

## EXECUTIVE ORDER 13650



### Executive Order 13650 Regulatory Frequent or Critical Violations

The May 2014 *Executive Order (EO) 13650 Actions To Improve Chemical Facility Safety and Security – A Shared Commitment*<sup>1</sup>, report to the President outlines improvement actions and activities identified by the EO Chemical Facility Safety and Security Working Group. The actions and activities outlined are intended to improve operational coordination with state, local, tribal, and territorial partners; enhance federal agency coordination and information sharing; modernize chemical facility safety and security policies, regulations, and standards; and work with stakeholders in identifying best practices to reduce safety and security risks in the production and storage of potentially harmful chemicals.

As part of the commitment to enhance Federal coordination, the interagency workgroup created this document to facilitate information sharing among field personnel from different agencies and with chemical industry partners. This resource describes the key items each program found to be its most frequent or, in some cases, most critical violations. While there is an expectation that facilities comply with all regulations, this information highlights areas of chemical security and safety that the regulated community should specifically consider for greater compliance. Each agency works with its regulated industry members to achieve compliance through various means, including inspections, meetings, presentations, publications, and/or information on its website. It is important to note that the violations listed are not necessarily of equal scope or magnitude, and the subsequent enforcement responses are governed by statute and Department/Agency enforcement policy. For additional information regarding enforcement, please contact the respective Agency.

The interagency considers this a ‘living document’ and anticipates reviewing and updating it periodically.

<sup>1</sup> [https://www.osha.gov/chemicalexecutiveorder/final\\_chemical\\_eo\\_status\\_report.pdf](https://www.osha.gov/chemicalexecutiveorder/final_chemical_eo_status_report.pdf)

## The Department of Homeland Security

Regulation	Requirement	Violation
	<p>6 CFR § 27.210(a)(1)-Any facility that comes into possession of any CFATS Appendix A listed chemicals of interest at or above the applicable Screening Threshold Quantity after November 20, 2007, must complete and submit a Top-Screen within 60 days of coming into possession of such chemicals.</p>	<p>Facility fails to submit a Top-Screen within the timeframes established.</p>
<p>Chemical Facility Anti-Terrorism Standards (CFATS)<sup>2</sup></p>	<p>6 CFR § 27.230(a)(4) - <b>Risk Based Performance Standard (RBPS) 4 - Deter, Detect, and Delay:</b> Deter, detect, and delay an attack, creating sufficient time between detection of an attack and the point at which the attack becomes successful, including measures to: [...] (iii) Detect attacks at early stages, through counter surveillance, frustration of opportunity to observe potential targets, surveillance and sensing systems, and barriers and barricades. (iv) Delay an attack for a sufficient period of time to allow appropriate response through on-site security response, barriers and barricades, hardened targets, and well-coordinated response planning.</p>	<p>Site Security Plan<sup>3</sup> (SSP) deficiency —facility measures are not appropriate to address the RBPS related to detection and/or delay to the facility perimeter and/or restricted areas for their specific chemical(s) of interest and tier level.</p>

<sup>2</sup> <https://www.dhs.gov/critical-infrastructure-chemical-security>

<sup>3</sup> Site Security Plans (SSPs) identify measures that satisfy the applicable risk-based performance standards. The CFATS Act of 2014 states, “A facility, in developing a site security plan as required under subsection (a), shall include security measures that, in combination, appropriately address the security vulnerability assessment and the risk-based performance standards for security for the facility.” 6 U.S.C. § 622(b)(1).

## The Department of Homeland Security

Regulation	Requirement	Violation
	<p><i>6 CFR § 27.230(a)(8)</i> <b>RBPS 8 – Cyber.</b> Deter cyber sabotage, including by preventing unauthorized on-site or remote access to critical process controls, such as Supervisory Control and Data Acquisition (SCADA) systems, Distributed Control Systems (DCSs), Process Control Systems (PCSs), Industrial Control Systems (ICSs), critical business systems, and other sensitive computerized systems.</p>	<p>SSP deficiency - facility measures are not appropriate to address the RBPS related to protecting critical systems from cyber sabotage.</p>
<p>Chemical Facility Anti-Terrorism Standards (CFATS) (Continued)</p>	<p><i>6 CFR § 27.230(a)(9)</i> <b>RBPS 9 – Response.</b> Develop and exercise an emergency plan to respond to security incidents Internally and with assistance of local law enforcement and first responders.</p>	<p>SSP deficiency – facility measures are not appropriate to address the RBPS specific to response planning and outreach with local law enforcement and first responders.</p>
	<p><i>6 CFR § 27.230(a)(12)</i> <b>RBPS 12 - Personnel Surety.</b> Perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets.</p>	<p>SSP deficiency- facility measures are not appropriate to address the RBPS related to personnel surety typically, because they do not include appropriate background checks for all facility personnel or unescorted visitors with access to restricted areas or critical assets.</p>
	<p><i>6 CFR § 27.230(a)(18)</i> <b>RBPS 18 – Records.</b> Maintain appropriate records. <i>6 CFR § 27.255</i> requires the creation, maintenance, protection, storage, and disposal of appropriate security-related records and the activities required to make these records available to DHS upon request.</p>	<p>SSP deficiency- facility measures are not appropriate to address the recordkeeping requirements, specifically those that relate to the types of records that are maintained and the timeframes required for retention.</p>

The Department of Homeland Security		
Regulation	Requirement	Violation
United States Coast Guard  Maritime Transportation Security Act of 2002 (MTSA) <sup>4</sup>	<i>33 CFR § 105.255</i> : <b>Security Measures for Access Control</b>	Owner/operator fails to ensure security fencing monitoring in accordance with Facility Security Plan (FSP).
	<i>33 CFR § 105.260</i> : <b>Security Measures for Restricted Areas</b>	Owner/operator fails to ensure validation of Transportation Worker Identification Credential (TWIC) holder.
	<i>33 CFR § 105.220</i> : <b>Security Drills and Exercises</b>	Owner/operator fails to ensure that at least one security drill is conducted every three months.
	<i>33 CFR § 105.415</i> : <b>Audits and FSP/ASP Amendments</b>	Owner/operator fails to ensure annual audit of FSP/ASP amendments.

Environmental Protection Agency		
Regulation	Requirement	Violation
Risk Management Program (RMP) <sup>5</sup>	<i>40 CFR § 68.50 and 68.67</i> – <b>Hazard Review/Process Hazard Analysis (PHA)</b> requires owners/operators to review hazards associated with regulated substances and covered processes.	Facilities do not consider all the hazards associated with a covered process. Facilities do not address findings and recommendations from the analyses, or do not update the analyses every five years.

<sup>4</sup> <https://www.gpo.gov/fdsys/pkg/PLAW-107publ295/pdf/PLAW-107publ295.pdf>

<sup>5</sup> <https://www.epa.gov/rmp>

Environmental Protection Agency		
Regulation	Requirement	Violation
	<p>40 CFR § 68.56 and 68.73 – <b>Maintenance/Mechanical Integrity</b> requires owners/operators to prepare and implement procedures to maintain the on-going mechanical integrity of process equipment.</p>	Facilities do not perform maintenance inspections or replace aging/damaged equipment in accordance with good engineering practices.
	<p>40 CFR § 68.75 – <b>Management of Change</b> requires owners/operators to establish and implement written procedures to manage changes that affect a covered process.</p>	Facilities do not consider all the potential consequences of changes to covered processes. Employees are not informed or trained in changes prior to the start-up of a modified covered process.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)		
Regulation	Requirement	Violation
Federal Explosives Regulations <sup>6</sup>	<p>27 CFR § 555.127: <b>Daily Summary of Magazine Transactions.</b> All Federal explosives licensees and permittees (FELs) must record by manufacturer's name or brand name, the total quantity of explosives received in and removed from each magazine during the day, and the total remaining on hand at the end of the day.</p>	FEL fails to timely enter information into daily summary of magazine transactions (DSMT)
	<p>27 CFR § 555.122 – 555.125: <b>Records of Acquisition and Disposition.</b> All FELs must timely record and maintain certain information on explosives acquisitions and dispositions.</p>	FEL fails to timely record or retain information pertaining to explosives acquisitions and dispositions.

<sup>6</sup> <https://www.atf.gov/explosives/docs/publication-federal-explosives-laws-and-regulations-atf-p-54007/download>

## Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Regulation	Requirement	Violation
Federal Explosives Regulations (Continued)	<p><b>27 CFR § 555.215: Housekeeping (for explosives magazines).</b> This section requires that FELs keep magazines orderly and clean. The FEL is to avoid fire hazards such as accumulation of empty containers or other rubbish in or around magazines, and the use or storage of sparking metal cleaning utensils.</p>	<p>FEL fails to clean explosives spills in magazines. FEL stores or uses sparking metal tools or cleaning implements; keeps rubbish in or around magazines; or allows tall grass and brush to grow near magazines.</p>
	<p><b>27 CFR § 555.210: Type 4 Magazine Construction.</b> FEL is required to store low explosives (such as most fireworks) in a type 4 magazine meeting the fire, theft, and weather-resistance, and security requirements under this section.</p>	<p>FEL fails to properly maintain or secure magazine to ensure specific safety and security standards are met.</p>
	<p><b>27 CFR § 555.208: Type 2 Magazine Construction.</b> FEL is required to store high explosives (such as dynamite, detonators, TNT, PETN, and boosters) in a type 2 magazine meeting the bullet, fire, theft, and weather-resistance, ventilation, and security requirements under this section.</p>	<p>FEL fails to properly maintain or secure magazine to ensure specific safety and security standards are met.</p>
	<p><b>27 CFR § 555.29: Storage Requirements (General).</b> Generally requires that explosives materials be stored in accordance with the regulations under this Part.</p>	<p>FEL failed to properly store explosives materials in a fashion not captured by other, more specific regulations. For example, FEL did not use a magazine for the storage of explosives.</p>

## Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Regulation	Requirement	Violation
Federal Explosives Regulations (Continued)	<b>27 CFR § 555.57: Reporting Change in Control, Responsible Persons, and Employee Possessors.</b> Requires FELs to report certain changes in key personnel within 30 days of the change. This is to ensure background checks can be conducted in a timely fashion.	FEL failed to report certain changes in key personnel, such as managers, or employees handling explosives, within 30 days of the change.

## Occupational Safety and Health Agency (OSHA)

Regulation	Requirement	Violation
Process Safety Management (PSM) <sup>7</sup>	<b>29 CFR § 1910.119(j): Mechanical Integrity (MI).</b> MI requires facilities to implement rigorous and systematic written procedures that ensure that all critical process components are properly designed, tested, inspected, repaired, and maintained.	(1) Written Procedures: The employer failed to establish or implement written procedures to maintain the on-going integrity of process equipment. (2) Inspection and Testing: The employer failed to perform inspections and tests on process equipment and/or inspection and testing procedures did not follow recognized and generally accepted good engineering practices. (3) Equipment Deficiencies: The employer failed to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when determined necessary.
	<b>29 CFR § 1910.119(d): Process Safety Information (PSI).</b> PSI requires the employer to compile information on the hazards of the highly hazardous chemicals, information on the technology, and information on the equipment of the process.	Recognized and Generally Accepted Good Engineering Practices: The employer failed to document that equipment complies with recognized and generally accepted good engineering practices.

<sup>7</sup> [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=9760](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9760)

## Occupational Safety and Health Agency (OSHA)

Regulation	Requirement	Violation
Process Safety Management (PSM) (Continued)	<b>29 CFR § 1910.119(e): Process Hazards Analysis (PHA).</b> The PHA requires the employer to perform a hazard analysis (hazard evaluation) that identifies, evaluates, and controls the hazards involved in the covered process.	PHA: The employer failed to conduct a PHA.
		Hazards of the Process. The employer failed to identify and/or address the hazards of the process.