

110TH CONGRESS  
2D SESSION

# H. R. 5533

To revise and extend the chemical-facility security program under Public Law 109–295, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2008

Mr. WYNN introduced the following bill; which was referred to the Committee on Energy and Commerce

---

## A BILL

To revise and extend the chemical-facility security program under Public Law 109–295, and for other purposes.

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 2008”.

6 **SEC. 2. MODIFICATION AND TRANSFER OF CHEMICAL-FA-**  
7 **CILITIES SECURITY PROGRAM.**

8 (a) STRIKING OF SUNSET PROVISION.—Section 550  
9 of Public Law 109–295 is amended by striking subsection

10 (b).

1 (b) PREEMPTION.—Section 550 of Public Law 109–  
2 295, as amended by section 534 of division E of Public  
3 Law 110–161, is amended by striking subsection (h).

4 (c) TRANSFER.—Section 550 of Public Law 109–  
5 295, as amended by subsections (a) and (b), is—

6 (1) transferred from Public Law 109–295;

7 (2) redesignated as section 2101;

8 (3) transferred to the Homeland Security Act  
9 of 2002; and

10 (4) added at the end of such Act.

11 (d) STYLISTIC MODIFICATIONS; REVISIONS REGARD-  
12 ING PREEMPTION.—The Homeland Security Act of 2002  
13 (6 U.S.C. 101 et seq.), as amended by subsection (c), is  
14 amended by striking section 2101 and inserting the fol-  
15 lowing:

16 **“TITLE XXI—REGULATION OF SE-**  
17 **CURITY PRACTICES AT CHEM-**  
18 **ICAL FACILITIES**

19 **“SEC. 2101. RISK-BASED PERFORMANCE STANDARDS; VUL-**  
20 **NERABILITY ASSESSMENTS; SITE SECURITY**  
21 **PLANS.**

22 “(a) IN GENERAL.—

23 “(1) REGULATIONS.—The Secretary shall by  
24 regulation establish risk-based performance stand-  
25 ards for security of chemical facilities and require

1 vulnerability assessments and the development and  
2 implementation of site security plans for such facili-  
3 ties, subject to paragraph (2).

4 “(2) COVERED FACILITIES.—This title applies  
5 to chemical facilities that, in the discretion of the  
6 Secretary, present high levels of security risk.

7 “(b) LAYERED SECURITY MEASURES.—Regulations  
8 under subsection (a) shall permit each chemical facility,  
9 in developing and implementing site security plans, to se-  
10 lect layered security measures that, in combination, appro-  
11 priately address the vulnerability assessment and the risk-  
12 based performance standards for security for the facility.

13 “(c) AUTHORITY OF SECRETARY REGARDING SITE  
14 SECURITY PLANS.—The Secretary may not disapprove a  
15 site security plan submitted under this section based on  
16 the presence or absence of a particular security measure,  
17 but the Secretary may disapprove a site security plan if  
18 the plan fails to satisfy the risk-based performance stand-  
19 ards established by this section.

20 “(d) ALTERNATIVE SECURITY PROGRAMS.—The Sec-  
21 retary may approve alternative security programs estab-  
22 lished by private sector entities, Federal, State, or local  
23 authorities, or other applicable laws if the Secretary deter-  
24 mines that the requirements of such programs meet the  
25 requirements of this section and the interim regulations.

1       “(e) REVIEW OF VULNERABILITY ASSESSMENTS AND  
2 SITE SECURITY PLANS.—The Secretary shall review and  
3 approve each vulnerability assessment and site security  
4 plan required under this section.

5       “(f) EXEMPTED FACILITIES.—The Secretary shall  
6 not apply regulations issued pursuant to this title to any  
7 of the following:

8           “(1) Facilities regulated pursuant to the Mari-  
9 time Transportation Security Act of 2002.

10          “(2) Public water systems, as defined by section  
11 1401 of the Safe Drinking Water Act.

12          “(3) Treatment works, as defined in section  
13 212 of the Federal Water Pollution Control Act.

14          “(4) Any facility owned or operated by the De-  
15 partment of Defense or the Department of Energy.

16          “(5) Any facility subject to regulation by the  
17 Nuclear Regulatory Commission.

18 **“SEC. 2102. PROTECTIONS FROM PUBLIC DISCLOSURE.**

19       “(a) IN GENERAL.—Notwithstanding any other pro-  
20 vision of law, information developed under this title, in-  
21 cluding vulnerability assessments, site security plans, and  
22 other security-related information, records, and docu-  
23 ments, shall be given protections from public disclosure  
24 consistent with similar information developed by chemical

1 facilities subject to regulation under section 70103 of title  
2 46, United States Code, subject to subsection (b).

3 “(b) **LIMITATION.**—Subsection (a) does not prohibit  
4 the sharing of information, as the Secretary deems appro-  
5 priate, with State and local government officials pos-  
6 sessed the necessary security clearances, including law  
7 enforcement officials and first responders, for the purpose  
8 of carrying out this title, except that such information may  
9 not be disclosed pursuant to any State or local law.

10 “(c) **TREATMENT AS SENSITIVE SECURITY INFORMA-**  
11 **TION.**—In any proceeding to enforce this title, vulner-  
12 ability assessments, site security plans, and other informa-  
13 tion submitted to or obtained by the Secretary under this  
14 title, and related vulnerability or security information,  
15 shall be treated as if the information were classified mate-  
16 rial.

17 **“SEC. 2103. ENFORCEMENT.**

18 “(a) **CIVIL PENALTY.**—Any person who violates an  
19 order issued under this title shall be liable for a civil pen-  
20 alty under section 70119(a) of title 46, United States  
21 Code.

22 “(b) **AUDITS AND INSPECTIONS.**—The Secretary  
23 shall audit and inspect chemical facilities for the purposes  
24 of determining compliance with the regulations issued pur-  
25 suant to this title.

1 “(c) NOTICE OF NONCOMPLIANCE.—

2 “(1) IN GENERAL.—If the Secretary determines  
3 that a chemical facility is not in compliance with this  
4 section, the Secretary shall provide the owner or op-  
5 erator with written notification (including a clear ex-  
6 planation of deficiencies in the vulnerability assess-  
7 ment and site security plan) and opportunity for  
8 consultation, and issue an order to comply by such  
9 date as the Secretary determines to be appropriate  
10 under the circumstances, subject to paragraph (2).

11 “(2) ORDER TO CEASE OPERATION.—If the  
12 owner or operator continues to be in noncompliance,  
13 the Secretary may issue an order for the facility to  
14 cease operation, until the owner or operator complies  
15 with the order.

16 “(d) EXCLUSIVE AUTHORITY OF SECRETARY.—  
17 Nothing in this title confers upon any person except the  
18 Secretary a right of action against an owner or operator  
19 of a chemical facility to enforce any provision of this title.

20 “(e) EFFECT ON OTHER FEDERAL LAWS.—Nothing  
21 in this section shall be construed to supersede, amend,  
22 alter, or affect any Federal law that regulates the manu-  
23 facture, distribution in commerce, use, sale, other treat-  
24 ment, or disposal of chemical substances or mixtures.

1 **“SEC. 2104. AUTHORITY OF STATES.**

2       “**This title does not preclude or deny any right of any**  
3 **State or political subdivision thereof to adopt or enforce**  
4 **any regulation, requirement, or standard of performance**  
5 **with respect to chemical facility security that is more**  
6 **stringent than a regulation, requirement, or standard of**  
7 **performance issued under this title, or otherwise impair**  
8 **any right or jurisdiction of any State with respect to chem-**  
9 **ical facilities within that State.”.**

○