



**Homeland
Security**

Expedited Approval Program

The Department of Homeland Security (DHS) regulates high-risk chemical facilities under the Chemical Facility Anti-Terrorism Standards Program (CFATS).¹ Under CFATS, facilities that have been finally determined by DHS to be high-risk are required to develop and implement security plans that meet applicable risk-based performance standards (RBPS). CFATS was created pursuant to Section 550 of the Homeland Security Appropriations Act of 2007, which gave DHS regulatory authority over security at high-risk chemical facilities. Congress re-authorized and amended the program in 2014 through the CFATS Act of 2014 (“the Act”).² While the Act preserves most of the existing CFATS regulations, it also creates new aspects of the program, including the Expedited Approval Program (EAP).



What is the Expedited Approval Program?

The EAP provides an optional process through which high-risk chemical facilities assigned a final Tier 3 or 4 may receive expedited approval of their Site Security Plans (SSP) and enter directly into a regular cycle of compliance inspections, removing the requirement for a pre-approval authorization inspection. The Act directs DHS to issue prescriptive guidance for facilities that choose to submit SSPs as part of the EAP that “identifies specific security measures that are sufficient to meet the RBPS.”³ Facility participation in the EAP is voluntary; facilities with a final Tier 1 or 2 are ineligible.

On May 13, 2015, DHS published prescriptive guidance for facilities that elect to participate in the program (please visit <https://www.dhs.gov/publication/cfats-expedited-approval-program>). This prescriptive guidance was developed using the RBPS Guidance document, best practices drawn from the nearly 1,800 Site Security Plans and Alternative Security Programs the Department had previously approved, and a number of other sources; however, the requirements within the EAP guidance are prescriptive in nature and therefore offer more detailed security measures than are found in the RBPS Guidance document. The EAP goes into effect on June 16, 2015, and the EAP Guidance document identifies the specific security measures that are sufficient to satisfy the RBPS for this program.

EAP SSP and the RBPS

Because many RBPS have cross-cutting requirements, they are grouped in the guidance into overarching security objectives, which collectively account for all of the RBPS in the CFATS

¹ 6 C.F.R. Part 27

² 6 U.S.C. § 621, et seq

³ See 6 U.S.C § 622(c)(4)(B)(i)

program. Facilities that choose to submit an EAP SSP must develop their SSPs either by adopting the prescriptive measures in the guidance issued by DHS or by choosing measures that materially deviate from the measures in the guidance, provided that they include sufficient justification that their measures meet the applicable portions of the relevant RBPS as described further below.

Material Deviations

If a facility includes a measure that does not meet the specific requirements of a measure in the guidance, it must identify the deviation for the specific security measure in the SSP and explain how the deviating measure meets the relevant portions of the RBPS and provides levels of security comparable to the prescriptive measure(s) outlined in the guidance. Material deviations and the applicable portions of the RBPS are set forth for each specific required security measure in the EAP guidance, and an example EAP SSP is provided, which includes an example deviation.

How do I submit an EAP SSP and what are the deadlines?

Facilities assigned a final Tier 3 or 4 may elect to submit an EAP SSP using the prescriptive guidance created by DHS. Any facility that elects to submit under the new EAP must notify DHS of its intention at least 30 days prior to submitting the security plan.

Facilities assigned a final Tier 3 or 4 prior to December 18, 2014 (the date of enactment of the Act) that choose to submit an EAP SSP must submit the security plan no later than November 13, 2015. Facilities that are assigned a final Tier 3 or 4 after the enactment of the Act have until November 13, 2015 or until 120 days after their assignment to Tier 3 or 4, whichever date is later.

An EAP SSP can be submitted via the Chemical Security Assessment Tool starting July 16, 2015, provided that proper prior notification was received by the Department. If DHS determines an EAP SSP to be facially deficient, DHS must notify the facility within 100 days of submission. An EAP SSP may be found facially deficient if it does not include existing and/or planned measures which satisfy all applicable RBPS, or if the facility materially deviates from the guidance and the deviation does not accomplish sufficient security required within the security requirements the relevant portions of the applicable RBPS as set forth in the EAP guidance.

Contact Information

For more information about the Expedited Approval Program, please visit <http://www.dhs.gov/cfats-expedited-approval-program>.

To access the prescriptive DHS EAP guidance, please visit <https://www.dhs.gov/publication/cfats-expedited-approval-program>.

For more information about critical infrastructure, visit <http://www.dhs.gov/critical-infrastructure>. To speak with a DHS representative about the CFATS regulatory program, please contact CFATS@hq.dhs.gov.