

## TIER II REPORT FILING AND CFATS REGULATIONS

<http://www.epa.gov/emergencies/content/epcra/tier2.htm>

Recently, several facilities subject to Federal reporting requirements under the Emergency Planning and Community Right to Know Act (EPCRA) or Clean Air Act section 112(r) have inquired about the appropriateness of filing reports under these legislative requirements. Facilities have cited nondisclosure or confidentiality agreements relating to implementation of the Department of Homeland Security's new Chemical Facility Anti-Terrorism Standards (CFATS).

It should be noted that nothing in the new CFATS regulations alter the requirements that apply to a facility covered under both CFATS and EPCRA or CAA 112(r) Section 27.405 of the CFATS regulations (Review and Preemption of State laws and Regulations), states:

...

"(1) Nothing in this regulation is intended to displace other federal requirements administered by the Environmental Protection Agency, U.S. Department of Justice, U.S. Department of Labor, U.S. Department of Transportation, or other federal agencies."

In the preamble to the regulation, DHS further clarifies this provision, specifically indicating that CFATS has no affect on EPCRA, CAA section 112(r), and other laws administered by EPA:

"At this time, we do not intend to displace or otherwise affect any provisions of Federal statutes, including the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11001 et seq., or section 112(r) and 114 of the Clean Air Act of 1990, as amended, 42 U.S.C. 7412(r), 7414, sections 308 and 402 of the Clean Water Act, 33 U.S.C. 1318, 1342, and section 104(e)(7) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9604."

The regulation and preamble language are consistent with similar language contained in the statute authorizing the CFATS program (Public Law 109-295, Section 550).

At the headquarters level, EPA and DHS officials have had recent discussions to confirm that the current intent of the CFATS regulations remains in accordance with this understanding and that information currently required to be submitted under EPCRA and CAA Section 112 (r) is not Chemical-Terrorism Vulnerability Information (CVI).

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