

§ 27.255

6 CFR Ch. I (1–19 Edition)

(d) *Inspectors.* Inspections and audits are conducted by personnel duly authorized and designated for that purpose as “inspectors” by the Secretary or the Secretary’s designee.

(1) An inspector will, on request, present his or her credentials for examination, but the credentials may not be reproduced by the facility.

(2) An inspector may administer oaths and receive affirmations, with the consent of any witness, in any matter.

(3) An inspector may gather information by reasonable means including, but not limited to, interviews, statements, photocopying, photography, and video- and audio-recording. All documents, objects and electronically stored information collected by each inspector during the performance of that inspector’s duties shall be maintained for a reasonable period of time in the files of the Department of Homeland Security maintained for that facility or matter.

(4) An inspector may request forthwith access to all records required to be kept pursuant to § 27.255. An inspector shall be provided with the immediate use of any photocopier or other equipment necessary to copy any such record. If copies can not be provided immediately upon request, the inspector shall be permitted immediately to take the original records for duplication and prompt return.

(e) *Confidentiality.* In addition to the protections provided under CVI in § 27.400, information received in an audit or inspection under this section, including the identity of the persons involved in the inspection or who provide information during the inspection, shall remain confidential under the investigatory file exception, or other appropriate exception, to the public disclosure requirements of 5 U.S.C. 552.

(f) *Guidance.* The Assistant Secretary shall issue guidance identifying appropriate processes for such inspections, and specifying the type and nature of documentation that must be made available for review during inspections and audits.

§ 27.255 Recordkeeping requirements.

(a) Except as provided in § 27.255(b), the covered facility must keep records

of the activities as set out below for at least three years and make them available to the Department upon request. A covered facility must keep the following records:

(1) *Training.* For training, the date and location of each session, time of day and duration of session, a description of the training, the name and qualifications of the instructor, a clear, legible list of attendees to include the attendee signature, at least one other unique identifier of each attendee receiving the training, and the results of any evaluation or testing.

(2) *Drills and exercises.* For each drill or exercise, the date held, a description of the drill or exercise, a list of participants, a list of equipment (other than personal equipment) tested or employed in the exercise, the name(s) and qualifications of the exercise director, and any best practices or lessons learned which may improve the Site Security Plan;

(3) *Incidents and breaches of security.* Date and time of occurrence, location within the facility, a description of the incident or breach, the identity of the individual to whom it was reported, and a description of the response;

(4) *Maintenance, calibration, and testing of security equipment.* The date and time, name and qualifications of the technician(s) doing the work, and the specific security equipment involved for each occurrence of maintenance, calibration, and testing;

(5) *Security threats.* Date and time of occurrence, how the threat was communicated, who received or identified the threat, a description of the threat, to whom it was reported, and a description of the response;

(6) *Audits.* For each audit of a covered facility’s Site Security Plan (including each audit required under § 27.225(e)) or Security Vulnerability Assessment, a record of the audit, including the date of the audit, results of the audit, name(s) of the person(s) who conducted the audit, and a letter certified by the covered facility stating the date the audit was conducted.

(7) *Letters of Authorization and Approval.* All Letters of Authorization and Approval from the Department,

and documentation identifying the results of audits and inspections conducted pursuant to § 27.250.

(b) A covered facility must retain records of submitted Top-Screens, Security Vulnerability Assessments, Site Security Plans, and all related correspondence with the Department for at least six years and make them available to the Department upon request.

(c) To the extent necessary for security purposes, the Department may request that a covered facility make available records kept pursuant to other Federal programs or regulations.

(d) Records required by this section may be kept in electronic format. If kept in an electronic format, they must be protected against unauthorized access, deletion, destruction, amendment, and disclosure.

Subpart C—Orders and Adjudications

§ 27.300 Orders.

(a) *Orders generally.* When the Assistant Secretary determines that a facility is in violation of any of the requirements of this part, the Assistant Secretary may take appropriate action including the issuance of an appropriate Order.

(b) *Orders Assessing Civil Penalty and Orders to Cease Operations.* (1) Where the Assistant Secretary determines that a facility is in violation of an Order issued pursuant to paragraph (a) of this section, the Assistant may enter an Order Assessing Civil Penalty, Order to Cease Operations, or both.

(2) Following the issuance of an Order by the Assistant Secretary pursuant to paragraph (b)(1) of this section, the facility may enter further consultations with Department.

(3) Where the Assistant Secretary determines that a facility is in violation of an Order issued pursuant to paragraph (a) of this section and issues an Order Assessing Civil Penalty pursuant to paragraph (b)(1) of this section, a chemical facility is liable to the United States for a civil penalty of not more than \$25,000 for each day during which the violation continues, if the violation of the Order occurred on or before November 2, 2015, or \$34,013 for each day during which the violation of the Order

continues, if the violation occurred after November 2, 2015.

(c) *Procedures for Orders.* (1) At a minimum, an Order shall be signed by the Assistant Secretary, shall be dated, and shall include:

(i) The name and address of the facility in question;

(ii) A listing of the provision(s) that the facility is alleged to have violated;

(iii) A statement of facts upon which the alleged instances of noncompliance are based;

(iv) A clear explanation of deficiencies in the facility's chemical security program, including, if applicable, any deficiencies in the facility's Security Vulnerability Assessment, Site Security Plan, or both; and

(v) A statement, indicating what action(s) the chemical must take to remedy the instance(s) of noncompliance; and

(vi) The date by which the facility must comply with the terms of the Order.

(2) The Assistant Secretary may establish procedures for the issuance of Orders.

(d) A facility must comply with the terms of the Order by the date specified in the Order unless the facility has filed a timely Notice for Application for Review under § 27.310.

(e) Where a facility or other person contests the determination of the Assistant Secretary to issue an Order, a chemical facility may seek an adjudication pursuant to § 27.310.

(f) An Order issued under this section becomes final agency action when the time to file a Notice of Application of Review under § 27.310 has passed without such a filing or upon the conclusion of adjudication or appeal proceedings under this subpart.

[72 FR 17729, Apr. 9, 2007, as amended at 81 FR 43001, July 1, 2016; 82 FR 8579, Jan. 27, 2017; 83 FR 13834, Apr. 2, 2018]

§ 27.305 Neutral adjudications.

(a) Any facility or other person who has received a Finding pursuant to § 27.230(a)(12)(iv), a Determination pursuant to § 27.245(b), or an Order pursuant to § 27.300 is entitled to an adjudication, by a neutral adjudications officer, of any issue of material fact relevant to any administrative action