

ASCIP ***RISK ALERT!***

Date: February 26, 2008 (Updated)

Attention: ASCIP Members

Subject: CFATS – Chemical Facility Anti-Terrorism Standards

ASCIP has received numerous inquiries concerning the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program. CFATS was developed in order to protect the United States from terrorists using chemicals obtained from chemical plants and storage facilities in attacks on the general population.

In October of 2006, President George Bush gave authority to the Department of Homeland Security (DHS) to regulate the security of chemical facilities by signing the Homeland Security Appropriations Act of 2007. DHS developed the CFATS program and on November 20th, 2007 it issued the final list of Chemicals of Interest (COI's) which is now incorporated into the Final Rule.

CFATS requires any "facility" or "chemical facility" as defined in the rule to complete a survey and report (Top-Screen) for any of the 325 Chemicals of Interest (COI) listed in the Rule that the facility currently possesses or intends to possess at or above the Screening Threshold Quantity (STQ). Most of the ASCIP inquiries relate to the definition of "facility" or "chemical facility" and if school districts, colleges and universities are required to complete a Top-Screen report.

There is no specific exemption for educational facilities under the CFATS Final Rule however the STQ's were established with the reportable quantities intended to be large enough to make it unlikely that most school districts, colleges and universities would be subject to CFATS. However, DHS may still notify a school district or college of its requirement to comply with CFATS either directly or through a Federal Register notice. In the event that a district has received a notice to complete, it is advisable that the district conduct a chemical inventory of their facilities to determine if they possess or intend to possess any of the 325 COI's and would therefore be required to complete the Top-Screen process.

While the Final Rule indicates that those facilities that do not meet the STQ thresholds are not required to submit the Top-Screen, ASCIP observes that failure to submit a response following the receipt of a DHS *notice to complete* could be interpreted by DHS as non-compliance and trigger a variety of enforcement activities. ASCIP recommends that in the event a district receives a notice to complete, the District should conduct the chemical inventory, complete the Top-Screen report indicating "Not Applicable" for those COI chemicals not at or above the STQ, and submit the Top-Screen documents to DHS in a timely manner. The CFATS rules and information may be found on the DHS website at http://www.dhs.gov/xprevprot/laws/gc_1166796969417.shtm

If you have any questions regarding the CFATS Final Rule, please consult with ASCIP and/or competent legal counsel.