

Department of Homeland Security Memorandum of Agreement with Access to Chemical-terrorism Vulnerability Information (CVI)

Please do not use the MOA provided here as an official MOA. Please contact the CSCD CVI Security Officer to begin development of a MOA specific to your department or agency.

- 1. Parties.** The parties to this Memorandum of Agreement (MOA) are the Department of Homeland Security, through its Chemical Security Compliance Division (hereinafter referred to as “DHS CSCD”), and the officials persons, parties, offices, or governmental divisions designated to access and receive CVI as listed in Attachment A (hereinafter referred to as “the Recipient”).
- 2. Purpose.** The purpose of this MOA is to set forth agreed terms and conditions under which DHS will provide CVI to the Recipient.
- 3. Authorities.** DHS is authorized to enter this MOA under Section 550 of PL 109-295.
- 4. Background.** Section 550 of Public Law (PL) 109-295 entitled, *Making Appropriations for the Department Of Homeland Security for the Fiscal Year Ending September 30, 2007, and for Other Purposes* (Oct. 4, 2006) establishes the statutory requirements for the submission and protection of information submitted pursuant to that section. Section 550 provides that:

[I]nformation 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, United States Code: Provided, That 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: Provided further, That 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.

The Procedures Manual entitled, *Safeguarding Information Designated as Chemical-Terrorism Vulnerability Information (CVI)* provides further detailed guidance, and requires that Federal agencies that obtain CVI from the DHS CSCD enter into an MOA. This MOA fulfills that requirement.

5. Responsibilities.

A. DHS will:

- (i) Provide access to CVI to the Recipient for the purposes and under the conditions outlined in this MOA; and
- (ii) Train the Recipient's CVI Security Officer(s) and be available for consultation and guidance.

B. The Recipient will:

- (i) Warrant and agree that each of its employees and contractors who will have access to CVI has signed an individual non-disclosure agreement approved of, or provided by, DHS, and is familiar with, will be trained in, and will comply with, the statutes, regulations, and rules that address CVI set forth in Section 550 of PL 109-295 and the accompanying Procedures Manual, and other relevant guidance issued by the CSCD, and will periodically check such guidance for updates and amendments;
- (ii) Use any CVI provided to it only for the purposes set forth in Section 550 of PL 109-295 and will not use CVI as a substitute for the exercise of its own legal authority to compel access to or submission of that same information, and further, will not use CVI for regulatory purposes without first contacting the DHS CSCD;
- (iii) Designate a CVI Security Officer and Deputy CVI Security Officer), who each may be asked to submit to a background investigation to determine eligibility and suitability for access to CVI, or have a current SECRET or higher security clearance. Both shall be familiar with and trained in the responsibilities overseeing the use and dissemination of CVI as set forth in Section 550 of PL 109-295 and the accompanying Procedural Manual, and any other guidance issued by DHS. The Security Officer will be responsible for determining need to know for all persons covered by this Agreement.
- (iv) Upon request, immediately take such steps as may be necessary to return promptly all CVI, including copies, however made, to DHS;
- (v) Consider any violations of procedures regarding CVI as matters subject to rules of conduct (including sanctions) that apply to its employees, and will refer violations of law to appropriate authorities for prosecution;
- (vi) Immediately report all compromises of CVI and violations of applicable procedures to the DHS CSCD CVI Security Officer and cooperate with any investigation that may be initiated;
- (vii) Ensure that information it receives from DHS that is marked "CHEMICAL-TERRORISM VULNERABILITY INFORMATION" is accessed only by those persons covered by this Agreement and have a need to know this information as determined by the Security Officer;
- (viii) Not further disclose CVI to authorized persons covered by this Agreement without the consent of the CVI Director. Not further disclose CVI to other authorized users outside the scope of this Agreement without the consent of

the CSCD Security Officer. Not further disclose CVI to any unauthorized person without the prior approval of the CSCD Director;

- (ix) Fully comply with any requests or visits, whether scheduled or unscheduled, by the DHS CSCD CVI Security Officer or his/her designee, to review the Recipient's compliance with the terms of this MOA, and will take any corrective action recommended; and
 - (x) Notify and coordinate with DHS prior to responding to any requests for release of CVI under a court order, agency decision, state or local laws requiring the disclosure of information or records, or any other statute or regulation.
 - (xi) Ensure all IT systems and media used to handle, store, or transmit materials containing CVI are in compliance with the requirements of the CVI Procedural Manual and all other requirements set forth herein.
 - (xii) Consider any violations of procedures regarding CVI as matters subject to rules of conduct (including sanctions) and will refer violations of law to appropriate authorities for prosecution;
- 6. Amendments.** Should there be a change in either the DHS CVI Procedures Manual, DHS will require conforming amendments to this MOA. Otherwise, no amendments are permitted.
- 7. Reimbursables.** This MOA does not provide authority for any reimbursable expenditure, or funding.
- 8. Other Provisions.** Nothing in this MOA is intended to conflict with current law or regulation. If a term of this MOA is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOA shall remain in full force and effect.
- 9. Effective Date and Termination Provisions.** This MOA is effective as of the date of the last required signature. It continues until terminated in writing by either party.

It may be terminated effective upon the delivery by any means of written notice of termination signed by an authorized official. Unwillingness by the Recipient to agree to amendments required by DHS will constitute a basis for termination. If terminated, the Recipient agrees to promptly return all CVI that it has received to the DHS CSCD CVI Security Officer.

- 10. Original Memorandum of Agreement.** The original of this document will be kept by the DHS CSCD CVI Security Officer. Copies may be made as necessary.

Please do not use the MOA provided here as an official MOA. Instead, please contact the DHS CSCD CVI Security Officer for an individualized MOA for signature.