

House-Senate Final  
Sec. 540

(a) No later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall issue interim final regulations establishing risk-based performance standards for security of chemical facilities and requiring vulnerability assessments and the development and implementation of site security plans for chemical facilities. Provided, that such regulations shall apply to chemical facilities that, in the discretion of the Secretary, present high levels of security risk. Such regulations shall permit each such facility, in developing and implementing site security plans, to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility. Provided further, that the Secretary may not disapprove a site security plan submitted under this section based on the presence or absence of a particular security measure, but the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section. Provided further, that the Secretary may approve alternative security programs established by private sector entities, Federal, State, or local authorities, or other applicable laws if the Secretary determines that the requirements of such programs meet the requirements of this section and the interim regulations. Provided further, that the Secretary shall review and approve each vulnerability assessment and site security plan required under this section. Provided further, that the Secretary shall not apply regulations issued pursuant to this section to facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Pub. L. 107-295, as amended; Public Water Systems, as defined by section 1401 of the Safe Drinking Water Act, Pub. L. 93-523, as amended; Treatment Works as defined in section 212 of the Federal Water Pollution Control Act, Pub. L. 92-500, as amended; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.

(b) Interim regulations issued under this section shall apply until the effective date of interim or final regulations promulgated under other laws that establish requirements and standards referred to in subsection (a) and expressly supersede this section. Provided further, that the authority provided by this section shall terminate three years after the date of enactment of this Act.

(c) Notwithstanding any other provision of law and subsection (b), information developed under this section, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46 U.S.C. This subsection does not prohibit the sharing of such information, as the Secretary deems appropriate, with state and local government officials possessing the necessary security clearances, including law enforcement officials and first responders, for the purpose of carrying out this section, provided that such information may not be disclosed pursuant to any state or local law. In any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this

section, and related vulnerability or security information, shall be treated as if the information were classified material.

(d) Any person that violates an order issued under this section shall be liable for a civil penalty under section 70119(a) of title 46, United States Code. Nothing in this section confers upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this section.

(e) The Secretary of Homeland Security shall audit and inspect chemical facilities for the purposes of determining compliance with the regulations issued pursuant to this section.

(f) Nothing in this section shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.

(g) If the Secretary determines that a chemical facility is not in compliance with this section, the Secretary shall provide the owner or operator with written notification (including a clear explanation of deficiencies in the vulnerability assessment and site security plan) and opportunity for consultation, and issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances. If the owner or operator continues to be in noncompliance, the Secretary may issue an order for the facility to cease operation, until the owner or operator complies with the order.