

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

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

**IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.**

(no.) \_\_\_\_\_

(title) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CORZINE (for himself and Mr. LAUTENBERG)

Viz:

1 At the appropriate place, insert the following:

2 **TITLE \_\_\_\_\_—CHEMICAL**  
3 **FACILITIES SECURITY**

4 **SEC. \_\_\_\_01. SHORT TITLE.**

5 This title may be cited as the “Chemical Facilities  
6 Security Act of 2004”.

7 **SEC. \_\_\_\_02. DEFINITIONS.**

8 In this title:

1           (1) ALTERNATIVE APPROACHES.—The term  
2 “alternative approaches” means ways of reducing  
3 the threat of a terrorist release and the con-  
4 sequences of a terrorist release from a chemical  
5 source by such means as—

6           (A) the use of smaller quantities of sub-  
7 stances of concern;

8           (B) replacement of a substance of concern  
9 with a less hazardous substance; or

10          (C) the use of less hazardous processes.

11          (2) CHEMICAL SOURCE.—

12           (A) IN GENERAL.—The term “chemical  
13 source” means a stationary source (as defined  
14 in section 112(r)(2) of the Clean Air Act (42  
15 U.S.C. 7412(r)(2))) for which—

16           (i) the owner or operator is required  
17 to complete a risk management plan in ac-  
18 cordance with section 112(r)(7)(B)(ii) of  
19 the Clean Air Act (42 U.S.C.  
20 7412(r)(7)(B)(ii)); and

21           (ii) the Secretary is required to pro-  
22 mulgate implementing regulations under  
23 section \_\_\_\_03(a) of this title.

24          (B) EXCLUSIONS.—The term “chemical  
25 source” does not include—

1 (i) any facility owned and operated by  
2 the Department of Defense or the Depart-  
3 ment of Energy; or

4 (ii) any facility that uses ammonia as  
5 fertilizer as an end user or holds ammonia  
6 for sale as a fertilizer at a retail facility,  
7 unless the Secretary determines that a ter-  
8 rorist release from the facility would pose  
9 potential harm to more than 10,000 peo-  
10 ple.

11 (3) CONSIDERATION OF ALTERNATIVE AP-  
12 PROACHES.—The term “consideration of alternative  
13 approaches” includes—

14 (A) an analysis of alternative approaches,  
15 including the benefits and risks of such ap-  
16 proaches;

17 (B) the potential of the alternative ap-  
18 proaches to prevent or reduce the threat or con-  
19 sequences of a terrorist release;

20 (C) the cost and technical feasibility of al-  
21 ternative approaches; and

22 (D) the effect of alternative approaches on  
23 product quality, product cost, and employee  
24 safety.

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

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

7           (6) OWNER OR OPERATOR.—The term “owner  
8 or operator” has the meaning given the term in sec-  
9 tion 112(a) of the Clean Air Act (42 U.S.C.  
10 7412(a)).

11          (7) PERSON.—The term “person” includes—

12               (A) the Federal Government; and

13               (B) a State or local government.

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

18          (9) SECRETARY.—The term “Secretary” means  
19 the Secretary of Homeland Security.

20          (10) SECURITY MEASURE.—

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

- 1 (B) INCLUSIONS.—The term “security  
2 measure”, with respect to a chemical source, in-  
3 cludes measures such as—
- 4 (i) employee training and background  
5 and identification authentication checks;
  - 6 (ii) the limitation and prevention of  
7 access to controls of the chemical source;
  - 8 (iii) the protection of the perimeter of  
9 the chemical source;
  - 10 (iv) the installation and operation of  
11 intrusion detection sensors;
  - 12 (v) the implementation of measures to  
13 increase computer or computer network se-  
14 curity;
  - 15 (vi) the implementation of other secu-  
16 rity-related measures to protect against or  
17 reduce the threat of—
    - 18 (I) a terrorist attack on the  
19 chemical source; or
    - 20 (II) the theft of a substance of  
21 concern for offsite release in further-  
22 ance of an act of terrorism;
    - 23 (vii) the installation of measures and  
24 controls to protect against or reduce the  
25 consequences of a terrorist attack; and

1 (viii) the conduct of any similar secu-  
2 rity-related activity, as determined by the  
3 Secretary.

4 (11) SUBSTANCE OF CONCERN.—The term  
5 “substance of concern” means—

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

12 (B) such other chemical substance as the  
13 Secretary may designate under section  
14 \_\_\_\_03(g).

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

18 (13) TERRORIST RELEASE.—The term “ter-  
19 rorist release” means—

20 (A) a release from a chemical source into  
21 the environment of a substance of concern that  
22 is caused by an act of terrorism; and

23 (B) the theft of a substance of concern by  
24 a person for off-site release in furtherance of an  
25 act of terrorism.

1 **SEC. \_\_\_\_03. VULNERABILITY ASSESSMENTS AND SITE SE-**  
2 **CURITY PLANS.**

3 (a) REQUIREMENT.—

4 (1) IN GENERAL.—Not later than 1 year after  
5 the date of enactment of this Act, the Secretary  
6 shall promulgate regulations that require the owner  
7 or operator of each chemical source included on the  
8 list described in subsection (f)—

9 (A) to conduct an assessment of the vul-  
10 nerability of the chemical source to a terrorist  
11 release, including identifying hazards that may  
12 result from a terrorist release; and

13 (B) to prepare and implement a site secu-  
14 rity plan that addresses the results of the vul-  
15 nerability assessment.

16 (2) CONTENTS OF SITE SECURITY PLAN.—A  
17 site security plan required under the regulations pro-  
18 mulgated under paragraph (1) or any other plan de-  
19 termined to be substantially equivalent by the Sec-  
20 retary under subsection (c)—

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

25 (B) shall describe, at a minimum, par-  
26 ticular equipment, plans, and procedures that

1           could be implemented or used by or at the  
2           chemical source in the event of a terrorist re-  
3           lease; and

4                   (C) shall include consideration of alter-  
5           native approaches and, where practicable in the  
6           judgment of the owner or operator of the chem-  
7           ical source, implementation of options to reduce  
8           the threat of a terrorist release through the use  
9           of alternative approaches.

10           (3) IMPLEMENTATION OF ALTERNATIVE AP-  
11           PROACHES AT HIGHEST RISK FACILITIES.—

12                   (A) IN GENERAL.—A chemical source de-  
13           scribed in subparagraph (B) shall implement  
14           options to significantly reduce or eliminate the  
15           threat or consequences of a terrorist release  
16           through the use of alternative approaches that  
17           would not create an equal or greater risk to  
18           human health or the environment.

19                   (B) APPLICABILITY.—This subparagraph  
20           applies to a chemical source if the chemical  
21           source is 1 of the 123 facilities that the Sec-  
22           retary determines would pose a risk of harm to  
23           the greatest number of people in the event of a  
24           terrorist release, unless the owner or operator  
25           of the chemical source can demonstrate to the

1 Secretary through an assessment of alternative  
2 approaches that available alternative  
3 approaches—

4 (i) would not significantly reduce the  
5 number of people at risk of death, injury,  
6 or serious adverse effects resulting from a  
7 terrorist release;

8 (ii) cannot practicably be incorporated  
9 into the operation of the chemical source;  
10 or

11 (iii) would significantly and demon-  
12 strably impair the ability of the owner or  
13 operator of the chemical source to continue  
14 its business.

15 (4) GUIDANCE TO CHEMICAL SOURCES.—Not  
16 later than 1 year after the date of enactment of this  
17 Act, the Secretary shall publish guidance to assist  
18 owners and operators of chemical sources in com-  
19 plying with this title, including advice on aspects of  
20 compliance with this title that may be unique to  
21 small businesses (including completion of analyses of  
22 alternative approaches).

23 (5) THREAT INFORMATION.—To the maximum  
24 extent practicable under applicable authority and in  
25 the interests of national security, the Secretary shall

1 provide to an owner or operator of a chemical source  
2 required to prepare a vulnerability assessment and  
3 site security plan threat information that is relevant  
4 to the chemical source.

5 (6) COORDINATED ASSESSMENTS AND PLANS.—

6 The regulations promulgated under paragraph (1)  
7 shall permit the development and implementation of  
8 coordinated vulnerability assessments and site secu-  
9 rity plans in any case in which more than 1 chemical  
10 source is operating at a single location or at contig-  
11 uous locations, including cases in which a chemical  
12 source is under the control of more than 1 owner or  
13 operator.

14 (b) CERTIFICATION AND SUBMISSION.—

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

21 (A) regulations promulgated under sub-  
22 section (a)(1); and

23 (B) any applicable procedures, protocols,  
24 or standards endorsed or recognized by the Sec-  
25 retary under subsection (c)(1).

1           (2) SUBMISSION.—Not later than 18 months  
2 after the date of promulgation of regulations under  
3 subsection (a)(1), an owner or operator of a chem-  
4 ical source shall provide to the Secretary copies of  
5 the vulnerability assessment and site security plan of  
6 the chemical source for review.

7           (3) REVIEW BY THE SECRETARY.—The Sec-  
8 retary shall review the assessments and plans sub-  
9 mitted by the owner or operator of a chemical source  
10 under paragraph (2) to determine whether the chem-  
11 ical source is in compliance with—

12                   (A) this title (including regulations pro-  
13 mulgated under subsection (a)(1)); and

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

17           (4) TIMELINE.—

18                   (A) IN GENERAL.—The Secretary shall—

19                           (i) conduct the review and determine  
20 compliance under this title for not fewer  
21 than 20 percent of the chemical sources re-  
22 quired to submit assessments and response  
23 plans in each year following the submission  
24 deadline under paragraph (2); and

1 (ii) complete the review and deter-  
2 mination of compliance with this title for  
3 all such facilities not later than 5 years  
4 after the deadline.

5 (B) SUBSEQUENT REVIEW.—After con-  
6 ducting reviews and determining compliance  
7 under this title for all chemical sources, the  
8 Secretary may subsequently conduct a review  
9 and determine compliance under this title for a  
10 chemical source.

11 (C) REVIEW OF ADDED CHEMICAL  
12 SOURCES AND UPDATED ASSESSMENTS AND  
13 PLANS.—The Secretary shall review and deter-  
14 mine compliance under this title not later than  
15 3 years after the date of submission of assess-  
16 ments and response plans for chemical sources  
17 that—

18 (i) update their vulnerability assess-  
19 ments or response plans under this para-  
20 graph or subsection (h); or

21 (ii) are added under subsection (f)(3).

22 (5) CERTIFICATE.—

23 (A) FACILITIES DETERMINED TO BE IN  
24 COMPLIANCE.—If the Secretary completes a re-  
25 view under paragraph (3) and determines that

1 the vulnerability assessment and site security  
2 plan of a chemical source are in compliance  
3 with the requirements of this title, the Sec-  
4 retary shall provide to the chemical source and  
5 make available for public inspection a certificate  
6 of approval that contains the following state-  
7 ment (in which the first bracketed space shall  
8 contain the name of the chemical source and  
9 the second bracketed space shall contain the  
10 Public Law number assigned to this Act):

11 “The Secretary of Homeland Security certifies that  
12 the Department of Homeland Security has reviewed and  
13 approved the vulnerability assessment and site security  
14 plan submitted by [\_\_\_\_\_] under the Chemical Facilities  
15 Security Act of 2004 (Public Law [\_\_\_\_\_]”).”

16 (B) FACILITIES AWAITING REVIEW.—If a  
17 person requests a certificate of approval for a  
18 chemical source the vulnerability assessment  
19 and site security plan of which have not yet  
20 been reviewed for compliance with this title, the  
21 Secretary shall make available for public inspec-  
22 tion a certificate that contains the following  
23 statement (in which the first bracketed space  
24 shall contain the name of the chemical source

1           and the second bracketed space shall include  
2           the Public Law number assigned to this Act):  
3           “The Secretary of Homeland Security’s review of the  
4 vulnerability assessment and site security plan submitted  
5 by [\_\_\_\_\_] under the Chemical Facilities Security Act  
6 of 2004 (Public Law [\_\_\_\_\_] ) is pending.”.

7           (6) DETERMINATION OF NONCOMPLIANCE.—If  
8 the Secretary determines under paragraph (3) that  
9 a chemical source is not in compliance with the re-  
10 quirements of this title (including regulations pro-  
11 mulgated under this title) the Secretary shall exer-  
12 cise the authority provided in section \_\_\_\_04.

13           (7) SUBMISSION OF CHANGES.—The owner or  
14 operator of a chemical source shall—

15           (A) not later than 90 days after the date  
16 on which any significant change is made to the  
17 vulnerability assessment or site security plan re-  
18 quired for the chemical source under this sec-  
19 tion, provide to the Secretary a description of  
20 the change; and

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

23           (c) SPECIFIED STANDARDS.—

24           (1) EXISTING PROCEDURES, PROTOCOLS, AND  
25 STANDARDS.—On submission of a petition by any

1 person to the Secretary, the Secretary may initiate  
2 a rulemaking to—

3 (A) endorse or recognize procedures, proto-  
4 cols, and standards—

5 (i) that are established by—

6 (I) industry;

7 (II) State or local authorities; or

8 (III) other applicable law; and

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

11 (I) substantially equivalent to  
12 each of subparagraphs (A) and (B) of  
13 subsection (a)(1) and subparagraphs  
14 (A), (B), and (C) of subsection (a)(2);  
15 and

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

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

21 (2) NOTIFICATION OF SUBSTANTIAL EQUIVA-  
22 LENCY.—If the Secretary endorses or recognizes  
23 procedures, protocols, and standards under para-  
24 graph (1)(A), the Secretary shall provide notice to  
25 the person that submitted the petition.

1           (3) NO ACTION BY SECRETARY.—If the Sec-  
2           retary does not endorse or recognize existing proce-  
3           dures, protocols, and standards under paragraph  
4           (1)(A), the Secretary shall provide to each person  
5           that submitted a petition under paragraph (1) a  
6           written notification that includes a clear explanation  
7           of the reasons why the endorsement or recognition  
8           was not made.

9           (d) PREPARATION OF ASSESSMENTS AND PLANS.—  
10          As of the date of endorsement or recognition by the Sec-  
11          retary of a particular procedure, protocol, or standard  
12          under subsection (c)(1)(A), any vulnerability assessment  
13          or site security plan that is prepared by the owner or oper-  
14          ator of a chemical source before, on, or after the date of  
15          endorsement or recognition of, and in accordance with,  
16          that procedure, protocol, or standard, shall, for the pur-  
17          poses of subsection (b)(3) and section \_\_\_\_04, be judged  
18          by the Secretary against that procedure, protocol, or  
19          standard rather than the relevant regulations promulgated  
20          under subsection (a)(1) (including such a vulnerability as-  
21          sessment or site security plan prepared before, on, or after  
22          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 shall develop a list of chemical sources in ex-  
20 istence 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 subsection (a)(1) and every 3 years thereafter,  
2 the Secretary shall, after considering the criteria de-  
3 scribed in subsection (e)—

4 (A) determine whether additional sta-  
5 tionary sources (including, as of the date of the  
6 determination, facilities that are operational  
7 and facilities that will become operational in the  
8 future) shall be considered to be chemical  
9 sources under this title;

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

15 (C) update the list as appropriate.

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

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

22 (1) IN GENERAL.—The Secretary may, by  
23 regulation—

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

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

7 (C) adjust the threshold quantity of a  
8 chemical substance for purposes of this title.

9 (2) CONSIDERATIONS.—In designating or ex-  
10 emptioning 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 in regulations  
19 promulgated under subsection (a)(1).

20 (h) 5-YEAR REVIEW.—Not later than 5 years after  
21 the date of certification of a vulnerability assessment and  
22 a site security plan under subsection (b)(1), and not less  
23 often than every 5 years thereafter (or on such a schedule  
24 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 sessment 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) submit to the Secretary a description of  
9 any changes to the vulnerability assessment or site  
10 security plan.

11 (i) **NO PRIVATE RIGHT OF ACTION.**—Nothing in this  
12 title—

13 (1) confers on any private person a right of ac-  
14 tion against an owner or operator of a chemical  
15 source to enforce any provision of this title;

16 (2) creates any liability on the part of an owner  
17 or operator of a chemical source arising out of any  
18 event that could not reasonably have been foreseen  
19 by the owner or operator; or

20 (3) affects any other remedies or defenses avail-  
21 able under Federal or State law.

22 **SEC. \_\_\_04. ENFORCEMENT.**

23 (a) **FAILURE TO COMPLY.**—If an owner or operator  
24 of a chemical source fails to certify or submit a vulner-  
25 ability assessment or site security plan in accordance with

1 this title, the Secretary may issue an order requiring the  
2 certification and submission of a vulnerability assessment  
3 or site security plan in accordance with section \_\_\_\_03(b).

4 (b) DISAPPROVAL.—The Secretary may disapprove a  
5 vulnerability assessment or site security plan submitted  
6 under section \_\_\_\_03(b) if the Secretary determines  
7 that—

8 (1) the vulnerability assessment or site security  
9 plan does not comply with—

10 (A) a regulation promulgated under section  
11 \_\_\_\_03(a)(1); or

12 (B) a procedure, protocol, or standard en-  
13 dorsed or recognized under section \_\_\_\_03(c);  
14 or

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

17 (A) the results of a vulnerability assess-  
18 ment of a chemical source; or

19 (B) a threat or consequence of a terrorist  
20 release.

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

24 (1) provide the owner or operator of the chem-  
25 ical source a written notification of the determina-

1           tion that includes a clear explanation of deficiencies  
2           in the vulnerability assessment, site security plan, or  
3           implementation of the assessment or plan;

4           (2) consult with the owner or operator of the  
5           chemical source to identify appropriate steps to  
6           achieve compliance; and

7           (3) if, following that consultation, the owner or  
8           operator of the chemical source does not achieve  
9           compliance by such date as the Secretary determines  
10          to be appropriate under the circumstances, issue an  
11          order requiring the owner or operator to correct  
12          specified deficiencies.

13          (d) EMERGENCY POWERS.—

14           (1) DEFINITION OF EMERGENCY THREAT.—In  
15          this subsection, the term “emergency threat” means  
16          a threat of a terrorist act that could result in a ter-  
17          rorist release at a chemical source—

18           (A) that is beyond the scope of the site se-  
19          curity plan as implemented at the chemical  
20          source;

21           (B) the likelihood of the immediate occur-  
22          rence of which is high;

23           (C) the consequences of which would be se-  
24          vere; and

1 (D) based on the factors described in sub-  
2 paragraphs (A) through (C), would not be ap-  
3 propriately and reasonably addressed, or ad-  
4 dressed in a timely manner, by the Secretary  
5 under subsections (a) through (c).

6 (2) INITIATION OF ACTION.—

7 (A) IN GENERAL.—If the Secretary (in  
8 consultation with State and local law enforce-  
9 ment officials) determines that an emergency  
10 threat exists, the Secretary may bring a civil  
11 action on behalf of the United States in United  
12 States district court to immediately require  
13 each chemical source potentially subject to the  
14 emergency threat to take such actions as are  
15 necessary to respond to the emergency threat.

16 (B) NOTICE AND PARTICIPATION.—The  
17 Secretary shall provide to each chemical source  
18 that is the subject of a civil action under sub-  
19 paragraph (A)—

20 (i) notice of any injunctive relief to  
21 compel compliance with this subsection  
22 that is being sought; and

23 (ii) an opportunity to participate in  
24 any proceedings relating to the civil action.

25 (3) EMERGENCY ORDERS.—

1 (A) IN GENERAL.—If the Secretary deter-  
2 mines that it is not practicable to ensure  
3 prompt action to protect public safety from an  
4 emergency threat by bringing a civil action  
5 under paragraph (2), the Secretary may issue  
6 such orders as are necessary to ensure public  
7 safety.

8 (B) CONSULTATION.—Before issuing an  
9 order under subparagraph (A), the Secretary  
10 shall—

11 (i) consult with State and local law  
12 enforcement officials; and

13 (ii) attempt to confirm the accuracy of  
14 the information on which the action pro-  
15 posed to be taken is based.

16 (C) EFFECTIVENESS OF ORDERS.—

17 (i) IN GENERAL.—An order issued by  
18 the Secretary under this paragraph shall  
19 be effective for the 60-day period begin-  
20 ning on the date of issuance of the order  
21 unless the Secretary brings a civil action  
22 under paragraph (2) before the expiration  
23 of that period.

24 (ii) EXTENSION OF EFFECTIVE PE-  
25 RIOD.—With respect to an order issued

1 under this paragraph, the Secretary may  
2 bring a civil action before the end of the  
3 60-day period described in clause (i) to ex-  
4 tend the effective period of the order for—

5 (I) 14 days; or

6 (II) such longer period as the  
7 court in which the civil action is  
8 brought may authorize.

9 (e) PROTECTION OF INFORMATION.—Any determina-  
10 tion of disapproval or order made or issued under this sec-  
11 tion shall be exempt from disclosure—

12 (1) under section 552 of title 5, United States  
13 Code;

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

16 (3) except as provided in section \_\_\_\_08(d), in  
17 any Federal or State civil or administrative pro-  
18 ceeding.

19 **SEC. \_\_\_\_05. INTERAGENCY TECHNICAL SUPPORT AND CO-**  
20 **OPERATION.**

21 The Secretary—

22 (1) may request other Federal agencies to pro-  
23 vide technical and analytical support (other than  
24 field work) in carrying out this title;

1           (2) may provide reimbursement for such tech-  
2           nical and analytical support received as the Sec-  
3           retary determines to be appropriate; and

4           (3) shall, in consultation with other relevant  
5           Federal agencies, take steps to minimize any dupli-  
6           cative administrative burdens on, or requirements of,  
7           any owner or operator of a chemical facility that are  
8           imposed by this Act and—

9                   (A) the Maritime Transportation Security  
10                   Act of 2002 (116 Stat. 2064) and the amend-  
11                   ments made by that Act;

12                   (B) the Public Health Security Prepared-  
13                   ness and Bioterrorism and Response Act of  
14                   2002 (116 Stat. 594) and the amendments  
15                   made by that Act; or

16                   (C) any other Federal law.

17 **SEC. \_\_\_\_06. RECORDKEEPING; SITE INSPECTIONS; PRO-**  
18 **DUCTION OF INFORMATION.**

19           (a) RECORDKEEPING.—The owner or operator of a  
20           chemical source that is required to prepare a vulnerability  
21           assessment or site security plan under section \_\_\_\_03(a)  
22           shall maintain a current copy of those documents.

23           (b) RIGHT OF ENTRY.—In carrying out this title, the  
24           Secretary (or a designee), on presentation of credentials,  
25           shall have a right of entry to, on, or through—

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

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

5           (c) REQUESTS FOR RECORDS.—In carrying out this  
6 title, the Secretary (or a designee) may require the sub-  
7 mission of, or, on presentation of credentials, may at rea-  
8 sonable times seek access to and copy—

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

11           (2) any other documentation necessary for—

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

14                 (B) implementation of a site security plan.

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

20 **SEC. \_\_\_07. PENALTIES.**

21           (a) ADMINISTRATIVE PENALTIES.—

22                 (1) PENALTY ORDERS.—The Secretary may im-  
23 pose an administrative penalty of not more than  
24 \$250,000 for failure to comply with an order issued  
25 by the Secretary under this title.

1 (B) NOTICE AND HEARING.—Before  
2 issuing an order under subparagraph (A), the  
3 Secretary shall provide to the person against  
4 which the penalty is to be assessed—

5 (i) written notice of the proposed  
6 order; and

7 (ii) the opportunity to request, not  
8 later than 30 days after the date on which  
9 the person receives the notice, a hearing on  
10 the proposed order.

11 (3) PROCEDURES.—The Secretary may promul-  
12 gate regulations establishing procedures for adminis-  
13 trative hearings and appropriate review, including  
14 necessary deadlines.

15 (b) CIVIL PENALTIES.—Any owner or operator of a  
16 chemical source that violates or fails to comply with any  
17 order issued by the Secretary under this title or site secu-  
18 rity plan submitted to the Secretary under this title may,  
19 in a civil action brought in United States district court,  
20 be subject, for each day on which the violation occurs or  
21 the failure to comply continues, to—

22 (1) an order for injunctive relief; or

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

24 (c) CRIMINAL PENALTIES.—An owner or operator of  
25 a chemical source that knowingly violates any order issued

1 by the Secretary under this title or knowingly fails to com-  
2 ply with a site security plan submitted to the Secretary  
3 under this title shall be fined not more than \$50,000 for  
4 each day of violation, imprisoned not more than 2 years,  
5 or both.

6 **SEC. \_\_\_\_ 08. PROTECTION OF INFORMATION.**

7 (a) DEFINITION OF PROTECTED INFORMATION.—

8 (1) IN GENERAL.—In this section, the term  
9 “protected information” means—

10 (A) a vulnerability assessment or site secu-  
11 rity plan required by subsection (a) or (b) of  
12 section \_\_\_\_ 03;

13 (B) any study, analysis, or other document  
14 generated by the owner or operator of a chem-  
15 ical source primarily for the purpose of pre-  
16 paring a vulnerability assessment or site secu-  
17 rity plan (including any alternative approach  
18 analysis); and

19 (C) any other information provided to or  
20 obtained or obtainable by the Secretary solely  
21 for the purposes of this title from the owner or  
22 operator of a chemical source that, if released,  
23 is reasonably likely to increase the probability  
24 or consequences of a terrorist release.

1           (2) OTHER OBLIGATIONS UNAFFECTED.—Noth-  
2           ing in this section affects—

3                   (A) the handling, treatment, or disclosure  
4                   of information obtained from a chemical source  
5                   under any other law;

6                   (B) any obligation of the owner or operator  
7                   of a chemical source to submit or make avail-  
8                   able information to a Federal, State, or local  
9                   government agency under, or otherwise to com-  
10                  ply with, any other law; or

11                  (C) the public disclosure of information de-  
12                  rived from protected information, so long as the  
13                  information disclosed—

14                           (i) would not divulge methods or proc-  
15                           esses entitled to protection as trade secrets  
16                           in accordance with the purposes of section  
17                           1905 of title 18, United States Code;

18                           (ii) does not identify any particular  
19                           chemical source; and

20                           (iii) is not reasonably likely to in-  
21                           crease the probability or consequences of a  
22                           terrorist release,

23           even if the same information is also contained in a  
24           document referred to in paragraph (1).

1 (b) DISCLOSURE EXEMPTION.—Except with respect  
2 to certifications specified in paragraphs (1) and (5) of sub-  
3 section (b) and subsection (h)(2)(A) of section \_\_\_\_03,  
4 protected information shall be exempt from disclosure  
5 under—

- 6 (1) section 552 of title 5, United States Code;  
7 and  
8 (2) any State or local law providing for public  
9 access to information.

10 (c) DEVELOPMENT OF PROTOCOLS.—

11 (1) IN GENERAL.—The Secretary, in consulta-  
12 tion with the Director of the Office of Management  
13 and Budget and appropriate Federal law enforce-  
14 ment and intelligence officials, and in a manner con-  
15 sistent with protections for sensitive or classified in-  
16 formation, shall by regulation establish confiden-  
17 tiality protocols for maintenance and use of pro-  
18 tected information.

19 (2) REQUIREMENTS FOR PROTOCOLS.—A pro-  
20 tocol established under paragraph (1) shall ensure  
21 that—

22 (A) protected information shall be main-  
23 tained in a secure location; and

24 (B) except as provided in subsection (e)(2),  
25 or as necessary for enforcement of this title or

1 any law, in either case consistent with sub-  
2 section (d), access to protected information  
3 shall be limited to persons designated by the  
4 Secretary, including State or local law enforce-  
5 ment officers or other officials (including first  
6 responders) to the extent disclosure is needed to  
7 carry out the purposes of this title or to further  
8 the investigation of a potential violation of any  
9 law.

10 (d) TREATMENT OF PROTECTED INFORMATION IN  
11 FEDERAL OR STATE ADMINISTRATIVE OR JUDICIAL PRO-  
12 CEEDINGS.—

13 (1) ADMINISTRATIVE PROCEEDINGS.—

14 (A) IN GENERAL.—In an administrative  
15 proceeding in which a person seeks to compel  
16 the disclosure of protected information or to  
17 offer protected information into evidence, the  
18 person to which the discovery request is di-  
19 rected, the person seeking to offer evidence, or  
20 the owner or operator of a chemical source shall  
21 provide written notice of the request to—

22 (i) the United States Attorney for the  
23 district in which the administrative entity  
24 conducting the proceeding is located;

25 (ii) the Secretary; and

1 (iii) the administrative entity con-  
2 ducting the proceeding.

3 (B) CONTENTS.—A notice under subpara-  
4 graph (A) shall include a brief description of  
5 the protected information.

6 (C) RESPONSE BY THE SECRETARY.—

7 (i) IN GENERAL.—Not later than 60  
8 days after the date on which the Secretary  
9 receives a notice under subparagraph (A),  
10 the Secretary shall issue to each entity de-  
11 scribed in that subparagraph a response to  
12 the notice.

13 (ii) DETERMINATION OF THREAT.—If  
14 the Secretary determines that disclosure of  
15 protected information covered by a notice  
16 under subparagraph (A) would pose a  
17 threat to public security or endanger the  
18 life or safety of any person, the Secretary  
19 shall have the authority to request from  
20 the administrative entity any prohibitions  
21 or restrictions on disclosure of the pro-  
22 tected information necessary to avert such  
23 threat or danger.

24 (D) PROHIBITION.—

1 (i) IN GENERAL.—No party to an ad-  
2 ministrative proceeding may disclose pro-  
3 tected information except consistently with  
4 any restrictions established by the adminis-  
5 trative entity regarding that information.

6 (ii) NO RESPONSE.—If an administra-  
7 tive entity has not received a response  
8 from the Secretary by the date that is 60  
9 days after the date of receipt by the Sec-  
10 retary of a notice under subparagraph (A),  
11 an administrative entity—

12 (I) shall determine whether the  
13 information covered by the notice  
14 qualifies as protected information that  
15 would pose a threat to public security  
16 or endanger the life or safety of a per-  
17 son if the information were publicly  
18 disclosed; and

19 (II) shall consider imposing any  
20 prohibitions or restrictions on disclo-  
21 sure of the protected information nec-  
22 essary to avert such threat or danger.

23 (2) JUDICIAL PROCEEDINGS.—

24 (A) IN GENERAL.—In a judicial proceeding  
25 in which a person seeks to compel the disclo-

1           sure of protected information, or to offer pro-  
2           tected information into evidence, the person to  
3           which the discovery request is directed, the per-  
4           son seeking to offer evidence, or the owner or  
5           operator of a chemical source shall provide writ-  
6           ten notice of the request to—

7                   (i) the United States Attorney for the  
8                   district in which the court conducting the  
9                   proceeding is located;

10                   (ii) the Secretary; and

11                   (iii) the court of jurisdiction.

12           (B) CONTENTS.—A notice under subpara-  
13           graph (A) shall include a brief description of  
14           the protected information.

15           (C) RESPONSE BY SECRETARY.—

16                   (i) IN GENERAL.—Not later than 60  
17                   days after the date on which the Secretary  
18                   receives a notice under subparagraph (A),  
19                   the Secretary shall issue to each entity de-  
20                   scribed in that subparagraph a response to  
21                   the notice.

22                   (ii) DETERMINATION OF THREAT.—If  
23                   the Secretary determines that disclosure of  
24                   protected information covered by a notice  
25                   under subparagraph (A) would pose a

1 threat to public security or endanger the  
2 life or safety of any person, the Secretary  
3 shall have the authority to request from  
4 the court of jurisdiction any prohibitions or  
5 restrictions on disclosure of the protected  
6 information necessary to avert such threat  
7 or danger.

8 (D) PROHIBITION.—

9 (i) IN GENERAL.—No party to a judi-  
10 cial proceeding may disclose protected in-  
11 formation except consistently with any re-  
12 strictions established by the judge regard-  
13 ing that information.

14 (ii) NO RESPONSE.—If a court of ju-  
15 risdiction has not received a response from  
16 the Secretary by the date that is 60 days  
17 after the date of receipt by the Secretary  
18 of a notice under subparagraph (A), the  
19 court—

20 (I) shall determine whether the  
21 information qualifies as protected in-  
22 formation that would pose a threat to  
23 public security or endanger the life or  
24 safety of a person if the information  
25 were publicly disclosed; and

1 (II) shall consider imposing any  
2 prohibitions or restrictions on disclo-  
3 sure of the protected information nec-  
4 essary to avert such a threat or dan-  
5 ger.

6 (e) PENALTIES FOR UNAUTHORIZED DISCLOSURE.—

7 (1) IN GENERAL.—Except as provided in para-  
8 graph (2), any person referred to in subsection  
9 (c)(2)(B) that acquires any protected information,  
10 and that knowingly or recklessly discloses the pro-  
11 tected information, shall—

12 (A) be imprisoned not more than 1 year,  
13 fined under title 18, United States Code (appli-  
14 cable to class A misdemeanors), or both; and

15 (B) if the person is a Federal officer or  
16 employee, be removed from Federal office or  
17 employment.

18 (2) EXCEPTIONS.—

19 (A) IN GENERAL.—Paragraph (1) shall not  
20 apply to a person described in that subpara-  
21 graph that discloses protected information—

22 (i) to a person designated by the Sec-  
23 retary under subsection (c)(2)(B);

24 (ii) for the purpose of section 6; or

1 (iii) consistent with subsection (d), for  
2 use in any administrative or judicial pro-  
3 ceeding to enforce, or to impose a penalty  
4 for failure to comply with, a requirement  
5 of this title.

6 (B) LAW ENFORCEMENT OFFICIALS AND  
7 FIRST RESPONDERS.—Notwithstanding para-  
8 graph (1), a person referred to in subsection  
9 (c)(2)(B) that is an officer or employee of the  
10 United States may disclose to a State or local  
11 law enforcement official or other official (in-  
12 cluding a first responder) the contents of a vul-  
13 nerability assessment or site security plan, or  
14 other information described in that subsection,  
15 to the extent disclosure is necessary to carry  
16 out this title.

17 (f) CONGRESSIONAL ACCESS TO INFORMATION.—  
18 Nothing in this section authorizes the withholding of infor-  
19 mation from Congress.

20 **SEC. \_\_\_09. PROVISION OF TRAINING AND OTHER ASSIST-**  
21 **ANCE.**

22 (a) TRAINING.—The Secretary may provide training  
23 to State and local officials and owners and operators in  
24 furtherance of the purposes of this title.

1 (b) OTHER ASSISTANCE.—The Secretary shall pro-  
2 vide assistance to facilities exempt from this Act under  
3 section \_\_\_\_02(B)(ii) to help the facilities develop vol-  
4 untary measures to enhance the security of the facilities,  
5 including the prevention of theft.

6 **SEC. \_\_\_\_10. JUDICIAL REVIEW.**

7 (a) REGULATIONS.—Not later than 60 days after the  
8 date of promulgation of a regulation under this title, any  
9 person may file a petition for judicial review relating to  
10 the regulation with—

11 (1) the United States Court of Appeals for the  
12 District of Columbia; or

13 (2) with the United States circuit court—

14 (A) having jurisdiction over the State in  
15 which the person resides; or

16 (B) for the circuit in which the principal  
17 place of business of the person is located.

18 (b) FINAL AGENCY ACTIONS OR ORDERS.—Not later  
19 than 60 days after the date on which a chemical source  
20 receives notice of an action or order of the Secretary under  
21 this title with respect to the chemical source, the chemical  
22 source may file a petition for judicial review of the action  
23 or order with the United States district court for the dis-  
24 trict in which—

25 (1) the chemical source is located; or

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

3           (c) STANDARD OF REVIEW.—

4           (1) IN GENERAL.—On the filing of a petition  
5 under subsection (a) or (b), the court shall review  
6 the regulation or other final action or order that is  
7 the subject of the petition in accordance with chap-  
8 ter 7 of title 5, United States Code.

9           (2) BASIS.—

10           (A) IN GENERAL.—Judicial review of a  
11 regulation, or of a final agency action or order  
12 described in paragraph (1) that is based on an  
13 administrative hearing held on the record, shall  
14 be based on the record of the proceedings, com-  
15 ments, and other information that the Secretary  
16 considered in promulgating the regulation, tak-  
17 ing the action, or issuing the order being re-  
18 viewed.

19           (B) OTHER ACTIONS AND ORDERS.—Judi-  
20 cial review of a final agency action or order de-  
21 scribed in paragraph (1) that is not described  
22 in subparagraph (A) shall be based on any sub-  
23 missions to the Secretary relating to the action  
24 or order and any other information that the

1 Secretary considered in taking the action or  
2 issuing the order.

3 **SEC. \_\_\_ 11. NO EFFECT ON REQUIREMENTS UNDER OTHER**  
4 **LAW.**

5 (a) IN GENERAL.—Except as provided in section  
6 \_\_\_08, nothing in this title affects any duty or other re-  
7 quirement imposed under any other Federal or State law.

8 (b) OTHER FEDERAL LAW.—

9 (1) IN GENERAL.—Notwithstanding subsection  
10 (a), an owner or operator of a chemical source that  
11 is required to prepare a site vulnerability assessment  
12 and implement a site security plan under any an-  
13 other Federal law may petition the Secretary to be  
14 subject to the other Federal law in lieu of this title.

15 (2) DETERMINATION OF SUBSTANTIAL EQUIVA-  
16 LENCE.—If the Secretary determines by rulemaking  
17 that a Federal law covered by a petition submitted  
18 by a chemical source under paragraph (1) is sub-  
19 stantially equivalent to this title (including the re-  
20 quirements regarding alternative approaches under  
21 section \_\_\_03(a))—

22 (A) the Secretary may grant the petition;  
23 and

24 (B) the chemical source shall be subject to  
25 the other Federal law in lieu of this title.

1 **SEC. \_\_\_\_12. AGRICULTURAL BUSINESS SECURITY GRANT**  
2 **PROGRAM.**

3 (a) DEFINITION OF ELIGIBLE ENTITY.—In this sec-  
4 tion, the term “eligible entity” means a retail or produc-  
5 tion agricultural business (including a business that is en-  
6 gaged in the production or processing of seafood) that em-  
7 ploys not more than such number of individuals at a chem-  
8 ical source included in the list described in section  
9 \_\_\_\_03(f) as shall be determined by the Secretary, in con-  
10 sultation with the Administrator of the Small Business  
11 Administration and the Secretary of Agriculture.

12 (b) GRANTS.—The Secretary shall provide grants to  
13 an eligible entity that is a chemical source included in the  
14 list described in section \_\_\_\_03(f) selected under this sec-  
15 tion to enable the eligible entity at the chemical source—

- 16 (1) to improve security measures; and  
17 (2) to protect against or reduce the consequence  
18 of a terrorist attack.

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

- 22 (1) consider on an individual, location-by-loca-  
23 tion basis, each applicant for a grant; and  
24 (2) require each eligible entity that receives a  
25 grant to use funds from the grant only for the pur-

1       poses described in subsection (b) in accordance with  
2       guidance of the Secretary.

3       (d) AUTHORIZATION OF APPROPRIATIONS.—There  
4       are authorized to be appropriated such sums as are nec-  
5       essary to carry out this section.