

Annex 2.2

Region 4 Executive Order 13650 – Chemical Facility Safety and Security Working Group

U.S. Department of Labor/OSHA • U.S. Department of Homeland Security • U.S. Environmental Protection Agency • Region 4 States

Standard Operating Procedure (2.2): Communicating Risks at Chemical Facilities

Effective Date: September 1, 2015

SOP Owner: Region 4 E.O. 13650 Working Group (RWG4)

- 1. Purpose:** This SOP establishes the process for sharing Inter-Agency Inspection Information, Data Requests, and Database Access by federal, state, and local government stakeholders. It also establishes the process for Inter-Agency Inspection Referrals by federal, state, and local government stakeholders.
- 2. Scope:** This SOP is intended for the members of the RWG4 Coordinating Committee and their respective agencies within Region 4: the U.S. Environmental Protection Agency (EPA), the U.S. Department of Homeland Security (DHS) Infrastructure Security Compliance Division, and the U.S. Department of Labor / Occupational Safety and Health Administration (OSHA). This SOP also supports the RWG4 Implementation Plan. Increased communication of risks, and Inter-Agency referrals will help ensure appropriate governmental agencies are notified of potential compliance matters, unsafe conditions, security matters, and other factors that may contribute to a catastrophic release, or compromise of a chemical facility and its surrounding community.
- 3. Responsibilities:** The RWG4 is responsible for developing and implementing SOPs that will increase chemical hazard prevention and preparedness at the federal, state, and local level. This responsibility is the result of the Presidential Executive Order 13650 on *Improving Chemical Facility Safety and Security*, as well as the report to the White House, developed by the National Chemical Facility Safety and Security Working Group.
- 4. Procedures:** The RWG4 adopts the following procedures to ensure consistency, sustainability, and effectiveness of risk communication, data sharing, and inter-agency referrals:

General

- a) There will be the fullest possible cooperation within RWG4 in carrying out accident notification, data and information exchange, training, technical and professional assistance, and related activities to ensure the safety and security of chemical facilities.
- b) Subject to any constraints regarding confidentiality or privileges, the RWG4 agencies

agree to exchange information relating to potential inspection targets, complaints, inspections, investigations, violations, penalties, or other legal actions taken to enforce laws and regulations, and other information necessary to ensure effective and coordinated law enforcement or other regulatory enforcement authority operations.

- c) Each agency will be responsible for the public release of its documents and for maintaining the information which it has collected. All requests for disclosure of material will be referred to the agency of record for response.
- d) The Semiannual Regional Response Team (RRT) meeting is acknowledged as a rich environment for information exchange that involves a broad range of stakeholders from the local level to the Federal level. The RWG4 members agree to fully support the semiannual RRT meetings and engage all attendees to understand Federal plans and intentions.
- e) Often the RWG4 agencies possess information that is neither tactical nor directly actionable, but are relevant for improving efficiency and increasing mission capability. These lessons learned or best practices will be shared at each RWG4 workgroup meeting.
- f) The RWG4 Coordinating Committee will designate points of contact for the purposes of this SOP.
- g) The RWG4 Coordinating Committee members will exchange names and telephone numbers of appropriate regional enforcement field personnel. All information will be kept up to date on a regular basis, and the information will be distributed to appropriate field personnel.
- h) When inspectors discover a pattern of concerning circumstances or facilities that fall outside the expected norm, RWG4 Coordinating Committee members or designees will inform each other of these findings. The notification shall be accomplished within 10 business days of discovery. The intent of this process is to ensure partner agencies are made aware when a particularly bad actor, recalcitrant employer, repeat offender, or substantially abnormal condition is identified.
- i) The RWG4 Coordinating Committee is expected to collaborate with their respective delegated/approved state/local accident prevention/process safety management counterparts, and with SERCs, TERCs and LEPCs, as necessary to achieve RWG4 directives.

Confidential or Privileged Information

- a) Subject to any constraints regarding confidentiality or privileges, the Parties expect to exchange information relating to potential inspection targets, complaints, inspections, investigations, violations discovered, imposition of monetary penalties or other legal actions taken to enforce pertinent laws and regulations, and other information necessary to ensure effective and coordinated law enforcement.
- b) All confidential or privileged information will be stored in secure spaces.
- c) If requested, EPA may provide to OSHA and DHS non-confidential data collected under EPCRA, RCRA, CAA Section 112(r)'s Risk Management Plan (RMP) program and other federal statutes. The agencies will discuss the possible exchange of confidential or privileged information on a case-by-case basis. DHS-IP-ISCD will share its list of regulated facilities to those that have taken the Chemical-terrorism Vulnerability Information (CVI) certification training and have established need-to-know requirements: CVI is the information protection category used to ensure secure handling of certain sensitive CFATS-related information
 - i) Except in emergency or exigent circumstances, only CVI authorized users with a “need-to-know” are permitted to access the CSAT Top-Screen, SVA, and SSP, certain correspondence, and other types of CVI as specified in CFATS.
 - ii) Persons potentially eligible to access CVI include facility employees; Federal employees, contractors, and grantees; and State/local government employees.
 - iii) DHS provides online CVI training and establishes need-to-know requirements.

Coordinating Inspections

- a) All existing inspections protocols of the RWG4 agencies remain in effect.
- b) The RWG4 Coordinating Committee will exchange information at least quarterly on planned inspections, outreach, and stakeholder engagements in order to integrate efforts as necessary.
- c) Each of the RWG4 agencies handles inspection scheduling through different process and under varying access restrictions. EPA updates and makes available their inspection schedule periodically. DHS sends each Regional Working Group agency POC with a CVI clearance an email with the inspection schedule for the coming month. OSHA is unable to share inspection schedules due to regulatory constraints regarding advance notice of inspection. However, OSHA will provide EPA and DHS an updated list of covered facilities annually.
- d) When an inspection is conducted, the inspecting agency should consider other agencies or offices that might have regulatory and jurisdictional interests. Based on the inspecting agency’s knowledge of other agencies and offices, the inspecting agency may choose to discuss inspection details with agencies or offices that might have a vested interest.
- e) Any RWG4 inspecting agency may request an inspection history from the other RWG4 agencies. When a general request for inspection history is received, the receiving agency

will respond to the inspection agency within 10 business days with information on prior violations, last inspection and the results of the last inspection. However, if an urgent request (potential for loss of life or property) is received, the responding agency will respond as soon as possible, but no later than 5 business days.

- f) Changes in inspection protocols by any agency will be communicated to the other federal, state and local agencies as appropriate.

Referrals

- a) RWG4 inspectors, in the course of conducting separate inspections or responding to incidents, may discover situations involving potential violations of the other Agency's laws or regulations. In those instances, referrals to the responsible program contacts may be appropriate. Where DHS, EPA and OSHA have conducted joint or coordinated inspections, they may share inspection reports, as appropriate, including copies of any photographs and documents.
- b) Each RWG4 agency may evaluate referrals from the other agencies concerning potential violations of the Agency's regulatory requirements and, when appropriate and when resources allow, conduct investigations or inspections and enforcement actions. The RWG4 agencies will report back to each other in a timely manner regarding the results of these referrals.
- c) DHS, EPA and OSHA expect to cooperate in developing and conducting periodic training programs for each other's personnel in the respective laws, regulations, and compliance requirements of each Agency, as appropriate, to ensure that valid referrals are made when potential violations are found and to support joint enforcement and inspection initiatives. This SOP contemplates exchanges of appropriate training materials and information and development of specialized training activities. Likewise, OSHA and EPA intend to make each other aware of local training opportunities that could be useful for enhancing each other's effectiveness. For example, if EPA offers training in National Fire Protection Association standards to its employees, EPA may inform OSHA about such training.
- d) The SERCs are recognized as a valuable resource for referrals. The interaction with the SERCs is a continuous dialogue that is an appropriate venue for sharing information from the RWG4 and obtaining information that could identify outlier facilities and risks that warrant investigation.
- e) The SERC is also considered an important conduit for sharing results of enforcement actions that can then be shared with the LEPCs. Routinely sharing the results of enforcement actions with the SERCs (and subsequently the LEPCs) will result in greater state and local awareness of risks within their area of responsibility.

Database Information Sharing

- a) EPA and OSHA have access to the CFATS Share database for Region 4 CFATS covered facilities. Information in the CFATS Share databases is routinely updated. It is

recommended that EPA and OSHA reconcile upcoming inspections or interactions with the CFATS database on a monthly basis. Reconciliation of facilities of interest is currently the primary use of the information shared via the CFATS database.

- b) DHS and EPA have access to the OSHA Integrated Management Information System (IMIS) database. The IMIS database is available on the public OSHA.gov webpage and allows a search to be conducted for OSHA inspection history.
- c) EPA maintains the following databases, and provides RWG4 members with access to information within the following systems as needed:
 - i) The Integrated Compliance Information System (ICIS) which tracks enforcement and compliance operations at regulated facilities. Information contained in ICIS is made available to the public through the Enforcement Compliance History Online (ECHO) system.
 - ii) The Central Data Exchange (CDX) system where RMPs are registered in compliance with 40 CFR 68. EPA's RMP rule requires operators (employers) with facilities that produce, handle, process, distribute, or store certain chemicals to develop a risk management program and submit the RMP to EPA. Covered facilities have been required to submit their RMP to the EPA Database since 1999. DHS and OSHA have access to the EPA RMP CDX database.
 - iii) The Oil Spill Prevention Program uses the national oil database to track compliance activities including inspections and exercises at oil storage facilities.
 - iv) The Emergency Response Notification System (ERNS) database which tracks reports of hazardous substance releases above a Reportable Quantity (RQ).
 - v) EPA tracks additional information concerning potential chemical facility safety and security risks through monitoring of National Response Center (NRC) release reports, and training/outreach activities.
- d) EPA also maintains the following databases which allow for readily available public access:
 - i) The Toxics Release Inventory (TRI) tracks the management of over 650 toxic chemicals that pose a threat to human health and the environment. U.S. facilities in different industry sectors that manufacture, process, or otherwise use these chemicals in amounts above established levels must report how each chemical is managed through recycling, energy recovery, treatment, and environmental releases. (A "release" of a chemical means that it is emitted to the air or water, or placed in some type of land disposal.) The information submitted by facilities to the EPA and states is compiled annually as the Toxics Release Inventory or TRI, and is stored in a publicly accessible database.
 - ii) EnviroFacts is an EPA data warehouse which makes information available from several EPA databases including, ECHO, ICIS, RCRAInfo, TRI and others and is accessible through <http://www.epa.gov/enviro/>.
- e) The RWG4 Coordinating Committee will also use the E-Plan Hazmat Emergency

Management System to access information for facilities that submit annual chemical inventory reports under EPCRA Section 312. E-Plan is a R4 SERC supported secure data system maintained and operated by the University of Texas at Dallas: <https://erplan.net>

Improving Data Management

- a) Regional data management relies heavily on each Agency's national data coordination. Significant improvements to database function or interagency integration are not possible at the regional level. RWG4 will continue to elevate these needs and recommendations through member agencies in its reporting.
- b) The RWG4 members will encourage chemical facilities to foster relationships with state and local agencies to ensure facility familiarization and access to updated records prior to an incident.
- c) RWG4 will continue to identify ways to improve and share data with the general public, including specific elements of Risk Management Program (RMP) data, and Process Safety Management (PSM).
- d) CFATS Share will be migrated to IPGateway.

Coordinating Drills and Exercises

- a) EPA conducts exercises and often invites OSHA, FEMA, USCG, state and local government agencies depending on the nature of the exercise. EPA supports local emergency management agencies in planning and carrying out drills and exercises through outreach efforts led by EPA On-Scene Coordinators. Many of these exercises focus on responder safety and response to spills/releases and the National Incident Management System. EPA will invite DHS to future exercises depending on the regulatory nature of the event.
- b) The EPA Oil Spill Prevention program periodically conducts unannounced facility drills and exercises called Government Initiated Unannounced Exercises (GIUEs).
- c) OSHA has a regional response team and participates in exercises when invited.
- d) DHS requires designated CFATS covered facilities to conduct their own drills and exercises and tailor the exercise to their specific facility security risk management program. When requested, DHS provides guidance for the types of drills that would be appropriate for a facility's respective security risk(s). There is no mandate for the facility to invite DHS to observe the exercise, but DHS does occasionally receive invites to observe. EPA and OSHA have not previously been invited to observe, but DHS will encourage the facilities to extend an invitation.
- e) Results of drills and exercises should be shared with other RWG4 representatives. There is not a requirement for CFATS covered facilities to share exercise reports. However, if a facility shares a report, DHS will share with other RWG4 representatives if the facility has no objection.
- f) If a facility does not know exactly who to invite to an exercise, RWG4 representatives should provide assistance to ensure the exercise has proper attendees such as State, County, City and other federal officials.

5. References:

- a) Executive Order 13650: Actions to Improve Chemical Facility Safety and Security – A Shared Commitment: Report for the President, May, 2014
- b) Executive Order 13650: Improving Chemical Facility Safety and Security, August 1, 2013
- c) The following are relevant EPA/OSHA cooperative agreements/memorandums:
 - Strategy For Coordinated EPA/OSHA Implementation of the Chemical Accident Prevention Requirements of the Clean Air Act Amendments of 1990, dated 1996 (see Coordinating Committee Business Appendix E.1)
 - Memorandum of Understanding among EPA and OSHA on Accident Investigations, dated 1996 (see Coordinating Committee Business Appendix E.2)
 - OSHA’s Memorandum on its coordination with EPA on chemical safety, dated 2013 (see Coordinating Committee Business Appendix E.3)
- d) Region 4 EO 13650 Implementation Plan