

107TH CONGRESS
2D SESSION

H. R. 5300

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

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2002

Mr. PALLONE (for himself and Mrs. ROUKEMA) introduced the following bill;
which was referred to the Committee on Energy and Commerce

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Chemical Security Act of 2002”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is
7 as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Designation of and requirements for high priority categories.
- Sec. 5. Enforcement.
- Sec. 6. Recordkeeping and entry.
- Sec. 7. Penalties.

Sec. 8. No effect on requirements under other law.

Sec. 9. Authorization of appropriations.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

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

5 (A) in its own right; and

6 (B) because that industry supplies re-
7 sources essential to the functioning of other
8 critical infrastructures;

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 chemi-
15 cals from chemical sources for use in terrorist at-
16 tacks poses a further threat to public health, safety,
17 and welfare, critical infrastructure, national security,
18 and the environment; and

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

1 (A)(i) reducing usage and storage of
2 chemicals by changing production methods and
3 processes; and

4 (ii) employing inherently safer technologies
5 in the manufacture, transport, and use of
6 chemicals;

7 (B) enhancing secondary containment and
8 other existing mitigation measures; and

9 (C) improving security.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

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

15 (2) CHEMICAL SOURCE.—The term “chemical
16 source” means a stationary source (as defined in
17 section 112(r)(2) of the Clean Air Act (42 U.S.C.
18 7412(r)(2))) that contains a substance of concern.

19 (3) 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 and other factors, is designated as a high
23 priority category by the Administrator under section
24 4(a)(1).

1 (4) EMPLOYEE.—The term “employee”
2 means—

3 (A) a duly recognized collective bargaining
4 representative at a chemical source; or

5 (B) in the absence of such a representa-
6 tive, other appropriate personnel.

7 (5) HEAD OF THE OFFICE.—The term “head of
8 the Office” means the head of the Office of Home-
9 land Security (or a successor agency).

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

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

20 (B) reducing any vulnerability of the chem-
21 ical source to a release of a covered substance
22 of concern through use of well-maintained sec-
23 ondary containment, control, or mitigation
24 equipment;

1 (C) reducing any vulnerability of the chem-
2 ical source to a release of a covered substance
3 of concern by implementing security measures;
4 and

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

15 (7) SECURITY MEASURE.—

16 (A) IN GENERAL.—The term “security
17 measure” means an action carried out to in-
18 crease the security of a chemical source.

19 (B) INCLUSIONS.—The term “security
20 measure”, with respect to a chemical source,
21 includes—

22 (i) employee training and background
23 checks;

24 (ii) the limitation and prevention of
25 access to controls of the chemical source;

- 1 (iii) protection of the perimeter of the
2 chemical source;
- 3 (iv) the installation and operation of
4 an intrusion detection sensor; and
- 5 (v) a measure to increase computer or
6 computer network security.

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

9 (A) any regulated substance (as defined in
10 section 112(r) of the Clean Air Act (42 U.S.C.
11 7412(r))); and

12 (B) any substance designated by the Ad-
13 ministrator under section 4(a).

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

16 (A) a release from a chemical source into
17 the environment of a covered substance of con-
18 cern that is caused, in whole or in part, by a
19 criminal act;

20 (B) a release into the environment of a
21 covered substance of concern that has been re-
22 moved from a chemical source, in whole or in
23 part, by a criminal act; and

24 (C) a release or removal from a chemical
25 source of a covered substance of concern that is

1 unauthorized by the owner or operator of the
2 chemical source.

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

5 (A) IN GENERAL.—The term “use of in-
6 herently safer technology”, with respect to a
7 chemical source, means use of a technology,
8 product, raw material, or practice that, as com-
9 pared with the technologies, products, raw ma-
10 terials, or practices currently in use—

11 (i) reduces or eliminates the possi-
12 bility of a release of a substance of concern
13 from the chemical source prior to sec-
14 ondary containment, control, or mitigation;
15 and

16 (ii) reduces or eliminates the threats
17 to public health and the environment asso-
18 ciated with a release or potential release of
19 a substance of concern from the chemical
20 source.

21 (B) INCLUSIONS.—The term “use of inher-
22 ently safer technology” includes input substi-
23 tution, catalyst or carrier substitution, process
24 redesign (including reuse or recycling of a sub-
25 stance of concern), product reformulation, pro-

1 cedure simplification, and technology modifica-
2 tion so as to—

3 (i) use less hazardous substances or
4 benign substances;

5 (ii) use a smaller quantity of covered
6 substances of concern;

7 (iii) reduce hazardous pressures or
8 temperatures;

9 (iv) reduce the possibility and poten-
10 tial consequences of equipment failure and
11 human error;

12 (v) improve inventory control and
13 chemical use efficiency; and

14 (vi) reduce or eliminate storage,
15 transportation, handling, disposal, and dis-
16 charge of substances of concern.

17 **SEC. 4. DESIGNATION OF AND REQUIREMENTS FOR HIGH**
18 **PRIORITY CATEGORIES.**

19 (a) DESIGNATION AND REGULATION OF HIGH PRI-
20 ORITY CATEGORIES BY THE ADMINISTRATOR.—

21 (1) IN GENERAL.—Not later than 1 year after
22 the date of enactment of this Act, the Administrator,
23 in consultation with the head of the Office and State
24 and local agencies responsible for planning for and
25 responding to unauthorized releases and providing

1 emergency health care, shall promulgate regulations
2 to designate certain combinations of chemical
3 sources and substances of concern as high priority
4 categories based on the severity of the threat posed
5 by an unauthorized release from the chemical
6 sources.

7 (2) FACTORS TO BE CONSIDERED.—In desig-
8 nating high priority categories under paragraph (1),
9 the Administrator, in consultation with the head of
10 the Office, shall consider—

11 (A) the severity of the harm that could be
12 caused by an unauthorized release;

13 (B) the proximity to population centers;

14 (C) the threats to national security;

15 (D) the threats to critical infrastructure;

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

18 (F) such other safety or security factors as
19 the Administrator, in consultation with the
20 head of the Office, determines to be appro-
21 priate.

22 (3) REQUIREMENTS FOR HIGH PRIORITY CAT-
23 EGORIES.—

24 (A) IN GENERAL.—Not later than 1 year
25 after the date of enactment of this Act, the Ad-

1 administrator, in consultation with the head of the
2 Office, the United States Chemical Safety and
3 Hazard Investigation Board, and State and
4 local agencies described in paragraph (1), shall
5 promulgate regulations to require each owner
6 and each operator of a chemical source that is
7 within a high priority category designated
8 under paragraph (1), in consultation with local
9 law enforcement, first responders, and employ-
10 ees, to—

11 (i) conduct an assessment of the vul-
12 nerability of the chemical source to a ter-
13 rorist attack or other unauthorized release;

14 (ii) using appropriate hazard assess-
15 ment techniques, identify hazards that may
16 result from an unauthorized release of a
17 covered substance of concern; and

18 (iii) prepare a prevention, prepared-
19 ness, and response plan that incorporates
20 the results of those vulnerability and haz-
21 ard assessments.

22 (B) ACTIONS AND PROCEDURES.—A pre-
23 vention, preparedness, and response plan re-
24 quired under subparagraph (A)(iii) shall include
25 actions and procedures, including safer design

1 and maintenance of the chemical source, to
2 eliminate or significantly lessen the potential
3 consequences of an unauthorized release of a
4 covered substance of concern.

5 (C) THREAT INFORMATION.—To the max-
6 imum extent permitted by applicable authorities
7 and the interests of national security, the head
8 of the Office, in consultation with the Adminis-
9 trator, shall provide owners and operators of
10 chemical sources with threat information rel-
11 evant to the assessments and plans required
12 under subsection (b).

13 (4) REVIEW AND REVISIONS.—Not later than 5
14 years after the date of promulgation of regulations
15 under each of paragraphs (1) and (3), the Adminis-
16 trator, in consultation with the head of the Office,
17 shall review the regulations and make any necessary
18 revisions.

19 (5) ADDITION OF SUBSTANCES OF CONCERN.—
20 For the purpose of designating high priority cat-
21 egories under paragraph (1) or any subsequent revi-
22 sion of the regulations promulgated under paragraph
23 (1), the Administrator, in consultation with the head
24 of the Office, may designate additional substances
25 that pose a serious threat as substances of concern.

1 (b) CERTIFICATION.—

2 (1) VULNERABILITY AND HAZARD ASSESS-
3 MENTS.—Not later than 1 year after the date of
4 promulgation of regulations under subsection (a)(3),
5 each owner and each operator of a chemical source
6 that is within a high priority category designated
7 under subsection (a)(1) shall—

8 (A) certify to the Administrator that the
9 chemical source has conducted assessments in
10 accordance with the regulations; and

11 (B) submit to the Administrator written
12 copies of the assessments.

13 (2) PREVENTION, PREPAREDNESS, AND RE-
14 SPONSE PLANS.—Not later than 18 months after the
15 date of promulgation of regulations under subsection
16 (a)(3), the owner or operator shall—

17 (A) certify to the Administrator that the
18 chemical source has completed a prevention,
19 preparedness, and response plan that incor-
20 porates the results of the assessments and com-
21 plies with the regulations; and

22 (B) submit to the Administrator a written
23 copy of the plan.

24 (3) 5-YEAR REVIEW.—Not later than 5 years
25 after each of the date of submission of a copy of an

1 assessment under paragraph (1) and a plan under
2 paragraph (2), and not less often than every 3 years
3 thereafter, the owner or operator of the chemical
4 source covered by the assessment or plan, in coordi-
5 nation with local law enforcement and first respond-
6 ers, shall—

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

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

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

13 (4) PROTECTION OF INFORMATION.—

14 (A) DISCLOSURE EXEMPTION.—Except
15 with respect to certifications specified in para-
16 graphs (1) through (3) of this subsection and
17 section 5(a), all information provided to the Ad-
18 ministrator under this subsection, and all infor-
19 mation derived from that information, shall be
20 exempt from disclosure under section 552 of
21 title 5, United States Code.

22 (B) DEVELOPMENT OF PROTOCOLS.—Not
23 later than 1 year after the date of enactment of
24 this Act, the Administrator, in consultation
25 with the head of the Office, shall develop such

1 protocols as are necessary to protect the copies
2 of the assessments and plans required to be
3 submitted under this subsection (including the
4 information contained in those assessments and
5 plans) from unauthorized disclosure. Such pro-
6 tocols shall ensure that—

7 (i) each copy of such assessment or
8 plan, and all information contained in or
9 derived from the assessment or plan, is
10 kept in a secure location;

11 (ii) only individuals designated by the
12 Administrator may have access to the cop-
13 ies of the assessments or plans; and

14 (iii) no copy of an assessment or plan,
15 or part of an assessment or plan, or infor-
16 mation contained in or derived from an as-
17 sessment or plan shall be available to any-
18 one other than an individual designated by
19 the Administrator.

20 At the earliest possible time prior to 1 year
21 after the date of enactment of this Act, the Ad-
22 ministrator shall complete the development of
23 such protocols for the purpose of having them
24 in place prior to receiving any assessment or
25 plan.

1 (C) OFFICER OR EMPLOYEES OF THE
2 U.S.—An individual referred to in paragraph
3 (B)(ii) who is an officer or employee of the
4 United States may discuss the contents of an
5 assessment or plan with a State or local official.

6 **SEC. 5. ENFORCEMENT.**

7 (a) REVIEW OF PLANS.—

8 (1) IN GENERAL.—The Administrator, in con-
9 sultation with the head of the Office, shall review
10 each assessment and plan submitted under section
11 4(b) to determine the compliance of the chemical
12 source covered by the assessment or plan with regu-
13 lations promulgated under paragraphs (1) and (3) of
14 section 4(a).

15 (2) CERTIFICATION OF COMPLIANCE.—

16 (A) IN GENERAL.—The Administrator
17 shall certify in writing each determination of
18 the Administrator under paragraph (1).

19 (B) INCLUSIONS.—A certification of the
20 Administrator shall include a checklist indi-
21 cating consideration by a chemical source of the
22 use of 4 elements of safer design and mainte-
23 nance described in subparagraphs (A) through
24 (D) of section 3(6).

25 (C) EARLY COMPLIANCE.—

1 (i) IN GENERAL.—The Administrator,
2 in consultation with the head of the Office,
3 shall—

4 (I) before the date of publication
5 of proposed regulations under section
6 4(a)(3), review each assessment or
7 plan submitted to the Administrator
8 under section 4(b); and

9 (II) before the date of promulga-
10 tion of final regulations under section
11 4(a)(3), determine whether each such
12 assessment or plan meets the con-
13 sultation, planning, and assessment
14 requirements applicable to high pri-
15 ority categories under section 4(a)(3).

16 (ii) AFFIRMATIVE DETERMINATION.—
17 If the Administrator, in consultation with
18 the head of the Office, makes an affirma-
19 tive determination under clause (i)(II), the
20 Administrator shall certify compliance of
21 an assessment or plan described in that
22 clause without requiring any revision of the
23 assessment or plan.

24 (D) SCHEDULE FOR REVIEW AND CERTIFI-
25 CATION.—

1 (i) IN GENERAL.—The Administrator,
2 after taking into consideration the factors
3 described in section 4(a)(2), shall establish
4 a schedule for the review and certification
5 of assessments and plans submitted under
6 section 4(b).

7 (ii) DEADLINE FOR COMPLETION.—
8 Not later than 3 years after the deadlines
9 for the submission of assessments and
10 plans under paragraph (1) or (2), respec-
11 tively, of section 4(b), the Administrator
12 shall complete the review and certification
13 of all assessments and plans submitted
14 under those sections.

15 (b) COMPLIANCE ASSISTANCE.—

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

20 (A) the assessment or plan does not com-
21 ply with regulations promulgated under para-
22 graphs (1) and (3) of section 4(a); or

23 (B)(i) a threat exists beyond the scope of
24 the submitted plan; or

1 (ii) current implementation of the plan is
2 insufficient to address—

3 (I) the results of an assessment of a
4 source; or

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

6 (2) DETERMINATION BY ADMINISTRATOR.—If
7 the Administrator, after consultation with the head
8 of the Office, makes a determination, the Adminis-
9 trator shall—

10 (A) notify the chemical source of the deter-
11 mination; and

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

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

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

22 (c) COMPLIANCE ORDERS.—

23 (1) IN GENERAL.—If, after the date that is 30
24 days after the later of the date on which the Admin-
25 istrator first provides assistance, or a chemical

1 source receives notice, under subsection (b)(2)(B), a
2 chemical source has not brought an assessment or
3 plan for which the assistance is provided into com-
4 pliance with regulations promulgated under para-
5 graphs (1) and (3) of section 4(a), or the chemical
6 source has not complied with an entry or informa-
7 tion request under section 6, the Administrator may
8 issue an order directing compliance by the chemical
9 source.

10 (2) NOTICE AND OPPORTUNITY FOR HEAR-
11 ING.—An order under paragraph (1) may be issued
12 only after notice and opportunity for a hearing.

13 (d) ABATEMENT ACTION.—

14 (1) IN GENERAL.—Notwithstanding a certifi-
15 cation under section 5(a)(2), if the head of the Of-
16 fice, in consultation with local law enforcement offi-
17 cials and first responders, determines that a threat
18 of a terrorist attack exists that is beyond the scope
19 of a submitted prevention, preparedness, and re-
20 sponse plan of 1 or more chemical sources, or cur-
21 rent implementation of the plan is insufficient to ad-
22 dress the results of an assessment of a source or a
23 threat described in subsection (b)(1)(B)(i), the head
24 of the Office shall notify each chemical source of the
25 elevated threat.

1 (2) INSUFFICIENT RESPONSE.—If the head of
2 the Office determines that a chemical source has not
3 taken appropriate action in response to a notifica-
4 tion under paragraph (1), the head of the Office
5 shall notify the chemical source, the Administrator,
6 and the Attorney General that actions taken by the
7 chemical source in response to the notification are
8 insufficient.

9 (3) RELIEF.—

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

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

22 **SEC. 6. RECORDKEEPING AND ENTRY.**

23 (a) RECORDS MAINTENANCE.—A chemical source
24 that is required to certify to the Administrator assess-
25 ments and plans under section 4 shall maintain on the

1 premises of the chemical source a current copy of those
2 assessments and plans.

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

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

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

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

17 (1) enforce this Act; and

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

20 **SEC. 7. PENALTIES.**

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

1 than \$25,000 for each day in which such violation occurs
2 or such failure 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 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**
6 **LAW.**

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

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

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

○