

March 8, 2021

## **Re: Removal of Certain Explosive Chemicals from the Chemical Facility Anti-Terrorism Standards**

### **Docket No. CISA-2020-0014**

On January 6, 2021, the DHS Cybersecurity and Infrastructure Security Agency (CISA) issued an Advance Notice of Proposed Rulemaking (ANPRM) for public comment on the advisability of removing some 49 chemicals that are considered Division 1.1 explosives from Appendix A of the Chemical Facility Anti-Terrorism Standards (CFATS) regulations. (86 Federal Register 495.)

This action is ill-advised. Two government reports, cited here for the record, suggest problems with exempting explosives from CFATS.

1] [U.S. Government Accountability Office, Chemical Security: Overlapping Programs Could Better Collaborate to Share Information and Identify Potential Security Gaps \(GAO-21-12\)](#)

GAO found that requirements or guidance of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for the regulation of explosives did not even generally align with seven of 18 CFATS performance standards (see Tables 3 and 4). CFATS security standards not covered by ATF include:

- Deter cyber sabotage,
- Develop and exercise an emergency response plan,
- Maintain effective monitoring, communications, and warning systems,
- Ensure proper security training,
- Escalate the level of protective measures for periods of elevated threat,
- Address specific threats, vulnerabilities, or risks,
- Establish officials and an organization responsible for security.

*CISA should specifically address the impact on security of the loss of each of these seven elements that would result from exempting explosives from CFATS. ATF coverage of the remaining 11 CFATS standards also may not align completely. For example, ATF authority does not generally extend to the entire facility at which explosives are stored.*

It should be noted that where the ATF and CFATS regulations on explosives do align, GAO states “the CFATS program allows facilities to meet CFATS program standards by providing information they prepared for other programs.” GAO concludes that such compliance reporting coordination could be improved.

## 2] U.S. Bomb Data Center Explosives Incident Report 2019

The USBDC Annual Explosives Incident Report for 2019 found 62 thefts of explosives 2015-19 (see Figure 24) and 616 explosives losses (possible diversions) 2015-19 (see Figure 26). This is more than two incidents per week. *DHS should determine the regulatory status of each facility where these 678 thefts and losses occurred and take steps to fill any regulatory gaps identified.*

Respectfully submitted,

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