

# STATE OF NEW YORK

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3810

2019-2020 Regular Sessions

## IN ASSEMBLY

January 31, 2019

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Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to directing the division of homeland security and emergency services to conduct a review and analysis of security measures at rail yards

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 719 to  
2 read as follows:

3 § 719. Protection of critical infrastructure; rail yards. 1. Notwith-  
4 standing any other provision of law and subject to the availability of  
5 an appropriation, the commissioner of the division of homeland security  
6 and emergency services shall conduct a review and analysis of measures  
7 being taken by the owners and operators of rail yards facilities to  
8 protect the security of critical infrastructure related to such facili-  
9 ties. Such commissioner shall have the authority to review all audits or  
10 reports related to the security of such critical infrastructure, includ-  
11 ing all such audits or reports mandated by state and federal law or  
12 regulation, including spill prevention reports and risk management  
13 plans, audits and reports conducted at the request of any federal enti-  
14 ty, or any other agency or authority of the state or any political  
15 subdivision thereof, and reports prepared by owners and operators of  
16 such facilities as required in this subdivision. The owners and opera-  
17 tors of such rail yard facilities shall, in compliance with any federal  
18 and state requirements regarding the dissemination of such information,  
19 provide access to the commissioner to such audits and reports regarding  
20 such critical infrastructure provided, however, exclusive custody and  
21 control of such audits and reports shall remain solely with the owners  
22 and operators of such facilities to the extent not inconsistent with any  
23 other law. For the purposes of this section "critical infrastructure"

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 has the meaning ascribed to that term in subdivision five of section  
2 eighty-six of the public officers law.

3 2. To effectuate his or her duties pursuant to this section and iden-  
4 tify risks to the public, the commissioner of the division of homeland  
5 security and emergency services shall:

6 (a) identify and prepare a list of all rail yard facilities in the  
7 state;

8 (b) in consultation with the commissioner of transportation and any  
9 state, local and municipal officials as may be appropriate, identify  
10 rail yard facilities, which because of their storage and/or transporta-  
11 tion of, or relationship to, such substances identified pursuant to  
12 paragraph (a) of subdivision two of section seven hundred fourteen of  
13 this article pose risks to the public should an unauthorized release of  
14 such hazardous substances occur; and

15 (c) require such rail yard facilities identified pursuant to paragraph  
16 (a) of this subdivision, as the commissioner so determines, to prepare a  
17 vulnerability assessment of the security measures taken by such facili-  
18 ties to prevent and respond to the unauthorized release of hazardous  
19 substances as may be stored therein, which assessments the commissioner  
20 shall review and consider in light of the seriousness of the risk posed  
21 and vulnerability of such facility and, where appropriate, make recom-  
22 mendations with respect thereto.

23 3. (a) On or before June first, two thousand twenty-one, the commis-  
24 sioner shall make a preliminary report to the governor, the temporary  
25 president of the senate, the speaker of the assembly, the commissioner  
26 of transportation and the chief executive officer of any such affected  
27 facility or his or her designee, and on or before December thirty-first,  
28 two thousand twenty-one, and not later than three years after such date,  
29 and every five years thereafter, the commissioner shall report to the  
30 governor, the temporary president of the senate, the speaker of the  
31 assembly, the commissioner of transportation and the chief executive  
32 officer of any such affected facility or his or her designee. Such  
33 report shall review the security measures being taken regarding critical  
34 infrastructure related to rail yard facilities, assess the effectiveness  
35 thereof, and include recommendations to the legislature and the depart-  
36 ment of transportation if the commissioner determines that additional  
37 measures are required to be implemented.

38 (b) Before the receipt of such report identified in paragraph (a) of  
39 this subdivision, each recipient of such report shall develop confiden-  
40 tiality protocols which shall be binding upon the recipient who issues  
41 the protocols and anyone to whom the recipient shows a copy of the  
42 report in consultation with the commissioner, for the maintenance and  
43 use of such report so as to ensure the confidentiality of the report and  
44 all information contained therein, provided, however, that such proto-  
45 cols shall not be binding upon a person who is provided access to such  
46 report or any information contained therein pursuant to section eighty-  
47 nine of the public officers law after a final determination that access  
48 to such report or any information contained therein could not be denied  
49 pursuant to subdivision two of section eighty-seven of the public offi-  
50 cers law. The commissioner shall also develop protocols for the division  
51 of homeland security and emergency services related to the maintenance  
52 and use of such report so as to ensure the confidentiality of all sensi-  
53 tive information contained in such report. On each report, the commis-  
54 sioner shall prominently display the following statement: "This report  
55 may contain information that if disclosed could endanger the life or  
56 safety of the public, and therefore, pursuant to section seven hundred

1 eleven of the executive law, this report is to be maintained and used in  
2 a manner consistent with protocols established to preserve the confi-  
3 dentiality of the information contained herein in a manner consistent  
4 with law."

5 (c) The departments of transportation and environmental conservation  
6 shall have the discretion to require that recommendations of the commis-  
7 sioner be implemented by any owner or operator of a rail yard facility.

8 § 2. This act shall take effect immediately.