



National Association of SARA Title III Program Officials

Concerned with the Emergency Planning and Community Right-to-Know Act

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VERSION 1.0

GUIDANCE FOR LOCAL EMERGENCY PLANNING COMMITTEES AND STATE EMERGENCY RESPONSE COMMISSIONS REGARDING THE DHS CFATS REQUIREMENTS FOR EMERGENCY PLANNING AND EXERCISES

The purpose of this guidance is to provide assistance to LEPCs and SERCs when they are working with facilities that are regulated by the CFATS program. The facilities are, of course, part of our communities. The safety of the community, the safety of employees at the facility, the community's preparedness for hazardous chemical releases, and most critically the safety of first responders depends on cooperation between the facility, LEPCs and first responders in planning, training and exercising for possible incidents.

The Department of Homeland Security's Chemical Facility Anti-Terrorism Standards contain the following provision at 6 CFR §27.230:

(9) Response. Develop and exercise an emergency plan to respond to security incident internally and with assistance of local law enforcement and first responders.

Of course it's helpful to have some idea of what DHS intended with this provision. The following discussion is found in the explanatory materials in the Federal Register when the regulation was announced. At 72 FR 17724, we find the following statement:

Developing and exercising an emergency plan to respond to security incidents internally and with local law enforcement and first responders (i.e., emergency medical technicians (EMTs), fire, police) benefits the facility by preparing it to take quick and decisive action in the event of an attack or other breach of security. Establishing relationships with local law enforcement improves responder understanding of the layout and of hazards associated with the facility and strengthens relationships with the community.

It's also useful to understand that DHS did not intend to preempt existing regulatory programs such as the Emergency Planning and Community Right-to-Know Act which created LEPCs and SERCs in the first place. At 6 CFR §27.405 we find:

(1) Nothing in this part 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.

Again we find that the explanatory materials in the Federal Register are helpful. A 72 FR 17714 we find the following:

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 112r 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.

In NASTTPO's view this means that LEPCs should play their normal role in promoting communication, planning, training and exercises with a focus on the sorts of incidents the facility might experience. This approach is also consistent with NFPA 1600 requirements in Section 4.3 dealing with a facility advisory committee.

The objective of these efforts is clear. Planning and preparedness to protect communities and all their members from the impacts of hazardous chemical releases is a community-wide process. Only through cooperation can we be successful. It would be horrifying if our efforts to improve security actually created risks and endangered the lives of first responders, or interfered with our ability to prevent accidents.

It is important to draw a distinction between DHS and law enforcement interactions with regulated facilities on security issues versus chemical release emergency planning. Quite obviously most discussions between the facility, LEPC and local responders will involve planning or response to an actual or threatened chemical release. In order to achieve community preparedness it will be important for all involved to have a responsible perspective on this balance.

It is inappropriate for a facility to "hide" behind security issues as an excuse to fail to cooperate with LEPCs and first responders. It is equally inappropriate for LEPCs and non-law enforcement first responders to attempt to force access to information that is unnecessary to emergency planning, training and exercises.

Facilities are required by the CFATS regulation to protect "confidential vulnerability information" (CVI). In order to accomplish this protection, facilities must determine when an individual has a "need to know" CVI information. The facility must also determine that the individual has completed training on how to handle CVI information. Further information can be found in the regulation at 27 CFR §27.400 and on-line at http://www.dhs.gov/xprevprot/programs/gc_1181835547413.shtm The training program can also be found at this link.

It is the opinion of NASTTPO that planning exercises and response training may require facilities to share limited CVI information with key members of the LEPC or first responder organizations. These key people need to be able to demonstrate completion of the training program to handle CVI information. The reason for this sharing of information is twofold. First, planning and exercises are vastly more valuable when they are based upon reasonable incident scenarios. Second, hazards to first responders created by security improvements – for example automatically locking doors – must be disclosed so that response planning can adapt.

LEPCs and first responders need to understand that communication of CVI is not always going to be necessary to accomplish reliable planning, training and exercises. While this might not be comfortable it is important to allow the facilities to comply the DHS requirements

In order to accomplish the goals of emergency planning, community preparedness and to assist the CFATS regulated facilities with their compliance obligations, LEPCs and first responders should expect facilities to do the following and to the extent that CVI is involved, LEPCs and first responders need to respect those requirements:

- Communicate that hazardous chemicals are present with information on the name, typical quantity and hazard presented - this should include reports of chemical release scenarios with impacts outside the facility as required under existing EPCRA and CAA §112r regulatory programs.
- Communicate accident prevention, internal response capabilities and planning.
- Review facility operational and access conditions that can impact search and rescue, first responder access and egress, and critical areas that first responders should attempt to protect during an incident.
- If there are security systems in place that will retard first responder access or egress, or which are so unique that hazards are presented to first responders during an incident, then the facility must make an effort to communicate these conditions in order to protect the health and safety of first responders.

LEPCs and first responders need to be prepared to do the following:

- Participate in planning and exercises with regulated facilities.
- Provide advice and counsel on accident prevention efforts.
- Work to fully integrate regulated facilities into community preparedness efforts.
- Protect CVI information.