



DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

[Docket No. DHS-2016-0039]

Chemical Facility Anti-Terrorism Standards

AGENCY: Department of Homeland Security.

ACTION: Suspension and modification of certain submission requirements for chemical facilities of interest and covered chemical facilities under agency regulations.

SUMMARY: The U.S. Department of Homeland Security (DHS or Department) is publishing this document to inform the public of the Department's actions to implement an improved tiering methodology for the Chemical Facility Anti-Terrorism Standards (CFATS) program that incorporates the relevant elements of risk mandated by section 2102(e)(2) of title XXI of the Homeland Security Act of 2002 (as amended).

Implementation of the improved tiering methodology required changes to an Information Collection Request (ICR), which has recently been approved by the Office of Management and Budget (OMB).

DATES: This document goes into effect July 20, 2016, or as otherwise specified in this document.

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SUPPLEMENTARY INFORMATION:

I. Background & History

In December 2014, the President signed into law the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014¹ or “CFATS Act of 2014” (Pub. L. No. 113-254, 6 U.S.C. 621, et seq.). The CFATS Act of 2014 amended the Homeland Security Act of 2002² (6 U.S.C. 101 et seq.) with the addition of Title XXI - Chemical Facility Anti-Terrorism Standards - authorizing the Department to regulate chemical facilities of interest.³

Section 2102(e)(2) of Title XXI of the Homeland Security Act of 2002 (as amended) requires that the Department incorporate the relevant elements of risk in determining the risk of terrorism associated with a covered chemical facility.⁴ The improved tiering methodology will require the submission by facilities of information that differs in some respects from the information that has previously been collected. Accordingly, the Department published two notices, one in November 2015 and one in April of 2016, that requested comments about the recently approved ICR for the Chemical Security Assessment Tool (CSAT).⁵ Among the approved revisions, the ICR

¹ Pub. L. 113-254, 128 Stat. 2898, Dec. 18, 2014, is available at: <https://www.congress.gov/bill/113th-congress/house-bill/4007?q=%7B%22search%22%3A%5B%22HR+4007%22%5D%7D> (CFATS Act of 2014)

² Pub. L. 107-296 Stat. 2135, Nov. 25, 2002 is available at: <https://www.gpo.gov/fdsys/pkg/PLAW-107publ296/pdf/PLAW-107publ296.pdf>. (Homeland Security Act of 2002)

³ Section 2101(2) of the Homeland Security Act of 2002, as enacted on December 18, 2014, defined chemical facility of interest as a facility that holds, or that the Secretary has a reasonable basis to believe holds, a chemical of interest at a set threshold quantity pursuant to relevant risk related security principles and is not an excluded facility.

⁴ Section 2101(3) of the Homeland Security Act of 2002 as enacted on December 18, 2014 defined covered chemical facility as a chemical facility of interest that based upon a review of the facility’s top screen meets the risk criteria developed under section 2102(e)(2)(B) of the Homeland Security Act of 2002 and is not an excluded facility.

⁵ See <https://www.federalregister.gov/articles/2015/11/18/2015-29457/chemical-security-assessment-tool-csat#p-25>.

describes a revised Top-Screen that will enable the Department to comply with Section 2102(e)(2) of Title XXI of the Homeland Security Act of 2002 (as amended).⁶

II. Department's Transition To a Revised Top-Screen, Security Vulnerability Assessment, and Site Security Plan Applications

The Department will transition to the revised CSAT Top-Screen application, a revised CSAT Security Vulnerability Assessment (SVA) application, and a revised CSAT Site Security Plan (SSP) application, hereafter described as "CSAT 2.0". The Department expects to begin collecting information using CSAT 2.0 from chemical facilities of interest in the near future using a phased approach.

The Department considered several alternatives for transitioning from the existing CSAT applications to CSAT 2.0 to minimize undue effort and unnecessary complexity that could inadvertently cause confusion. The Department believes that the actions taken in this document represent a reasonable transition process.

The transition from the existing CSAT applications to CSAT 2.0 will be a three-step process. **The first step** is to temporarily suspend, effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the requirement for CFATS chemical facilities of interest to submit a Top-Screen and SVA. This suspension is designed to help chemical facilities of interest avoid expending time and resources on Top-Screen and SVA submissions during the transition to CSAT 2.0. The Department will continue to allow covered chemical facilities to submit new or revised SSPs and

⁶ The Chemical Security Assessment Tool (CSAT) OMB Information Collection Request for 1670-0007 may be viewed at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-1670-001.

Alternative Security Programs (ASPs) in lieu of an SSP using the current CSAT SSP application up until the date of transition to CSAT 2.0.

The second step will be to replace the current CSAT Top-Screen, SVA, and SSP applications with CSAT 2.0 (i.e., the revised CSAT Top-Screen, SVA, and SSP applications). The Department currently plans to take this step in September 2016. Soon after transitioning to CSAT 2.0, the Department will, in a phased approach, begin individually notifying chemical facilities of interest to submit a Top-Screen using the revised CSAT Top-Screen application. Notification will be sent to facilities that either (a) have previously submitted a Top-Screen with COI above the STQ, or (b) the Department has reason to believe have COI at or above the STQ. Section III and IV of this document describe which chemical facilities of interest will and will not be required to submit a Top-Screen.

The third step will be to reinstate the Top-Screen and SVA submission requirements in 6 CFR 27.210(a) on October 1, 2016.

III. Facilities That Will Be Required To Submit A Top-Screen

After the transition to CSAT 2.0, the Department will begin individually notifying chemical facilities of interest (to include facilities previously determined not to be high-risk), unless otherwise described in Section IV of this document, to submit a Top-Screen using the revised CSAT Top-Screen application. The Department will send a specific written notification in this regard, pursuant to its authority under 6 CFR 27.210(a)(1)(ii). These letters will be issued in a phased manner over the course of several months.

A facility that does not possess any chemical of interest (COI) at or above the Screening Threshold Quantity (STQ) and as applicable, at or above the minimum

concentration specified in Appendix A will not need to submit a Top-Screen. However, any such facility, if provided with written notice to submit a Top-Screen, must notify the Department why it is not submitting a Top-Screen. Notification may be done either by (a) accessing CSAT and submitting a Top-Screen with no COI selected⁷ or (b) by sending a letter or fax to the contact listed in the contact section of this document.

A covered chemical facility does not have to wait for written notification from the Department to submit a Top-Screen after the Department transitions to CSAT 2.0. A covered chemical facility may find it advantageous to submit a Top-Screen prior to receiving specific notification from the Department if it believes its tier might be lowered under the improved tiering methodology.

Chemical facilities of interest that come into reportable amounts of COI listed on Appendix A during the temporary suspension must submit a Top-Screen within 60 days of reinstatement. The reinstatement of the submission requirements also means that chemical facilities of interest that either: (a) come into possession of reportable amounts of COI listed on Appendix A after the reinstatement of submission, or (b) have not complied with the existing reporting requirement since November 20, 2007 have an obligation to submit a Top-Screen within 60 days of reinstatement.

IV. Facilities That Will Not Be Required To Submit A Top-Screen

If a facility described below receives a notification letter directing it to submit a Top-Screen, it should contact the Department for further guidance -- using either the

⁷ It is common practice for a covered chemical facility that no longer possesses COI at or above the (STQ) and at or above the minimum concentration specified in Appendix A to submit a revised Top-Screen with no COI selected. Upon receiving the revised Top-Screen and confirming the information, the Department determines the facility no longer is a high risk chemical facility.

contact information contained in the contact section of this document or by contacting the CFATS Helpdesk.⁸

A. Agricultural Production Facilities and miscellaneous extensions

This document does not modify the existing Top-Screen submission extension applicable to Agricultural Production Facilities that use COI in preparation for the treatment of crops, feed, land, livestock (including poultry), or other areas of an Agricultural Production Facility or during application to or treatment of crops, feed, land, livestock (including poultry), or other areas of the facility.⁹ Similarly, this document does not modify any other extension issued by the Department for submitting a Top-Screen.

B. Chemical Facilities of Interest with reportable COI that is present in a gasoline mixture

The Department's practice has been to indefinitely extend the due dates for submission of Top-Screens, and as applicable SVAs and SSPs, for chemical facilities of interest whose only reportable COI is present in a gasoline mixture. Nothing in this document is intended to alter that practice; however, chemical facilities of interest that reported or have come into possession of one or more COI above the STQ in addition to the COI present in gasoline will be required to submit a Top-Screen in the revised CSAT Top-Screen application for that COI. The Department does not intend to send written

⁸ The CFATS Helpdesk may be contacted at 866-323-2957 Monday through Friday from 8:30 a.m. to 5:00 p.m. (EST). The CFATS Helpdesk is closed on Federal Holidays.

⁹ The Department of Homeland Security published a letter that it issued on December 21, 2007. Through this letter, the Department granted a time extension for farmers and other agricultural end-users who would otherwise have been required to submit a Top-Screen consequence assessment through the secure online CSAT Top-Screen. See 73 FR 1640, Jan. 9, 2008 is available at <https://federalregister.gov/a/E8-199>.

notifications requesting revised Top-Screens from facilities that have previously submitted a Top-Screen with only COI present in gasoline.

C. Statutorily Excluded Facilities

Facilities that are statutorily excluded from CFATS are not required to submit a Top-Screen, and the Department does not intend to send written notifications requesting statutorily-excluded facilities to submit a Top-Screen.¹⁰

D. Untiered facilities that previously notified the Department they had no reportable COI

The Department does not intend to require untiered facilities that previously submitted a Top-Screen with no COI selected to submit another Top-Screen; however, the Department does expect such facilities to submit a Top-Screen if they have come into possession of a reportable amount of COI since submitting their previous Top-Screen.

V. Unsubmitted SVAs and SSPs in the current CSAT SVA and SSP applications

The Department notes that (a) some SVAs that have been initiated in the current CSAT SVA application have not yet been submitted, and similarly that (b) some SSPs that have been initiated in the current CSAT SSP application have not yet been

¹⁰ Section 2101(4) of the Homeland Security Act of 2002, as enacted on December 18, 2014 defined excluded facility as: (A) a facility regulated under the Maritime Transportation Security Act of 2002 (Publ. L. 107-295; 116 Stat. 2064); (B) a public water system, as that term is defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f); (C) a Treatment Works, as that term is defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292); (D) a facility owned or operated by the Department of Defense or the Department of Energy; or (E) a facility subject to regulation by the Nuclear Regulatory Commission, or by a State that has entered into an agreement with the Nuclear Regulatory Commission under section 274 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)) to protect against unauthorized access of any material, activity, or structure licensed by the Nuclear Regulatory Commission.

submitted. Only complete and submitted SVAs and complete and submitted SSPs will be retained in CSAT 2.0.¹¹

Upon transitioning to CSAT 2.0, the Department will delete any partially completed SVA (i.e., unsubmitted SVA) found in the current CSAT SVA application. Any covered chemical facility that has either (a) an unsubmitted SVA within the current CSAT SVA application or (b) has submitted an SVA but not received a final tier determination based on its most recent SVA submission, will receive written notification from the Department to submit a Top-Screen using the revised CSAT Top-Screen application.

Upon transitioning to CSAT 2.0, the Department will delete any partially completed SSP (i.e., unsubmitted SSPs) in the current CSAT SSP application. This means that if a covered chemical facility has not submitted its SSP prior to the transition to CSAT 2.0, any data in its partially completed SSP (i.e., unsubmitted SSP) within the current CSAT SSP application will be deleted and will no longer be retrievable. Any data from a SSP previously submitted through the current CSAT SSP application will be available and pre-populated in CSAT 2.0.

VI. Changes to Submission Schedule for SVAs and SSPs

A. Impacts to “Initial Submission” schedule at 6 CFR 27.210(a)

As described in the November 2015 CSAT ICR Notice, the Department expects that because of the revisions in CSAT 2.0:

¹¹ A covered chemical facility that would like to preserve information within the current CSAT SSP application prior to the transition to CSAT 2.0 may consider generating a PDF of the partially SSP.

- Chemical facilities will spend 90 percent less time logged into the SVA application, and
- Chemical facilities will spend 70 percent less time logged into the SSP application.

Furthermore, as mentioned in the November 2015 CSAT ICR Notice one of the expected outcomes of the revisions is a greater confidence in the tiering results conducted after the Top-Screen. Hence, while the Department reserves the right to modify a facility's tier following review of the facility's SVA, generally speaking, the Department will rely on the information submitted in a facility's Top-Screen to make a single tiering determination for the facility, as described in 6 CFR 27.220(a). The Department will indicate confirmation of or, in extremely rare cases, alteration of, the facility's tier in a Letter of Authorization (or, in the case of a facility electing to submit an SSP under the Expedited Approval Program, a Letter of Acceptance).

In large part due to (a) the Department's reliance on a single tiering determination based on a facility's Top-Screen, and (b) an improved integration between the CSAT SVA application and the CSAT SSP application, the revised CSAT SVA application and revised CSAT SSP application have been designed to be completed and submitted together. The Department also believes that the revised CSAT SVA application aligns substantially better with 6 CFR 27.215 (the requirements of an SVA) compared to the current CSAT SVA application. Therefore, the Department, in this document, is streamlining the submission requirements to align with the revised CSAT SVA application and revised CSAT SSP application efficiencies described in the CSAT ICR by aligning the submission requirements and having them run in parallel. Based on these

changes, the SVA start date and due date will be the same as the SSP start date and due date, respectively. Specifically, in this document, the Department is using its authorities:

- under 6 CFR 27.210(a)(2), when the Department transitions to CSAT 2.0, to require covered chemical facilities to submit their initial SVA within 120 days of written notification of the Department’s determination under 6 CFR 27.205(a) that they are high-risk.
- under 6 CFR 27.210(a)(3), when the Department transitions to CSAT 2.0, to require covered chemical facilities to submit their initial SSP within 120 days of written notification of the Department’s determination under 6 CFR 27.205(a) that they are high-risk.

Therefore, the deadline for a covered chemical facility to submit an initial SVA and an initial SSP will be 120 days after the Department’s tiering determination described in 6 CFR 27.205(a). Facilities may request extensions to the due dates for the SVA and SSP. All requests will be considered by the Department on a case by case basis.

B. Impacts to “Resubmission Schedule for Covered Facilities” at 6 CFR 27.210(b)

As previously explained, the Department expects to maintain the ability to have data from the most recently submitted CSAT SSP pre-populate into an SSP that will be available in the CSAT 2.0 SSP application. As a result, after the transition to CSAT 2.0, covered chemical facilities that need to revise their SSPs will need to (a) review a pre-populated SSP for completeness and accuracy; and (b) make any necessary updates or corrections to their SSP before submission using the revised CSAT SSP application. Because the new CSAT 2.0 design contemplates the submission of the SVA and SSP

together, covered chemical facilities will also be required to revise their SVAs if/when they revise their SSPs. Furthermore, the start date and due date for a revised SVA will be the same as the start date and due date, respectively, for the covered chemical facility's revised SSP. Covered chemical facilities will be required to submit revised SVAs and revised SSP within 30 days of written notification from the Department. The Department selected the 30 day deadline because it has been allowing covered chemical facilities 30 days to complete revisions to their SVAs and SSPs for the past several years and found that it is a sufficient amount of time for most facilities. The Department will consider requests for extensions to the due dates for revised SVAs and SSPs.

VII. Additional Considerations for Chemical Facilities of Interest

A. Inactive CSAT User Accounts

Many chemical facilities of interest previously determined not to be high risk will need to reactivate the CSAT account(s) of their designated representative(s) or register a new representative. All chemical facilities of interest affected by this document, in particular chemical facilities of interest previously determined not to be high risk, should verify what, if any, steps they need to take in order to ensure that an appropriate representative has an active CSAT account. For assistance on how to reactivate a CSAT account please contact the CFATS Help Desk. Information about how to register for a new CSAT account can be found on the CFATS Knowledge Center at www.dhs.gov/chemicalsecurity.

B. Need for Chemical-terrorism Vulnerability Information (CVI) Certification

To access CSAT, a CSAT User must be a Chemical-terrorism Vulnerability Information (CVI) authorized user. CSAT Users, in particular CSAT users affiliated with

chemical facilities of interest previously determined not to be high risk, may need to complete CVI training and apply to be a CVI Authorized User prior to their ability to access CSAT. To verify your status as a CVI Authorized User you may contact the CFATS Helpdesk.

VIII. Regulatory Actions This Document Exercises under Part 27 of Title 6, Code of Federal Regulations

This document exercises the following regulatory actions:

- Temporarily suspends the requirement to submit a Top-Screen and SVA on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The Department is authorized to take this action under § 27.210(a)(1)(ii) and (a)(2) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public that when the Department transitions to CSAT 2.0, a covered chemical facility will be required to submit its initial SVA within 120 days of notification of the Department's determination under 6 CFR 27.205(a) that they are high-risk. The Department is authorized to take this action under § 27.210(a)(2) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public that when the Department transitions to CSAT 2.0, a covered chemical facility will be required to submit its initial SSP within 120 days of notification of the Department's determination under 6 CFR 27.205(a) that they are high-risk. The Department is authorized to take

this action under § 27.210(a)(3) of part 27 of title 6, Code of Federal Regulations.

- Notifies the public that when the Department transitions to CSAT 2.0, covered chemical facilities seeking to revise an SSP will also be required to revise their SVA. The Department is authorized to take this action under § 27.210(b)(2) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public that when the Department transitions to CSAT 2.0, a covered chemical facility submitting a revised SVA will have 30 days to submit its revised SVA. The Department is authorized to take this action under § 27.210(a)(2) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public that when the Department transitions to CSAT 2.0, a covered chemical facility submitting a revised SSP will have 30 days to submit its revised SSP. The Department is authorized to take this action under § 27.210(a)(3) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public of the reinstatement of the Top-Screen and SVA submission requirements on October 1, 2016. This means that chemical facilities of interest that acquire reportable amounts of COI listed on Appendix A after the reinstatement of the requirement to submit a Top-Screen and SVA must submit a Top-Screen within 60 days. The reinstatement of the submission requirements also means that chemical facilities of interest that have not complied with the existing reporting requirement since November 20, 2007 must also submit a Top-Screen with 60 days. The Department is authorized to take this action under §

27.210(a)(1)(ii) and (a)(2) of part 27 of title 6, Code of Federal Regulations.

- Notifies the public that a chemical facility of interest will have 60 days following the reinstatement of the submission requirements under 6 CFR 27.210(a) to submit a Top-Screen if the chemical of facility of interest have come into possession of a reportable amount of COI after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** but before reinstatement of the submission requirements. The Department is authorized to take this action under § 27.210(a)(1)(ii) of part 27 of title 6, Code of Federal Regulations.

This document does not require chemical facilities to immediately submit a Top-Screen after the transition to the revised CSAT Top-Screen application. Rather, this document publicizes the Department's intent to begin individually notifying chemical facilities of interest. After the transition to CSAT 2.0, the Department will begin sending written notification to chemical facilities of interest requiring them to submit a Top-Screen using the revised CSAT Top-Screen application. Finally, the Department (1) reemphasizes that once the Department transitions to CSAT 2.0, any chemical facility of interest can submit a Top-Screen using the revised CSAT Top-Screen application, regardless of whether it has received written notification from the Department, and (2) continues to be available for consultation to any chemical facility of interest before, during, or after the transition to CSAT 2.0. In particular the Department is available for consultation to any chemical facilities of interest that acquire COI for the first time. Requests for consultation can be made through the CFATS Helpdesk.

Taken together the process and steps outlined in this document will enable the Department to collect the necessary information to implement the improved tiering methodology required in Section 2102(e)(2) of the Homeland Security Act of 2002.

Dated: July 11, 2016.

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