



DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

[Docket No. DHS-2014-0016]

Retrospective Analysis of the Chemical Facility Anti-Terrorism Standards

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: Announcement of availability; request for comments.

SUMMARY: Through this document, the Cybersecurity and Infrastructure Security Agency (CISA) is making available a retrospective analysis of the data, assumptions, and methodology used to support the 2007 interim final rule for the Chemical Facility Anti-Terrorism Standards (CFATS) program. The purpose of the retrospective analysis is to provide an updated assessment of the costs and burdens of the CFATS program. Based on data observed by the program for over ten years, CISA estimates that the actual costs of the CFATS program is 83 percent lower than estimated in 2007. The retrospective analysis has been added to the docket for the CFATS Advanced Notice of Proposed Rulemaking (ANPRM) published in 2014.

DATES: Comments are due by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may send comments, identified by docket number DHS-2014-0016, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

- Mail: DHS/CISA/ISD/OCS, ATTN: DHS Docket No. DHS-2014-0016, 245 Murray Lane SW, Mail Stop 0610, Arlington, VA 20528-0610.

Instructions: All comments received for the public docket will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Do not submit comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), Protected Critical Infrastructure Information (PCII), or Sensitive Security Information (SSI) to the public regulatory docket. Comments containing this type of protected information should be appropriately marked as containing such information and submitted by mail to the address provided above. CISA will not place comments containing protected information in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. Additionally, CISA will hold them in a separate file to which the public does not have access and place a note in the public docket that CISA has received such protected materials from the commenter. If CISA receives a request to examine or copy this information, CISA will treat it as any other request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department's FOIA regulation found in part 5 of Title 6 of the Code of Federal Regulations (CFR).

Docket: For access to the docket and to read the retrospective analysis or the comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Lona Saccomando, (703) 603-4868, CISARulemaking@cisa.dhs.gov.

SUPPLEMENTARY INFORMATION:

The Department published an ANPRM on August 18, 2014 seeking public

comment on the CFATS interim final rule (IFR) published in 2007 (72 FR 17687) and a final rule for Appendix A to the CFATS regulations published in 2007 (72 FR 65395). The 2014 ANPRM was an initial step towards maturing the program. See 79 FR 48693 (August 18, 2014). To better inform the ongoing rulemaking process, CISA has performed a retrospective analysis of the costs and burdens of the 2007 CFATS IFR on regulated facilities.¹ The retrospective analysis updates cost estimates from the 2007 CFATS IFR with new estimates based on data observed from the implementation and operation of CFATS over the last decade. CISA intends to use the retrospective analysis: (1) to improve the accuracy of cost estimates incurred by regulated facilities since 2007; (2) as a basis for future regulatory changes to the CFATS program; and (3) to perform cumulative impact analysis on the full costs of the program as it evolves.

Based on the retrospective analysis, CISA believes that the regulatory impact assessment (RIA) for the 2007 CFATS IFR overestimated the costs of the program imposed on chemical facilities and that the actual costs are 83 percent lower than previously estimated. Because CFATS was a new regulatory program that was developed under a six-month Congressional deadline, there was limited time to conduct economic studies and collect data to establish the pre-statutory security baseline at high-risk chemical facilities.² As CFATS was a new program, there was no historical data that could inform the analysis. In order to meet the Congressional deadline, the Department

¹ The original regulatory impact assessment for the IFR may be viewed at <https://www.regulations.gov/document?D=DHS-2006-0073-0116> and the IFR published on April 9, 2007 may be viewed at <https://www.federalregister.gov/d/E7-6363>.

² On October 4, 2006, the President signed the Department of Homeland Security Appropriations Act of 2007, which provided DHS with the authority to regulate the security of high-risk chemical facilities. See Pub. L. 109–295, sec. 550. Section 550 required the Secretary of Homeland Security to promulgate interim final regulations “establishing risk-based performance standards for security of chemical facilities” by April 4, 2007. See also 72 FR 17689 (Apr. 9, 2007)

relied heavily on the elicitation of subject matter expert (SME) judgment to estimate the cost of the regulation in the 2007 RIA. Now that CISA has fully implemented CFATS, CISA was able to replace the SME judgments with historical data provided by industry through the Chemical Security Assessment Tool, CFATS compliance data, and lessons learned. As a result, the retrospective analysis provides a more accurate estimate of the cost that the CFATS program imposed on chemical facilities between 2007 to 2017. The retrospective analysis resulted in a decrease in the estimated 10-year cost, discounted at 7%, of CFATS from \$9.84 billion to \$1.68 billion. The main drivers of this substantial reduction in cost were the 2007 CFATS IFR's overestimation of: (1) the number of chemical facilities that would be covered by CFATS; and (2) the costs of security measures implemented by CFATS covered facilities.

CISA encourages public comment on the retrospective analysis. Commenters can find a copy of the analysis in the docket. Comments that will provide the most assistance to CISA will refer to a specific section, appendix, figure, and/or table of the analysis, explain the reason for any comments, and include other information or authority that supports such comments.

This document is issued under the authority of 6 U.S.C. 621 et seq.

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