

# STATE OF NEW YORK

9480

## IN ASSEMBLY

March 14, 2024

Introduced by M. of A. HYNDMAN -- 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"  
24 has the meaning ascribed to that term in subdivision five of section  
25 eighty-six of the public officers law.

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

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1 2. To effectuate his or her duties pursuant to this section and identify  
2 risks to the public, the commissioner of the division of homeland  
3 security and emergency services shall:

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

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

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

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

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

1 deniality of the information contained herein in a manner consistent  
2 with law."

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

6 § 2. This act shall take effect immediately.