

Proposed Rules

Federal Register

Vol. 85, No. 120

Monday, June 22, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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 September 21, 2020.

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 Saccamano, (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

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>.

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 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

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 Public Law 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).

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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Cybersecurity and Infrastructure Security
Agency, Department of Homeland Security.
[FR Doc. 2020-13147 Filed 6-19-20; 8:45 am]

BILLING CODE 9110-9P-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB-2020-0019]

Advisory Opinions Proposal

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed procedural rule; proposed information collection; request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) invites the public to comment on a new advisory opinion program (Proposed AO Program), and a proposed information collection associated with requests submitted by persons requesting advisory opinions under the Proposed AO Program, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments on the Proposed AO Program are encouraged and must be received on or before August 21, 2020.

ADDRESSES: You may submit comments on the Proposed AO Program, identified by Docket No. [CFPB-2020-0019], by any of the following methods:

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

- *Email:* 2020-RFC-AdvisoryOpinions@cfpb.gov. Include Docket No. [CFPB-2020-0019] in the subject line of the email.

- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID-19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: All submissions should include the agency name and docket

number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID-19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Standard Time. You can make an appointment to inspect the documents by telephoning (202) 435-9169. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For additional information about the Proposed AO Program, contact Marianne Roth, Chief Risk Officer, Office of Strategy, at 202-435-7684. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),¹ the Bureau's "primary functions" include issuing guidance implementing Federal consumer financial law.² The Bureau believes that providing clear and useful guidance to regulated entities is an important aspect of facilitating markets that serve consumers.

The Bureau currently issues several types of guidance regarding the statutes that it administers and regarding the regulations and Official Interpretations that it normally issues through the notice-and-comment process. On occasion, the Bureau provides guidance in interpretive rules or general statements of policy. The Bureau also routinely issues Compliance Aids that present legal requirements in a manner that is useful for compliance professionals, other industry stakeholders, and the public, or include practical suggestions for how entities might choose to go about complying

with those requirements.³ The Bureau also provides individualized "implementation support" to regulated entities through its Regulatory Inquiries Function (RIF).⁴ Neither Compliance Aids nor the RIF are intended to interpret ambiguities in legal requirements.

The Bureau is presenting the Proposed AO Program in response to feedback received from external stakeholders encouraging the Bureau to provide written guidance in cases of regulatory uncertainty. This feedback is summarized in the Background section of the Advisory Opinions Pilot (AO Pilot) **Federal Register** document published elsewhere in today's edition of the **Federal Register**. The Bureau issues this request for public comment on the Proposed AO Program and associated information collection concurrent with the establishment of the Pilot AO Program. The Proposed AO Program represents the next phase in full implementation of the Bureau's AO capability, with the intent of replacing the AO Pilot, and allowing the Bureau to further provide timely guidance that enables compliance by resolving outstanding regulatory uncertainty, thereby supporting the Bureau's statutory purpose of ensuring consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

II. Parameters of the Proposed AO Program

A. Overview

The primary purpose of the Proposed AO Program is to provide a mechanism through which the Bureau may more effectively carry out its statutory purposes and objectives by better enabling compliance in the face of regulatory uncertainty. Under the program, parties will be able to request interpretive guidance, in the form of an AO, to resolve such regulatory uncertainty.⁵

B. Submission and Content of Requests

Requests would be submitted through means, such as an email address, designated by the Bureau. Parties requesting AOs will be required to

¹ See Policy Statement on Compliance Aids, 85 FR 4579 (Jan. 27, 2020).

² See Bureau of Consumer Financial Protection Request for Information Regarding Bureau Guidance and Implementation Support (Guidance RFI), 83 FR 13959, 13961-62 (Apr. 2, 2018).

³ For convenience, this document uses the term "regulatory uncertainty" to encompass uncertainty with respect to regulatory or, where applicable, statutory provisions.

⁴ Public Law 111-203, 124 Stat. 2081 (2010).

⁵ 12 U.S.C. 5511(c)(5).