SECURITY GRANT PRO-**
 11 **GRAM.**

12 (a) *DEFINITION OF ELIGIBLE ENTITY.—In this sec-*
 13 *tion, the term “eligible entity” means a retail or production*
 14 *agricultural business (including a business that is engaged*
 15 *in the production or processing of seafood) that employs not*
 16 *more than such number of individuals at a chemical source*
 17 *included in the list described in section 3(f)(1) as shall be*
 18 *determined by the Secretary, in consultation with the Ad-*
 19 *ministrator of the Small Business Administration and the*
 20 *Secretary of Agriculture.*

21 (b) *GRANTS.—The Secretary shall provide grants to an*
 22 *eligible entity that is a chemical source included in the list*
 23 *described in section 3(f)(1) selected under this section to en-*
 24 *able the eligible entity at the chemical source—*

25 (1) *to improve security measures; and*

1 (2) to protect against or reduce the consequence
2 of a terrorist attack.

3 (c) *CRITERIA.*—In establishing criteria for the selec-
4 tion of, or in otherwise selecting, eligible entities to receive
5 a grant under this section, the Secretary shall—

6 (1) consider on an individual, location-by-locat-
7 ion basis, each applicant for a grant; and

8 (2) require each eligible entity that receives a
9 grant to use funds from the grant only for the pur-
10 poses described in subsection (b) in accordance with
11 guidance of the Secretary.

12 (d) *AUTHORIZATION OF APPROPRIATIONS.*—There are
13 authorized to be appropriated such sums as are necessary
14 to carry out this section.

Calendar No. 509

108TH CONGRESS
2^D SESSION

S. 994

[Report No. 108-261]

A BILL

To protect human health and the environment from the release of hazardous substances by acts of terrorism.

MAY 11, 2004

Reported with an amendment