

IME

institute of makers of explosives

The safety and security institute of the commercial explosives industry since 1913

13 May 2016

OMB Desk Officer
Department of Homeland Security
National Protection and Programs Directorate
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

RE: DHS-2015-0058

Dear Desk Officer:

On behalf of the Institute of Makers of Explosives (IME), I am submitting comments on the 30-day notice of an information collection request (ICR) pertaining to the Department of Homeland Security's (DHS) revised Chemical Security Assessment Tool (CSAT).¹ The CSAT was developed to help the Department identify facilities that meet the criteria for high-risk chemical facilities under the Chemical Facilities Anti-Terrorism Standards (CFATS). CSAT is also the modality by which facilities submit information to DHS to conduct a Top-Screen and a Security Vulnerability Assessment (SVA), and to develop a Site Security Plan (SSP).

Interest of the IME

IME is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. IME member companies manufacture, distribute, and use explosives and explosive precursors. At the federal level, our members adhere to security requirements of the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Department of Transportation; and some, because of the type and quantity of "chemicals of interest" (COI) present in "screening threshold quantities" (STQ) at their facilities, to DHS's requirements under the CFATS program.

Comments

The IME participated in a preview of the revised CSAT tool. Based on this insight, we support and congratulate the DHS team that developed the new CSAT. The revised tool substantively improved the ease of use and time required by individuals submitting the CSAT Top Screen application. That said, we submitted to DHS some suggestions for additional enhancements to the software.² However, we are unaware of how these recommendations were addressed. DHS has not subsequently shared updated Top Screen or other CSAT documents with reviewers. Rather, DHS has said that OMB "will post the instruments when they are approved." The instruments that DHS produced and OMB posted are documents summarizing the information to be collected.³ These documents are not a substitute for seeing the actual questions again and provide no insight as to how they may have been further clarified. Consequently, we are not able to respond to the questions OMB

¹ 71 FR 21887 (April 13, 2016).

² IME letter to DHS, dated 24 FEB 2016.

³ http://www.reginfo.gov/public/do/PRAICList?ref_nbr=201604-1670-001

has raised about the necessity of specific information requests or the projected cost or savings of compliance over the current information collection.

As an example of what may or may not be an unnecessary information collection is how information about regulated COIs is captured. The posted document “CSAT Top-Screen Instrument”⁴ states, in section 4, that responders will be asked whether or not they manufacture any chemicals. In section 5, responders will be asked to identify COIs that the facility possesses. In section 6, only COIs at or above STQs are required to be identified. DHS only needs to know what COIs are present at or above their STQs in order to determine a facility’s regulatory status under CFATS. If the actual questions in sections 4 and 5 are not phrased the way the information collection is summarized in section 6, the information request may be “unnecessary for the proper performance of the functions of the agency” and “the burden of the collection of information on those who are to respond” may be needlessly increased. At the same time, please know that IME has advocated for changes to the chemicals on the COI list and/or their STQs. DHS has also indicated support for updating the COI list and revalidating the STQs.⁵ To this end, it may be that DHS would benefit from the additional data it could collect under broader questions aimed at ascertaining the totality of chemicals manufactured or present at facilities, such as those summarized in sections 4 and 5.⁶ However, such information should be collected as part of agency rulemaking, not through an ICR that is limited to the support of existing program requirements.

Conclusion

The CSAT tool we were able to review is an improvement over the current Top Screen form. Still, we felt a few minor changes or clarifications were justified to minimize the burden of this information collection. At this time, we cannot comment on the specifics of this information collection since we have no access to the questions themselves nor do we know the status of the revisions we recommended. We do not believe that the CSAT questions themselves are security sensitive. We urge OMB to share the revised questions with the public or at least the regulated CFATS community to allow one final assessment of the revised tool. We hope that OMB will see the value in a more transparent approach to assessing the burdens of the revised CSAT.

Please contact me if additional information is needed.

Respectfully submitted,

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⁴ OMB No. 1670-0007, DHS Form 9007.

⁵ DHS issued an advance notice of proposed rulemaking soliciting comments on ways to update and improve CFATS regulations on August 18, 2014 (79 FR 4693). Whether or not changes should be made to the list of COIs and/or their thresholds was one of the areas of comment. According to the latest semi-annual regulatory agenda, it is expected that DHS will issue a notice of proposed rulemaking in July 2016. DHS has stated that this proposal will include changes affecting the COI list.

⁶ It may be that some of this information could be found in information collected by other federal agencies, such as EPA.