



FAQ Number: 1782

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Question: Are there any facilities statutorily excluded from CFATS?

Answer: Yes, the following types of facilities are statutorily excluded from CFATS:

1. Maritime Transportation Security Administration (MTSA) Facilities - Facilities regulated under 33 CFR Part 105 – Maritime Security, <https://www.gpo.gov/fdsys/pkg/FR-2003-10-22/pdf/03-26348.pdf>, are excluded from CFATS. For facilities where only a portion of the facility is regulated under MTSA, and the facility possesses a threshold level of a chemical of interest in the portion of the facility not covered under MTSA, then the facility is only partially exempt and must complete a Top-Screen for the portion of the facility not subject to MTSA.
2. Public Water System Facilities - A public water system is defined in the Safe Drinking Water Act (SDWA), <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title42/pdf/USCODE-2015-title42-chap6A-subchapXII-partA-sec300f.pdf>, as a system for the provision of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. While an entire facility may be construed as a public water system, there may be facilities for which the public water system is only one asset contained within a larger facility. In those cases, the facility shall complete a Top-Screen for the portion of the facility that is not a public water system regulated under the SDWA.
3. Treatment Works Facilities - The Federal Water Pollution Control Act, <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title33/pdf/USCODE-2015-title33-chap26-subchapII-sec1292.pdf> defines treatment works facilities as any device/system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. In addition, treatment works means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.
4. Department of Defense (DoD) Facilities - Facilities owned or operated by DoD or any component thereof are excluded from CFATS. This exclusion does not apply to contractor-owned, contractor-operated facilities, even if DoD is the only facility customer or if the facility is subject to DoD security requirements.
5. Department of Energy (DOE) Facilities - This exclusion applies to facilities owned or operated by DOE or any component thereof. This exclusion does not apply to contractor-owned, contractor-operated facilities, even if DOE is the only facility customer or if the facility is subject to DOE security requirements.
6. Nuclear Regulatory Commission (NRC) Facilities - Facilities subject to regulation by the NRC or by an Agreement State, <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title42/pdf/USCODE-2015-title42-chap23-divsnA-subchapI-sec2021.pdf>, are excluded from CFATS where the NRC or an Agreement State have imposed significant security requirements on most of the facility. The exclusion does not apply to NRC-licensed facilities that only have a few radioactive sources and for which NRC security requirements are not imposed. The scope of exclusion has been formalized in a memorandum of understanding between DHS and the NRC including waste in combined storm water and sanitary sewer systems.



Question: What needs to be done with the facility ID in the Chemical Security Assessment Tool (CSAT) when a covered chemical facility is bought or sold?

Answer: DHS provides two options for changing the facility ID when a covered chemical facility is bought or sold.

Option 1: The buyer may assume the facility ID and the submitted surveys of the previous owner. This option is possible under the following conditions:

- There are no substantive changes to the chemical(s) of interest (COI) holdings or processes at the facility.
- There are no changes to the facility that would affect the overall security posture of the facility or its vulnerabilities.
- The seller agrees to allow the buyer to take ownership of their regulatory documentation (i.e., previously submitted Top-Screen, Security Vulnerability Assessment (SVA), Site Security Plan (SSP), and/or Alternative Security Program (ASP), as applicable).
- The buyer agrees that because no substantive changes will take place following the sale, it is in the best interest of the facility and the CFATS program to continue implementation of CFATS according to the schedule and obligations that were being implemented by the previous owner/operator.
- If necessary, DHS will work with the new owner/operator to provide reasonable timelines for the facility to meet its regulatory obligations.

Option 2: The buyer may establish his own facility ID by registering the facility and submitting a new Top-Screen. The seller will submit a Top-Screen reporting no chemical(s) of interest and the sale of the facility.

Requirements

Option 1: The seller and the buyer should each write a letter to the Department providing details about the sale. The seller should explicitly grant the buyer permission to assume the ID and take ownership of the facility's submitted surveys. If the old owner is not available (i.e. previous sale date, insufficient contact information), a letter from the new owner accepting the facility documents will usually be sufficient. The buyer should explain that his organization is willing to assume the ID and take responsibility for the submitted and the future surveys, and should explicitly document that the COI holdings and facility operations will remain the same. The buyer should also provide the new facility name, owner, operator, and parent company, as applicable. Facilities may edit this information themselves; however the Department still requests a letter from the buyer and from the seller if possible.

Option 2: The seller should submit an updated Top-Screen reporting no COI and a letter to the Department explaining the circumstances of the sale of the facility that the buyer wants to establish his own CSAT identity and submit his own surveys. The buyer should register the new facility in CSAT and submit a new Top-Screen. DHS does not expect a letter from the buyer in this case.

Both Options: Letters should be written on company letterhead and should be addressed as follows:

Director
Infrastructure Security Compliance Division
Office of Infrastructure Protection
MS 0610
Department of Homeland Security
Washington, DC 20528

The letter(s) should be faxed to the CSAT Help Desk (866-731-2728).