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Chemical Facility Anti-Terrorism Standards: Penalty Policy Overview

Overview

The Cybersecurity and Infrastructure Security Agency's (CISA) Chemical Facility Anti-Terrorism Standards (CFATS) program identifies and regulates facilities determined to be high-risk to ensure they have security measures in place to reduce the risk of certain hazardous chemicals being weaponized. Under CFATS, any facility that possesses a chemical of interest (COI) listed in Appendix A of the CFATS regulation at or above a specific concentration and screening threshold quantity (STQ) is required to submit an online Top-Screen survey within 60 days of coming into possession of the chemical. This requirement applies regardless of how long the facility is in possession of the COI.

The Top-Screen is reviewed by CISA using a risk-tiering methodology to determine whether a facility is high-risk and assigns high-risk facilities to one of four risk-based tiers. High-risk facilities must develop a security plan that meets risk-based performance standards (RBPS) for securing the COI applicable to the facility's tier level and unique circumstances. After a facility submits a security plan, CISA Chemical Security Inspectors will conduct inspections to verify and validate that the content listed in the security plan is accurate and complete, and to assist the facility in resolving any identified gaps.

CISA is committed to helping facility personnel understand and comply with CFATS by providing technical assistance or onsite consultation. However, CISA has the authority to enforce compliance with the program.

Violations Subject to a Civil Penalty

While CISA prioritizes helping facilities comply, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (6 U.S.C. § 621, et seq.) and the CFATS regulation (6 CFR Part 27) provide CISA the authority to issue enforcement action against a chemical facility in violation of CFATS. The CFATS Penalty Policy addresses the following specific categories of violations: Failure to File Violations, Submission of False Information, Security Vulnerability Assessment (SVA)/Site Security Plan (SSP)¹ Deficiencies (generally found during the authorization and approval process), SVA/SSP Infractions (generally found during Compliance Inspections), and Chemical-terrorism Vulnerability Information (CVI) Violations.

Issuance of a Civil Penalty

In general, a facility that fails to comply with CFATS may be issued an Administrative Order (A Order) or Final Notice notifying the facility of a potential violation of CFATS and providing a time period by which the facility must come into compliance. If the facility fails to come into compliance within the specified timeframe, CISA may issue a B Order assessing a civil penalty. CISA also may issue an Order to Cease Operations for a facility's continuous failure to comply or for other serious violations.

For a facility that possesses an Appendix A COI at or above STQ and has not submitted a Top-Screen, and/or in the case of a facility that knowingly submits false information or has had repeated violations, CISA has the authority to issue a civil penalty without first issuing an A Order.

Both A Orders and B Orders may be appealed pursuant to the procedures set forth in 6 CFR Part 27 Subpart C (see [ecfr.io/Title-6/Part-27/Subpart-C](https://www.ecfr.io/Title-6/Part-27/Subpart-C)).

¹ All references to SSP also apply to the Alternative Security Program (ASP).

Calculating a Civil Penalty Amount

SSP Deficiencies and Infractions are considered on a case-by-case basis using an established set of criteria to ensure consistent application of civil penalties. First, each security measure deficiency or infraction is categorized as either minor, moderate, or major based on its severity.

- **Minor (\$1,000 - \$2,000/day)** – A deficiency or infraction in which an RBPS is not fully addressed and the lack thereof is reasonably expected not to pose an immediate impact on the security of the COI.
- **Moderate (3,000 - \$6,000/day)** – A deficiency or infraction in which an RBPS is only partially addressed and poses an immediate and significant impact on the security of the COI.
- **Major (\$5,000 - \$10,000/day)** – A deficiency or infraction in which an RBPS is significantly or wholly unaddressed and poses an immediate and critical impact on the security of the COI.

Once the deficiency or infraction has been categorized, the amount within the applicable range is determined based on whether there are aggravating factors surrounding the deficiency or infraction. In cases where CISA finds multiple deficiencies or infractions, an aggregate per day penalty amount is calculated based on all the deficiencies or infractions. Fines may continue to accrue until all deficiencies or infractions have been fully corrected.

Failure to File Violations for Top-Screens and SVA/SSP are calculated on a set schedule at set amounts.

Date of Expiration of Time to File (Day “T”)	Action
T - 14	Top-Screen: Final Notice sent to facility with potential penalty amount of \$2,000 SVA/SSP: Final Notice letter sent to facility
T + 1	Top-Screen: One-time penalty amount of \$2,000 levied against the facility (B order) SVA/SSP: A Order sent to facility with potential penalty amount of \$2,000 and 30 days to file to avoid B Orders
T + 31	Top-Screen: One-time penalty amount of \$10,000 levied against the facility (B Order) SVA/SSP: One-time penalty amount of \$2,000 levied against the facility (B Order)
T + 61	Top-Screen: Begin to levy \$2,000/day against the facility until the facility complies with CFATS filing requirements SVA/SSP: One-time penalty amount of \$10,000 levied against the facility (B Order)
T + 91	SVA/SSP: Begin to levy \$2,000/day against the facility until the facility complies with CFATS filing requirements (B Order)

For violations in handling Chemical-terrorism Vulnerability Information (CVI), a facility is given a certain amount of time to remedy the violation. Repeated CVI Violations may warrant a one-time civil penalty amount that may be reassessed if the violation continues. Larger civil penalties may be assessed in cases in which a facility knowingly or intentionally violates the CVI rules or provides CVI to terrorists or other individuals who intend to use CVI for criminal purposes.

Tools and Resources

- CFATS Process: cisa.gov/cfats-process
- CFATS Enforcement: cisa.gov/cfats-enforcement
- 6 CFR Part 27: ecfr.io/Title-6/Part-27
- CFATS Appendix A: cisa.gov/appendix-chemicals-interest