

# The Office of Infrastructure Protection

National Protection and Programs Directorate  
U.S. Department of Homeland Security

2011 Chemical Sector Security Summit

Compliance Lessons Learned

July 7, 2011



# Agenda

- Overview
  - Chemical Facility Anti-Terrorism Standards (CFATS) Compliance
- Initiatives
  - Federal Review Center
    - Site-Specific Plans (SSP) Review Lessons Learned
  - Compliance Team
    - Redeterminations
    - Stakeholder Assistance
    - Penalty Policy
  - Technical Support Section
    - Appendix A Review



# Compliance Branch Overview

- Three functional areas designed to address the scope of CFATS implementation.

## Federal Review Center

- Review and analysis of Security Vulnerability Assessments (SVAs)
- Review and analysis of Site Security Plans and Alternative Security Plans (SSPs/ASPs)
- Recommendations to the Senior Compliance Officer

## Compliance Team

- Complete Redetermination Analyses and Requests
- Compliance Assurance - Regional Approach to Case Management
- Develop Authorization, Approval, Deficiency, and Disapproval Letters
- Penalty Recommendations

## Technical Support Section

- Tiering for Initial and Resubmitted Top-Screens, SVAs
- Appendix A Review
- Technical support to ISCD HQ, Inspectors and the Regulated Community



# Initiatives – SSP Review

- In order to increase the efficiency of certain components of the CFATS compliance process, IP's Infrastructure Security Compliance Division (ISCD) recently completed an analysis of the SSP submittal and review process. As part of this intensive analysis, the Compliance Branch:
  - Clarified internal policies for ISCD review of team and field personnel;
  - Developed recommendations to share with the regulated community to specifically improve SSP submissions;
  - Streamlined the SSP review process.
- Early results are reflected through the steady increase of specific SSP guidance to facilities through (1) conditional authorization letters issued to trigger inspections for facilities, or (2) deficiency letters issued to facilities that continue to have substantial shortcomings in their SSPs.
- In both instances, DHS will provide more direct feedback regarding where a given facility needs to make improvements or where the security measures are insufficient.

# Initiatives – Redeterminations

- ISCD is currently addressing a significant number of redetermination requests from the regulated community.
- Stakeholders should submit a Top-Screen and notify DHS when seeking a redetermination.
  - DHS often receives Top-Screens without additional clarification or documentation. Stakeholders will help speed the review process by providing DHS a substantive description of the material modification and proof of how the change was implemented (e.g., bill of lading, where the Chemical Of Interest (COI) was shipped, what replaced the COI).

# Initiatives – Redeterminations (Cont.)

- In 2011, the Compliance Branch and DHS Chemical Inspectors have resolved more than 250 redetermination requests through Compliance Assistance Visits (CAV) and via phone calls or e-mails to gather information; the Compliance Branch then evaluates the request and issues the final determination.
  - Following the completion of Headquarters-based analyses, ISCD completes a CAV with DHS Chemical Inspectors in order to verify the request for redetermination in conjunction.
- Since January 2011, ISCD has completed approximately 400 CAVs.
- An additional 22 CAVs are scheduled for completion this month.

# Initiatives – Stakeholder Outreach

- Improving Compliance Assistance through Stakeholder Outreach is a significant effort across the Compliance Branch
  - Lessons Learned from the SSP review process:
    - Additional field support is now being provided via the Inspection Branch and Technical Support Section to facilities where the SSP is not meeting the standards;
    - The Federal Review Center and Compliance Team place calls to stakeholders to clarify SSP submittals; and
    - Webinars, regional meetings and other outreach activities tailored to specific stakeholder needs sectors are being considered (e.g., SSP Webinar for the semi-conductor industry).
  - Internal policies are being refined to improve the overall efficiency of submitting, reviewing, and approving SSPs and ASPs.
  - “Courtesy calls” are being made in advance of a facility nearing a compliance deadline to determine whether the facility needs additional assistance.



# Initiatives – Penalty Policy

- Under 6 CFR § 27.300(a), the Assistant Secretary has the authority to issue an appropriate Order if he or she determines that a chemical facility is in violation of a requirement under CFATS. Through CFATS, DHS may impose civil penalties of up to \$25,000 per day per violation.
- Two distinct actions must occur to issue a monetary civil penalty through the CFATS program: (1) issuance of an Administrative Order, followed by (2) issuance of an Order Assessing Civil Penalty (which could either be monetary or a cease order for all or part of a facility).

# Initiatives – Penalty Policy (Cont.)

- The penalty policy provides:
  - Step-by-step guidance that allows DHS to consider each case file individually.
  - Established criteria to ensure consistency in the application of civil penalties.
  - Recommended fines are based on (a) the risk posed by the facility; (b) the gravity of the violation; and (c) aggravating and mitigating factors.
  - Transparency for stakeholders to understand how DHS applies the policy.

# Initiatives – Appendix A

- DHS has launched a review of the Appendix A Chemicals of Interest (COI):
  - Review of current list to determine whether:
    - It remains relevant.
    - The COI, thresholds, etc., are appropriate.
    - Additions or deletions should be made.
- This will include broader stakeholder input following the internal DHS review.

# Additional Compliance Initiatives

- **Material Modifications** – DHS is developing several FAQs that will include additional descriptions of what may or may not constitute a Material Modification and SSP operating conditions that a facility could adopt without needing to submit a new Top-Screen.
- **Tiering Analysis** – Periodic update of tiers, redeterminations, outcomes to highlight trends, best practices, etc.
- **Top-Screen Tool Enhancement** – Developing a change order that instructs facilities resubmitting a Top-Screen to:
  - Clarify if they are seeking a redetermination and, if so, to “check a box” that describes the change. This will “flag” the Top-Screen for DHS review and expedite the documentation and review of any request for redetermination.
- **SVA and SSP Tool Enhancements** – In addition to editing SVAs and SSPs, facilities seeking extensions will be able to submit their request and justification via CSAT.

Questions?



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