

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 sub-

mits 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 Director of Cybersecurity and Infrastructure Security.

(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.

¹ So in original. Probably should be preceded by “the”.

(d) Right of action

Nothing in this subchapter confers upon any person except the Secretary or his or her designee a right of action against an owner or operator of a covered chemical facility to enforce any provision of this subchapter.

(Pub. L. 107-296, title XXI, §2104, as added Pub. L. 113-254, §2(a), Dec. 18, 2014, 128 Stat. 2912; amended Pub. L. 115-278, §2(g)(8)(B), Nov. 16, 2018, 132 Stat. 4180.)

TERMINATION OF SECTION

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

AMENDMENTS

2018—Subsec. (c)(2). Pub. L. 115-278 substituted “Director of Cybersecurity and Infrastructure Security” for “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”.

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.

§ 625. Whistleblower protections**(a) Procedure for reporting problems****(1) Establishment of a reporting procedure**

Not later than 180 days after December 18, 2014, the Secretary shall establish, and provide information to the public regarding, a procedure under which any employee or contractor of a chemical facility of interest may submit a report to the Secretary regarding a violation of a requirement under this subchapter.

(2) Confidentiality

The Secretary shall keep confidential the identity of an individual who submits a report under paragraph (1) and any such report shall be treated as a record containing protected information to the extent that the report does not consist of publicly available information.

(3) Acknowledgment of receipt

If a report submitted under paragraph (1) identifies the individual making the report, the Secretary shall promptly respond to the individual directly and shall promptly acknowledge receipt of the report.

(4) Steps to address problems

The Secretary—

(A) shall review and consider the information provided in any report submitted under paragraph (1); and

(B) may take action under section 624 of this title if necessary to address any substantiated violation of a requirement under this subchapter identified in the report.

(5) Due process for facility owner or operator**(A) In general**

If, upon the review described in paragraph (4), the Secretary determines that a violation of a provision of this subchapter, or a

regulation prescribed under this subchapter, has occurred, the Secretary may—

(i) institute a civil enforcement under section 624(a) of this title; or

(ii) if the Secretary makes the determination under section 624(c) of this title, issue an emergency order.

(B) Written orders

The action of the Secretary under paragraph (4) shall be in a written form that—

(i) describes the violation;

(ii) states the authority under which the Secretary is proceeding; and

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

(C) Opportunity for review

After taking action under paragraph (4), the Secretary shall provide for review of the action if a petition for review is filed within 20 calendar days of the date of issuance of the order for the action.

(D) Expiration of effectiveness of order

If a petition for review of an action is filed under subparagraph (C) and the review under that subparagraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the violation providing a basis for the action continues to exist.

(6) Retaliation prohibited**(A) In general**

An owner or operator of a chemical facility of interest or agent thereof may not discharge an employee or otherwise discriminate against an employee with respect to the compensation provided to, or terms, conditions, or privileges of the employment of, the employee because the employee (or an individual acting pursuant to a request of the employee) submitted a report under paragraph (1).

(B) Exception

An employee shall not be entitled to the protections under this section if the employee—

(i) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or

(ii) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

(b) Protected disclosures

Nothing in this subchapter shall be construed to limit the right of an individual to make any disclosure—

(1) protected or authorized under section 2302(b)(8) or 7211 of title 5;

(2) protected under any other Federal or State law that shields the disclosing individual against retaliation or discrimination for having made the disclosure in the public interest; or

(3) to the Special Counsel of an agency, the inspector general of an agency, or any other