

GOVERNMENT AND REGULATORY AFFAIRS

BLAST**Chemical Facility Anti-Terrorism (CFATS) and Universities**

By CSHEMA Government Relations Community of Practice

*January 2016***STATUTE/REGULATION SOURCE**

Original (2007): Department of Homeland Security, Office of the Secretary, Chemical Facility Anti-Terrorism Standards (CFATS), including Appendix A - DHS Chemicals of Interest (COI), 6 CFR Part 27.

- http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title06/6cfr27_main_02.tpl

Update (2014): Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (CFATS Act of 2014).

- <https://www.congress.gov/bill/113th-congress/house-bill/4007>

For additional program information see:

- <http://www.dhs.gov/chemical-facility-anti-terrorism-standards>
- <http://www.dhs.gov/critical-infrastructure-chemical-security>

BRIEF DESCRIPTION

First authorized in 2007, CFATS is the first Department of Homeland Security (DHS) regulatory program dedicated to identifying and regulating high-risk chemical facilities. The CFATS Act of 2014 recodifies and reauthorizes the 2007 CFATS program for four years. CFATS is intended to ensure that security measures are in place to reduce risks associated with over 300 listed chemicals at locations categorized by DHS as high-risk chemical facilities. Facilities identified as high risk are separated into tiers based on the proscribed security risk assessment. These facilities are required to meet and maintain performance-based security standards based on the assigned tier level.

POTENTIAL/ACTUAL IMPACT TO HIGHER EDUCATION

As of today, there have been no instances of colleges and universities being penalized under the CFATS program; however, in a recent public meeting, DHS stated that they have begun penalizing non-compliant facilities. Please be advised there are stiff penalties for non-compliance with CFATS, including civil penalties up to \$25,000 per day up to the closure of a facility.

DISCUSSION

The determination of whether a particular university must comply with CFATS is conducted by DHS following a review of the institution's responses to the Chemical Security Assessment Tool (CSAT) Top Screen. The CFATS' Appendix A: DHS Chemicals of Interest (COI) list includes more than 300 chemicals that DHS believes to be of particular concern. These chemicals are of concern for one or more security issues: release, theft/diversion, and/or sabotage/contamination. Each of these chemicals has specific conditions that affect the level of risk assigned to them.

Each institution defines the physical campus area that is included in their facility. This area may be a building, a group of buildings or an entire campus. Within this defined area, all facilities that possess or come into possession of one or more of the listed chemicals in a quantity that is at or above the listed screening threshold quantity (STQ) are required to complete the Top Screen within 60 days of meeting or exceeding the STQ. Using this data, DHS performs a preliminary assessment of risk and assigns a preliminary risk "tiering," rated on a scale of 1 (high risk) to 4 (low risk).

Chemical Facility Anti-Terrorism (CFATS) and Universities

Facilities that are initially tiered by DHS must submit a Security Vulnerability Assessment (SVA) to determine their final tier level. Section 550 of the Act requires that DHS use “risk-based” performance standards, and the level of performance necessary to meet the standard is dependent upon a facility’s final risk-based tier level. Higher tier facilities are expected to meet higher levels of performance than lower tier facilities.

If DHS makes a final determination that a facility remains in any of the tiers 1-4, the facility must submit a Site Security Plan (SSP) or an Alternative Security Program (ASP) that includes security measures to meet applicable risk-based performance standards (RBPS) established by DHS for approval. Generally speaking, Tier 1 facilities are expected to meet the highest level of performance, with the expected level of performance becoming less stringent as one moves down the tiers. However, for certain RBPSs, the expected target level of performance is the same for more than one tier. Regardless of tier level, all high-risk facilities must address all RBPSs. Under the 2014 reauthorization statute, some new provisions were added allowing for expedited approval process of these SSP or ASP submissions.

If a university does not possess any of the chemical or come into possession of any chemical included on the COI list at or above the listed STQ, they are not required to complete and submit the Top Screen. However, DHS can request a Top Screen from any facility they believe might have COI in excess of STQ or of any facility they believe could be a security risk.

For most colleges and universities, the primary security issue is theft/diversion because of how chemicals are used and stored on college campuses and how many people have access to these materials. This is challenging because current regulations fail to recognize the differences between university teaching or research laboratories and major manufacturing or production facilities. While chemical plants typically store large volumes of chemicals in designated locations with extremely restricted access, colleges and universities generally do not. Rather, they distribute materials in smaller quantities among laboratories in multiple locations, accessible to faculty, staff and students as needed.

ACTION

Each institution should consider what area will be considered the facility for the purposes of CFATS reporting. Generally speaking, it is in the best interest of the institution, and has support from DHS, for an institution to count the totals for each COI by building, not by entire campus or complex. Institutions should review their current inventory control measures and their current inventory levels within the area(s) to ensure they are in compliance with CFATS. If inventory levels are at or above STQ, this should be reported to DHS via a Top Screen. If inventory levels have changed since the last submitted Top Screen, a new Top Screen should be submitted with current information. If the inventory review shows that there are no chemicals that exceed STQ, there is no reporting action required, but institutions should maintain these records in the event that DHS requests a Top Screen review.

SOURCES AND REFERENCES

- CFATS Appendix A – Chemicals of Interest, <http://www.dhs.gov/appendix-a-chemicals-interest-list>
- Assessing the Chemical Facility Anti-Terrorism Standards After 5 Years: Achievements, Challenges, and Risks Ahead, https://www.researchgate.net/publication/270549623_Assessing_the_Chemical_Facility_Anti-Terrorism_Standards_After_5_Years_Achievements_Challenges_and_Risks_Ahead
- CFATS Definitions, http://www.ecfr.gov/cgi-bin/text-idx?SID=e1897888bc7f6c3ff44e3fab53c72263&mc=true&node=se6.1.27_1105&rqn=div8
- CFATS Risk-Based Performance Standards, https://www.dhs.gov/xlibrary/assets/chemsec_cfats_riskbased_performance_standards.pdf

Chemical Facility Anti-Terrorism (CFATS) and Universities

AVAILABLE RESOURCES FOR ASSISTANCE

For CFATS Frequently Asked Questions and other useful CFATS-related information, go to:

- <http://www.dhs.gov/critical-infrastructure-chemical-security>

To request a CFATS presentation, go to:

- <http://www.dhs.gov/request-cfats-presentation>

To request a Compliance Assistance Visit, go to:

- <http://www.dhs.gov/cfats-request-compliance-assistance-visit>

DHS also has a CFATS Help Desk that anyone can call or email with questions on the CFATS program:

- 1-866-323-2957, csat@dhs.gov

This document is not legal advice. For legal advice, please contact your legal counsel.

URMIA's Government and Regulatory Affairs Committee (GRAC) serves as a resource for informing and educating its membership about federal legislation and regulations. Sally Alexander, Colorado State University, and Leta Finch, Aon, serve as its co-chairs. If you would like to be a member or have a topic for a future Regulatory Blast, contact the URMIA National Office (urmia@urmia.org).