

(iii) vulnerability of the facility to attack, compromise, infiltration, or exploitation by terrorists.

(3) Changes in tiering

(A) Maintenance of records

The Secretary shall document the basis for each instance in which—

- (i) tiering for a covered chemical facility is changed; or
- (ii) a covered chemical facility is determined to no longer be subject to the requirements under this subchapter.

(B) Required information

The records maintained under subparagraph (A) shall include information on whether and how the Secretary confirmed the information that was the basis for the change or determination described in subparagraph (A).

(4) Semiannual performance reporting

Not later than 6 months after December 18, 2014, and not less frequently than once every 6 months thereafter, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives a report that includes, for the period covered by the report—

- (A) the number of covered chemical facilities in the United States;
- (B) information—
 - (i) describing—
 - (I) the number of instances in which the Secretary—
 - (aa) placed a covered chemical facility in a lower risk tier; or
 - (bb) determined that a facility that had previously met the criteria for a covered chemical facility under section 621(3) of this title no longer met the criteria; and
 - (II) the basis, in summary form, for each action or determination under subclause (I); and
 - (ii) that is provided in a sufficiently anonymized form to ensure that the information does not identify any specific facility or company as the source of the information when viewed alone or in combination with other public information;

(C) the average number of days spent reviewing site security or an alternative security program for a covered chemical facility prior to approval;

(D) the number of covered chemical facilities inspected;

(E) the average number of covered chemical facilities inspected per inspector; and

(F) any other information that the Secretary determines will be helpful to Congress in evaluating the performance of the Chemical Facility Anti-Terrorism Standards Program.

(Pub. L. 107–296, title XXI, §2102, as added Pub. L. 113–254, §2(a), Dec. 18, 2014, 128 Stat. 2900.)

TERMINATION OF SECTION

For termination of section by section 5 of Pub. L. 113–254, see Effective and Termination Dates note below.

EFFECTIVE AND TERMINATION DATES

Section effective on the date that is 30 days after Dec. 18, 2014, and authority provided under this section to terminate on the date that is 4 years after such effective date, see sections 4(a) and 5 of Pub. L. 113–254, set out as notes under section 621 of this title.

§ 623. Protection and sharing of information

(a) In general

Notwithstanding any other provision of law, information developed under this subchapter, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with the protection of similar information under section 70103(d) of title 46.

(b) Sharing of information with States and local governments

Nothing in this section shall be construed to prohibit the sharing of information developed under this subchapter, as the Secretary determines appropriate, with State and local government officials possessing a need to know and the necessary security clearances, including law enforcement officials and first responders, for the purpose of carrying out this subchapter, provided that such information may not be disclosed pursuant to any State or local law.

(c) Sharing of information with first responders

(1) Requirement

The Secretary shall provide to State, local, and regional fusion centers (as that term is defined in section 124h(j)(1) of this title) and State and local government officials, as the Secretary determines appropriate, such information as is necessary to help ensure that first responders are properly prepared and provided with the situational awareness needed to respond to security incidents at covered chemical facilities.

(2) Dissemination

The Secretary shall disseminate information under paragraph (1) through a medium or system determined by the Secretary to be appropriate to ensure the secure and expeditious dissemination of such information to necessary selected individuals.

(d) Enforcement proceedings

In any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this subchapter, and related vulnerability or security information, shall be treated as if the information were classified information.

(e) Availability of information

Notwithstanding any other provision of law (including section 552(b)(3) of title 5), section 552 of title 5 (commonly known as the “Freedom of Information Act”) shall not apply to information protected from public disclosure pursuant to subsection (a) of this section.

(f) Sharing of information with Members of Congress

Nothing in this section shall prohibit the Secretary from disclosing information developed under this subchapter to a Member of Congress in response to a request by a Member of Congress.

(Pub. L. 107-296, title XXI, §2103, as added Pub. L. 113-254, §2(a), Dec. 18, 2014, 128 Stat. 2911.)

TERMINATION OF SECTION

For termination of section by section 5 of Pub. L. 113-254, see Effective and Termination Dates note below.

EFFECTIVE AND TERMINATION DATES

Section effective on the date that is 30 days after Dec. 18, 2014, and authority provided under this section to terminate on the date that is 4 years after such effective date, see sections 4(a) and 5 of Pub. L. 113-254, set out as notes under section 621 of this title.

§ 624. Civil enforcement

(a) Notice of noncompliance

(1) Notice

If the Secretary determines that a covered chemical facility is not in compliance with this subchapter, the Secretary shall—

(A) provide the owner or operator of the facility with—

(i) not later than 14 days after date¹ on which the Secretary makes the determination, a written notification of noncompliance that includes a clear explanation of any deficiency in the security vulnerability assessment or site security plan; and

(ii) an opportunity for consultation with the Secretary or the Secretary's designee; and

(B) issue to the owner or operator of the facility an order to comply with this subchapter by a date specified by the Secretary in the order, which date shall be not later than 180 days after the date on which the Secretary issues the order.

(2) Continued noncompliance

If an owner or operator remains noncompliant after the procedures outlined in paragraph (1) have been executed, or demonstrates repeated violations of this subchapter, the Secretary may enter an order in accordance with this section assessing a civil penalty, an order to cease operations, or both.

(b) Civil penalties

(1) Violations of orders

Any person who violates an order issued under this subchapter shall be liable for a civil penalty under section 70119(a) of title 46.

(2) Non-reporting chemical facilities of interest

Any owner of a chemical facility of interest who fails to comply with, or knowingly submits false information under, this subchapter or the CFATS regulations shall be liable for a civil penalty under section 70119(a) of title 46.

(c) Emergency orders

(1) In general

Notwithstanding subsection (a) or any site security plan or alternative security program approved under this subchapter, if the Secretary determines that there is an imminent threat of death, serious illness, or severe personal injury, due to a violation of this subchapter or the risk of a terrorist incident that may affect a chemical facility of interest, the Secretary—

(A) shall consult with the facility, if practicable, on steps to mitigate the risk; and

(B) may order the facility, without notice or opportunity for a hearing, effective immediately or as soon as practicable, to—

(i) implement appropriate emergency security measures; or

(ii) cease or reduce some or all operations, in accordance with safe shutdown procedures, if the Secretary determines that such a cessation or reduction of operations is the most appropriate means to address the risk.

(2) Limitation on delegation

The Secretary may not delegate the authority under paragraph (1) to any official other than the Under Secretary responsible for overseeing critical infrastructure protection, cybersecurity, and other related programs of the Department appointed under section 113(a)(1)(H) of this title.

(3) Limitation on authority

The Secretary may exercise the authority under this subsection only to the extent necessary to abate the imminent threat determination under paragraph (1).

(4) Due process for facility owner or operator

(A) Written orders

An order issued by the Secretary under paragraph (1) shall be in the form of a written emergency order that—

(i) describes the violation or risk that creates the imminent threat;

(ii) states the security measures or order issued or imposed; and

(iii) describes the standards and procedures for obtaining relief from the order.

(B) Opportunity for review

After issuing an order under paragraph (1) with respect to a chemical facility of interest, the Secretary shall provide for review of the order under section 554 of title 5 if a petition for review is filed not later than 20 days after the date on which the Secretary issues the order.

(C) Expiration of effectiveness of order

If a petition for review of an order is filed under subparagraph (B) and the review under that paragraph is not completed by the last day of the 30-day period beginning on the date on which the petition is filed, the order shall vacate automatically at the end of that period unless the Secretary determines, in writing, that the imminent threat providing a basis for the order continues to exist.

(d) Right of action

Nothing in this subchapter confers upon any person except the Secretary or his or her des-

¹ So in original. Probably should be preceded by "the".