

| | |
|---|-----------------------|
| | Calendar Year 2009 |
| Effective Date for Calendar Year 2009 Rates | |
| Consistent with previous annual rate revisions, the Calendar Year 2009 rates will be effective for services provided on/ or after January 1, 2009 to the extent consistent with payment authorities including the applicable Medicaid State plan. | |

Dated: February 4, 2009.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E9-13644 Filed 6-9-09; 8:45 am]

BILLING CODE 4165-16-P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate Office of Infrastructure Protection

[Docket No. DHS-2009-0026]

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

AGENCY: National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division, DHS.

ACTION: 60-Day Notice and request for comments: New information collection request 1670-NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division (ISCD) will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is a new information collection. The purpose of this notice is to solicit comments during a 60-day public comment period prior to the submission of this collection to OMB. The submission describes the nature of the information collection, the categories of respondents, the estimated burden, and cost.

DATES: Comments are encouraged and will be accepted until August 10, 2009. This process is conducted in accordance with 5 CFR 1320.8.

ADDRESSES: Interested persons are invited to submit comments on the proposed information collection through the Federal Rulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments must be identified by docket number DHS-2009-0026.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained through the Federal Rulemaking Portal at <http://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:

Program Description

The Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR Part 27, require high-risk chemical facilities to submit personally identifiable information (PII) from facility personnel and, as appropriate, unescorted visitors with access to restricted areas or critical assets at those facilities. This PII will be screened against the consolidated and integrated terrorist watch list maintained by the Federal Government in the Terrorist Screening Database (TSDB) to identify known or suspected terrorists (i.e., individuals with terrorist ties).

High-risk chemical facilities must also perform other relevant background checks in compliance with CFATS Personnel Surety risk-based performance standard (RBPS) #12. See 6 CFR 27.230(a)(12)(i-iii) (covered facilities must “perform appropriate background checks ... including (i) Measures designed to verify and validate identity; (ii) Measures designed to check criminal history; [and] (iii) Measures designed to verify and validate legal authorization to work”). The CFATS Personnel Surety Program is not intended to halt, hinder, or replace high-risk chemical facilities’ performance of background checks currently required for employment or access to secure areas of those facilities.

Background

On October 4, 2006, the President signed the Department of Homeland Security Appropriations Act of 2007 (the Act), Public Law 109-295. Section 550 of the Act provides the Department of Homeland Security (DHS) with the authority to regulate the security of high-risk chemical facilities.

Section 550 requires that DHS’s regulations establish risk-based performance standards. RBPS #12 (6 CFR 27.230(a)(12)) requires that regulated chemical facilities implement “measures designed to identify people

with terrorist ties.” The ability to identify individuals with terrorist ties requires use of information held in Government-maintained databases. Therefore, DHS is implementing the CFATS Personnel Surety Program which will allow chemical facilities to comply with RBPS #12 to implement “measures designed to identify people with terrorist ties.”

Overview of CFATS Personnel Surety Process

The CFATS Personnel Surety Program identifies individuals with terrorist ties by comparing PII submitted by each high-risk chemical facility to the PII of known or suspected terrorists on the consolidated and integrated terrorist watch list maintained by the Federal Government in the TSDB.

The representative(s) of each high-risk chemical facility with access to the Chemical Security Assessment Tool (CSAT), the online data collection portal for CFATS, will submit PII of affected individuals to the CFATS Personnel Surety Program via CSAT. The PII to be submitted is the data needed by DHS to conduct screening against the consolidated and integrated terrorist watch list in the TSDB. Upon receipt of each affected individual’s PII, the CFATS Personnel Surety Program will send a copy of the PII to the Transportation Security Administration (TSA). TSA will compare the PII provided by the CFATS Personnel Surety Program and the PII of known and suspected terrorists on the consolidated and integrated terrorist watch list in the TSDB. TSA will forward the results from all matches to the Terrorist Screening Center (TSC), which will make a final determination of whether an individual is, or is not, a match to an individual in the TSDB.

In the event that there is a positive match, the TSC will notify the appropriate Federal law enforcement agency for coordination, investigative action, and/or response.

For positive matches, the TSC may contact the Federal agency that nominated the individual to be listed on the consolidated and integrated terrorist watch list in the TSDB for further details regarding the reasons for nominating the individual.

DHS will not provide screening results to high-risk chemical facilities nor to the individuals whose PII is submitted by high-risk chemical facilities. As warranted, high-risk chemical facilities may be contacted by Federal law enforcement as a part of appropriate law enforcement investigation activity. (See the FBI System of Records published in the

Federal Register on August 22, 2007, 72 FR 47073.)

The CFATS Personnel Surety Program will send a "verification of submission" to the representative(s) of high-risk chemical facilities when: (1) A new individual's PII has been submitted, (2) an individual's information has been updated, and (3) when an individual's information has been removed because he/she no longer has access to the high-risk chemical facility's restricted areas or critical assets. "Verifications of submission" will allow for high-risk chemical facilities to demonstrate compliance with their facility Site Security Plans and with RBPS 12.

Affected Population

6 CFR 27.230(a)(12) requires facility personnel and, as appropriate, unescorted visitors with access to restricted areas or critical assets to undergo background checks. This affected population will include (1) facility personnel (e.g., employees and contractors) with access (unescorted or otherwise) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets.

These background checks do not affect facility personnel that do not have access to facilities' restricted areas or critical assets, nor do they affect escorted visitors.

Request for Exception to the Requirement Under 5 CFR 1320.8(b)(3)

The CFATS Personnel Surety Program intends to request from OMB an exception to the Paperwork Reduction Act requirement, contained in 5 CFR 1320.8(b)(3), that affected individuals whose PII is submitted by high-risk chemical facilities be notified of the reasons for the collection, be notified how the information will be used, be given an estimate of the average burden associated with the collection, and be notified whether responses to the collection are voluntary or mandatory. The CFATS Personnel Surety Program intends to request this exception in the event that these notices are required.

Neither Section 550 of the Act nor CFATS creates a requirement for high-risk chemical facilities to provide notice to affected individuals whose PII is submitted to the CFATS Personnel Surety Program. DHS, however, expects each high-risk facility to adhere to applicable Federal, State, local, and tribal laws, regulations, and policies pertaining to notification to individuals that their PII is being submitted to the Federal Government. The CFATS Personnel Surety Program will require each high-risk chemical facility to

certify that it is collecting and submitting this information in compliance with all applicable Federal, State, local, and tribal laws, regulations, and policies.

The CFATS Personnel Surety Program's request for an exception to the requirement under 5 CFR 1320.8(b)(3) would not exempt high-risk chemical facilities from having to adhere to applicable Federal, State, local, or tribal laws, regulations or policies pertaining to the privacy of facility personnel and the privacy of unescorted visitors. In fact, this exception would allow the CFATS Personnel Surety Program to avoid any conflict with such laws, regulations, and policies.

The CFATS Personnel Surety Program intends to take several steps to provide (1) adequate notice to high-risk chemical facilities of their responsibilities, and (2) general notice to affected individuals whose information will be submitted by high-risk chemical facilities to the CFATS Personnel Surety Program through this collection.

As part of Site Security Plans, required by CFATS, the Department will ask each high-risk chemical facility "Will the facility provide notification to facility personnel and, as appropriate, unescorted visitors with access to the restricted areas or critical assets that personal information about them has been or will be submitted to DHS to determine if they have terrorist ties?" High-risk chemical facilities that respond positively shall then explain their notification procedures.

- The CFATS Personnel Surety Program will publish a specific Privacy Impact Assessment.
- The CFATS Personnel Surety Program will publish in the **Federal Register** a specific System of Records Notice.
- The CFATS Personnel Surety Program will publish in the **Federal Register** the proposed exemptions for disclosure as required by the Privacy Act.
- The CFATS Personnel Surety Program will publish in the **Federal Register** the final exemptions for disclosure as required by the Privacy Act.

Solicitation of Comments

The Office of Management and Budget Is Particularly Interested in Comments Which

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The Department Is Particularly Interested in Comments Which

1. Respond to the Department's interpretation of the population affected by RBPS #12 background checks outlined in 6 CFR 27.230(a)(12);

2. Respond to fact that a Federal law enforcement agency may, if appropriate, contact the high-risk chemical facility as a part of a law enforcement investigation into terrorist ties of facility personnel; and

3. Respond to the Department on its intention to seek an exception to the notice requirement under 5 CFR 1320.8(b)(3).

Analysis

Agency

Department of Homeland Security, Office of the Under Secretary for National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: CFATS Personnel Surety Program

OMB Number: 1670-NEW
Background Check to Identify Terrorist Ties for an Individual at a High-Risk Chemical Facility

Frequency

As required in the schedule and timing in the high-risk chemical facilities Site Security Plan approved by DHS

Affected Public

High-risk chemical facilities as defined in 6 CFR Part 27, High-risk chemical facility personnel, and as appropriate, unescorted visitors with access to restricted areas or critical assets

Number of Respondents

354,400 individuals

Estimated Time Per Respondent

0.59 hours (35.4 minutes)

Total Burden Hours

210,351.7 annual burden hours

Total Burden Cost (capital/startup)

\$0.00

Total Burden Cost (operating/maintaining)

\$17,669,543

Signed: June 4, 2009.

Philip Reitingier,*Deputy Under Secretary, National Protection and Programs Directorate Department of Homeland Security.*

[FR Doc. E9-13618 Filed 6-9-09; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard**

[Docket No. USCG-2009-0446]

Merchant Mariner Medical Advisory Committee; Vacancies**AGENCY:** Coast Guard, DHS.**ACTION:** Notice of committee establishment and request for applications.

SUMMARY: The Secretary of Homeland Security is establishing the Merchant Mariner Medical Advisory Committee (MMMAC) under authority of 6 U.S.C. 451 and shall operate under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.). Individuals interested in serving on this committee are invited to apply for membership.

DATES: Completed application forms for membership should reach the Coast Guard on or before August 3, 2009.

ADDRESSES: You may request a copy of the charter for the Merchant Mariner Medical Advisory Committee or a form to apply for membership by writing to Captain Eric Christensen, Designated Federal Officer (DFO) of the Merchant Mariner Medical Advisory Committee, 2100 SW 2nd St., Washington, DC 20593. Completed applications should be sent to the DFO at this same address. A copy of this notice, the Committee charter, and the application form are available in our online docket, USCG-2009-0446, at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Court Smith, Assistant DFO of the Merchant Mariner Medical Advisory Committee; telephone 1-202-372-1128 or james.c.smith1@uscg.mil.

SUPPLEMENTARY INFORMATION:

Establishment of the Merchant Mariner Medical Advisory Committee. The Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92-463), governs the establishment of committees by Federal agencies. This committee will be established as a discretionary advisory committee that will operate in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.) and pursuant to the provisions of 5 U.S.C. 451. The Committee will advise, consult with, report to, and make recommendations to the Secretary on matters relating to the medical evaluation process and evaluation criteria for medical certification of merchant mariners. This may include but is not limited to:

- Commenting on Physical Qualification Requirements;
- Developing, communicating, and considering expert based and scientific recommendations;
- Examining such other matters, related to those above, that the Secretary may charge the Committee with addressing;
- Conducting studies, inquiries, workshops, and seminars in consultation with individuals and groups in the private sector and/or state and local government jurisdictions;
- Reviewing work from other agencies' medical advisory boards to recommend uniform guidelines for medical/functional fitness for operators of commercial vessels.

The Committee will meet at least once a year. It may also meet for additional purposes. Subcommittees and working groups may also meet to consider specific problems.

Request for Applications

The Committee will be composed of fourteen members. Ten Committee members shall be health-care professionals with particular expertise, knowledge, or experience regarding the medical examinations of merchant mariners or occupational medicine. Four Committee members shall be professional mariners with knowledge and experience in mariners' occupational requirements.

Initial appointments to the MMMAC shall be for terms of office of one, two, or three years. Thereafter, members shall serve terms of three years. Approximately one-third of members' terms of office shall expire each year. A member appointed to fill an unexpired term shall serve the remainder of that term. All members may serve more than one term. In the event the MMMAC terminates, all appointments to the committee shall terminate.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

All members shall serve as Special Government Employees (SGE), as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as an SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official (DAEO) or the DAEO's designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of the Committee, send a completed application to Captain Eric Christensen, DFO of the MMMAC. Send the application in time for it to be received by the DFO on or before August 3, 2009.

A copy of the application form is available in the docket for this notice. To visit our online docket, go to <http://www.regulations.gov>, enter the docket number for this notice USCG-2009-0446 in the Search box, and click "Go >>." Applicants may also request an application form via fax at 1-202-372-1918.

Dated: June 3, 2009.

J. A. Watson,*Rear Admiral, U.S. Coast Guard, Director, Prevention Policy.*

[FR Doc. E9-13634 Filed 6-9-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA-2008-0022]

Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; NUREG-0654/FEMA-REP-1/Rev. 1 Supplement 4 and FEMA Radiological Emergency Preparedness Program Manual**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Extension of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is extending the comment period for two documents: The proposed Supplement 4 (Supplement 4) to "Criteria for Preparation and Evaluation of

As of: August 03, 2009

Received: June 29, 2009

Status: Posted

Posted: June 30, 2009

Tracking No. 809e5b63

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0002

Comment Submitted by Scott Kirby Campbell

Submitter Information

Name: Scott Kirby Campbell

Address:

2017 Freeman Lk Rd

Oldtown, ID, 83822

Email: scott.campbell@abibow.com

Phone: 509-445-2304

Fax: 509-445-1233

General Comment

It is very difficult to comment on these proposed regulations without divulging confidential information in this public forum.

Screening every unescorted visitor for potential terrorist ties (ie: truck drivers) to a high risk facility is an impossible task.

How is the FBI terror watch list maintained? It seems, from different analysis I've

read, that there is no standard method for review of this list.

As of: August 03, 2009

Received: July 01, 2009

Status: Posted

Posted: July 01, 2009

Tracking No. 809e7059

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0003

Comment Submitted by Anonymous

Submitter Information

Address: United States,

General Comment

Will a TWIC card satisfy all the requirement standards?

As of: August 03, 2009

Received: July 02, 2009

Status: Posted

Posted: July 06, 2009

Tracking No. 809e83fd

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0004

Comment Submitted by Alwyn David Burger, Linde Electronics South Africa

Submitter Information

Name: Alwyn David Burger

Address:

Box 862

Ifafi

Hartbeespoortdam, North West, South Africa, 0260

Email: alwyn.burger@afrox.boc.com

Phone: 271-230-5438

Fax: 271-230-5437

Submitter's Representative: Andre Jooste

Organization: Linde Electronics South Africa

General Comment

Please be advise that I have no idea on how to assist or support this requirement, our company exports gases to various parts in the world and rent some containers from the USA.

Regards

Alwyn

As of: August 03, 2009

Received: July 07, 2009

Status: Posted

Posted: July 07, 2009

Tracking No. 809eb514

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0005

Comment Submitted by Patrick J. Coyle, Chemical Facility Security News

Submitter Information

Name: Patrick J Coyle

Address:

2 Island Creek Road

Seale, AL, 36875

Email: PJCoyle@aol.com

Phone: 706-888-8459

Organization: Chemical Facility Security News

General Comment

The attached comments were originally published on my Chemical Facility Security News blog on June 12th, 2009.

Attachments

DHS-2009-0026-0005.1: Comment Submitted by Patrick J. Coyle, Chemical Facility Security News (Attachment)

Note: This was originally published on the [Chemical Facility Security News](#) blog on June 12th, 2009

Terrorist Background Check

[Yesterday I reported](#) on the DHS ICR for their proposed solution for conducting terrorist database background checks for personnel with access to restricted areas or secure areas within high-risk chemical facilities. Today I would like to take another look at the issue with less of a reportorial approach. Specifically, I would like to take a look at some of the items I would like to see discussed in public comments on this ICR.

Facility Notification

I noted yesterday that “The submitting facility would not be notified by DHS of the results of the TSDB screening.” That means that if an employee’s name showed up on the TSDB check, the facility would not be notified by DHS that that employee was potentially a terrorist or linked to a terrorist. At most, the ICR notes that “high-risk chemical facilities may be contacted by Federal law enforcement as a part of appropriate law enforcement investigation activity” (74 FR 27555). There is no explanation of why DHS would not notify the facility that there was a potential terrorist working at that facility.

One can make a pretty good guess as to why DHS is taking this stance. First off, the mere presence of a person’s name on the TSDB does not mean that the person is a terrorist or has even associated with Terrorists. As we have seen with the ‘No Fly List’ there have been a number of very public instances of confusion of innocent people with potential terrorists because of name similarity. There are undoubtedly an at least equal number of unreported instances where person’s name was incorrectly placed on the list.

This means that requiring or even allowing high-risk chemical facilities to make personnel decisions based on the mere match of an employee’s name with a name on the TSDB would be patently unfair. Civil liberties organizations should certainly applaud the approach that DHS is taking.

On the other hand, the match does mean that there is at least a chance that an employee with access to restricted areas or security areas at a high-risk chemical facility is a terrorist planning an attack or a terrorist sympathizer providing information to terrorists planning an attack. While a ‘Federal law enforcement’ agency is getting around to conducting their investigation the planned terrorist attack could happen.

The DHS approach is probably the correct way to deal with this situation, but I think that there needs to be a public discussion about the assumptions being made. This ICR and the public comment period is the appropriate place for such a discussion.

Notifying Employees about the Check

DHS is proposing to effectively transfer responsibility to facility management for informing individual employees about the Privacy Act issues regarding the facility submission of PII (personally identifiable information). Since the facilities are the ones actually collecting and transferring the data, I suppose that this makes a certain amount of sense.

At the same time, however, DHS is proposing to publish Federal Register Notices about the same Privacy Act requirements. While it might be reasonable to expect that high-risk chemical facilities would read (or pay someone to read for them) the Federal Register watching for such notices, it is beyond the realm of reasonable supposition to assume that the average employee would do so.

I would like to suggest a reasonable alternative. DHS could come up with a poster explaining the program similar to the ubiquitous OSHA posters about a wide variety of regulatory programs. These could be posted on employee bulletin boards at high-risk chemical facilities. While these types of posters are not read with any great frequency, they are much more likely to be read by the affected parties than Federal Register Notices.

Unescorted Visitors

Having worked in chemical production facilities for a number of years, I agree that there are a number of 'visitors' (not employees, not contractors) that frequently move about certain areas of chemical facilities on a fairly routine basis. Small package delivery drivers, a wide variety of vendors (uniform and industrial mats vendors come easily to mind) are frequently overlooked because they are such a common sight at these facilities.

The big problem with most of these 'visitors' is that they are relatively invisible and there is a certain amount of inevitable turnover in these positions. I would like to see some comments on how high-risk chemical facilities would manage the identification and clearance of these personnel. I think that rather than facilities doing background checks on these 'unescorted visitors', covered chemical facilities will probably resort to requiring escorts or setting their employers up more like contractors and transferring the background check responsibility to those companies.

PUBLIC SUBMISSION

As of: August 17, 2009

Received: August 06, 2009

Status: Posted

Posted: August 07, 2009

Tracking No. 80a02d8a

Comments Due: August 10, 2009

Submission Type: Web

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0006

Comment Submitted by Cynthia Hilton, Institute of Makers of Explosives

Submitter Information

Name: Cynthia Hilton

Address:

1120 Nineteenth St., NW

Suite 310

Washington, DC, 20036

Email: chilton@ime.org

Phone: 202-266-4319

Organization: Institute of Makers of Explosives

General Comment

See attached.

Attachments

DHS-2009-0026-0006.1: Comment Submitted by Cynthia Hilton, Institute of Makers of Explosives (Attachment)

IME
institute of makers of explosives

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

August 6, 2009

Infrastructure Security Compliance Division
Office of Infrastructure Protection
National Protection and Programs Directorate
US Department of Homeland Security
Washington, DC 20528

RE: DHS-2009-0026¹

Information Collection Activity: Chemical Facility Anti-Terrorism Standards Personnel Surety Program
OMB Control Number: 1670-NEW

Dear Sir or Madam:

On behalf of the Institute of Makers of Explosives (IME), I am submitting comments on the US Department of Homeland Security (DHS) Infrastructure Security Compliance Division's (ISCD) new information collection request (ICR) that deals with personnel surety requirements under the Chemical Facility Anti-Terrorism Standards (CFATS), which the agency will be submitting to the Office of Management and Budget (OMB).

Interest of the IME

The IME is a non-profit association founded to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. The IME represents U.S. manufacturers and distributors of commercial explosive materials and oxidizers as well as companies providing related services. These products are used in every state of the Union, and they are literally the workhorse of our industrial society for which there is currently no alternative. Explosives are essential to energy production, metals and minerals mining, construction activities and supplies, and consumer products. IME members are still learning about their final standing under the CFATS program. Those members who will be subject to the program will be impacted by the ISCD personnel surety requirements.

Background

Since 1970, the safety and security of explosives has been closely regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) under Federal Explosives Law (FEL). In recognition of this close regulation by ATF, the CFATS program applies to only a few named explosives. Nevertheless, explosives manufacturing involves chemical precursors which are covered by the CFATS program and have resulted in explosives manufacturing sites being subject to both programs.

FEL requires that persons who import, manufacture, store, or distribute explosives obtain a license and those who receive or use explosives, who do not have a license, obtain a permit. Among the many requirements that these business entities must meet in order to obtain a license or a permit is to submit the names of all employees who are authorized to possess² explosives or those empowered to make

¹ 74 FR 27555 (June 10, 2009).

² "Possession" is interpreted as both actual and constructive.

management decisions or policies to ATF for a background check. The FEL standards for the background checks conducted by ATF are the forerunner of the background check standards that were subsequently adopted by DHS for the plethora of programs its administers for transportation workers.³ Each of these DHS programs has adopted the core disqualifications used by the ATF. The ATF threat assessment also includes a checked against the terrorist watch list.

Comments

With this perspective, IME offers the following comments:

- **Process:** We are disappointed that ISCD has chosen to implement this regulatory requirement through an ICR to OMB. This approach does not guarantee all of the due process protections available under notice and comment rulemaking pursuant to the Administrative Procedures Act. It sets an uncomfortable precedent.
- **Avoiding Regulatory Overlaps:** A purpose of the Paperwork Reduction Act is to “minimize the burden of the collection of information on those who are to respond.” ISCD takes a critically important step toward minimizing the compliance burden of the CFATS personal surety requirements by allowing reciprocity with other DHS background check programs. In guidance on the CFATS risk-based performance standards (RBPS), ISCD states that “workers ... who [have] successfully undergone a security threat assessment conducted by DHS and [are] in possession of a valid DHS credential ... will not need to undergo additional vetting by DHS.”⁴ While we strongly support this policy, we note that the “document is a ‘guidance document’ and does not establish any legally enforceable requirements.”⁵ We ask that ISCD and OMB ensure that this policy be implemented.

Likewise, as explained above, ATF performs a security background check on all employees. ISCD’s policy of reciprocity should extend to those whose backgrounds have been checked by the ATF. It is important to note that, in fact, the ATF conducts the background check required by FEL. Under CFATS, this task is left to employers. Since the ATF disqualification standards are equivalent to the other DHS threat assessment programs that ISCD is prepared to reciprocally recognize, and ATF, another agency of the federal government, is performing this work, ISCD should find it sufficient for purposes of the CFATS personnel surety program to grant reciprocity to the employees of ATF licensees and permittees. Without this accommodation, the regulatory overlaps between the two agencies will impose unreasonable burdens on this segment of the regulated community without any corollary enhancement to security. ISCD’s support for this accommodation should be prerequisite to OMB’s approval of this ICR.

- **Employer notification:** The ATF background check program provides notice to the employer and the employee whether employee has or has not cleared the agency’s background check.⁶ This notice does not reveal to the employer facts that led the agency to disqualify the employee, but it does allow the employer the opportunity to immediately, if appropriate, remove the employee from work functions that would allow the individual to process explosives. The notice to the employee explains the grounds for the determination and provides information on how the disability may be relieved or appealed. This approach contrasts with that of the proposed CFATS personnel surety program in that neither

³ Hazardous materials endorsement threat assessment, Transportation worker identification credential (TWIC), Free and secure trade credential, NEXUS, etc.

⁴ Risk-based Performance Standards Guidance, May 2009, page 97, FN 22.

⁵ Risk-based Performance Standards Guidance, May 2009, page 97, footer.

⁶ 27 CFR 555.33.

employers or employees will receive notification of a Terrorist Screening Database match. We do not believe that this is in the best interests of other workers, the employer, or the public who remain in proximity to the suspect worker. At minimum, ISCD should give notice to the employer that reveals the name of any employee who has failed the TSDB assessment.

- **Compliance:** We understand that the standard of compliance for this requirement will be the submission of personal identifying information to ISCD. Employers do not have to wait for notification of clearance before covered individuals may be permitted to unescorted access to restricted areas and critical assets. However, we request that employers receive an electronic acknowledgement that the submitted information has been received. We believe that this is important to demonstrate compliance and to ensure that personal identifying information has been received.

We do not support the RBPS guidance statement that “the facility ... still must provide DHS with sufficient identifying information about the [worker who has successfully undergone a security threat assessment conducted by DHS and is in possession of a valid DHS credential] to allow DHS to verify that the credential still is valid.”⁷ (Emphasis added.) First, the guidance document “does not establish any legally enforceable requirements.”⁸ (Emphasis added.) Second, these credentials should stand on their own. Such security credentials are recognized at face value at any number of venues now. Employers should not have to report those employees with these credentials. If ISCD believes that these credentials are insufficient for personnel surety validation, the agency should take its proof of a vulnerability gap to those other agencies within DHS that administer these credentialing programs for their action. Likewise, ISCD should accept that the possession by an employer of a valid ATF license or permit means that ATF has vetted and cleared all of the employees covered by the license or permit. No security purpose would be served to resubmit personal identifying information on these persons to ISCD. Third, there should be no expectation that non-MTSA facilities should be equipped with “readers” for TWIC credentials. Recently, the House Homeland Security Committee stated that for non-MTSA facilities, “the Committee does not intend to require that card readers be installed at all shipping facilities, rather, the Committee recognizes that a visual inspection of the card will provide the same level of security as provided under the current HME licensing process.”⁹

- **Program Requirements:** The truncated explanation in the ICR notice of how the personnel surety vetting program will work raises a number of questions. What personal identifying information will have to be disclosed? How is that information to be secured? When and how will it be destroyed? How often, if ever, will names have to be resubmitted? Are employers required to notify ISCD when employees are no longer authorized to have access to restricted areas or critical assets, either because of termination or transfer to other company locations? The answer to each of these questions will drive the cost of compliance. We reserve the right to file additional comments, once ISCD clarifies these matters.

Conclusion

We appreciate the importance of assuring that employees with access to restricted areas and critical assets at CFATS’ regulated sites undergo background checks. At the same, all federal agencies that require security-based background checks should actively look for opportunities to harmonize the requirements for these checks and should reciprocally-recognize equivalent programs. The ISCD should carefully tailor the implementation of its personnel surety program, including recordkeeping and reporting, so that it is

⁷ Risk-based Performance Standards Guidance, May 2009, page 97, FN 22.

⁸ Risk-based Performance Standards Guidance, May 2009, page 97, footer.

⁹ H.Rept. 111-123, page 56.

capturing only those employees not already covered and vetted under other equivalent programs. Finally, we also believe that safety is served if employers are given notice about employers who may be a “known or suspected terrorists.”

Thank you for the opportunity to comment.

Respectfully,

A handwritten signature in black ink, appearing to read "Cynthia Hilton". The signature is written in a cursive, flowing style.

Cynthia Hilton
Executive Vice President

As of: August 17, 2009

Received: August 07, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a010e2

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0007

Comment Submitted by Marc J. Meteyer, Compressed Gas Association, Inc.

Submitter Information

Name: Marc J. Meteyer

Address:

4221 Walney Road

5th Floor

Chantilly, VA, 20151

Email: mmeteyer@cganet.com

Phone: 703-788-2711

Fax: 703-961-1831

Organization: Compressed Gas Association, Inc.

General Comment

Please find attached the Compressed Gas Association, Inc.'s (CGA) comments on Docket No. DHS-2009-0026. If you have any difficulty with the attached file, or require any additional information, please contact myself or CGA staff at (703) 788-2757.

Attachments

DHS-2009-0026-0007.1: Comment Submitted by Marc J. Meteyer, Compressed Gas Association, Inc. (Attachment)



COMPRESSED GAS ASSOCIATION

4221 Walney Road, 5th Floor, Chantilly, VA 20151-2923

(703) 788-2700 ■ Fax: (703) 961-1831 ■ E-mail: cga@cganet.com ■ Web Site: www.cganet.com

August 10, 2009

Mr. Dennis Deziel
U.S. Department of Homeland Security
National Protection and Programs Directorate
Office of Infrastructure Protection
Infrastructure Security Compliance Division
Mail Stop 8100
Washington, DC 20528

Docket No. DHS-2009-0026

Dear Mr. Deziel,

On behalf of the Compressed Gas Association (CGA), I am submitting comments regarding the Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670 - NEW (Docket No. DHS-2009-0026) published on Wednesday, June 10, 2009, in the *Federal Register*.

CGA, founded in 1913, is dedicated to the development and promotion of safety standards and safe practices in the industrial and medical gas industry. CGA represents over 125 member companies in all facets of the industry: manufacturers, distributors, suppliers, and transporters of gases, cryogenic liquids, and related products and services. Through a committee system, CGA develops technical specifications, safety standards, and training and educational materials, and works with government agencies to formulate responsible regulations and standards and to promote compliance with these regulations and standards.

Without knowledge of the full personnel surety program, it was difficult to provide a complete response to the personnel surety requirements proposed by DHS. A complete program outline with a schedule for the implementation of this program and the duration between submission of employee information and the employer's receipt of a result of the employee's status (approved or disapproved) should be provided to facilitate a clear understanding of the program requirements. CGA reviewed the information collection request and provides the following comments regarding personnel surety practices based on the information presented in the *Federal Register*.

Comment 1: Changes to "affected population"

DHS now defines the "affected population" as "(1) facility personnel (e.g., employees and contractors) with access (unescorted or otherwise) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets." (74 Fed. Reg. 27,556 (emphasis added)). This definition *expands* the "affected population" beyond the scope of the regulation.

Pursuant to 6 CFR § 27.230(a) (12), a regulated facility need only to "perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets ..." In other words, so long as a person is "under escort" (which could be even camera-based monitoring), then a CFATS-mandated background check is unnecessary. Requiring facilities to perform background checks on *escorted* individuals would be duplicative, would not enhance security, and is inconsistent with other regulatory schemes (e.g., TWIC and MTSA).

CGA recommends that the “affected population” description be clarified to indicate that an individual entering a facility and remaining under escort does not require a background check.

Comment 2: Information management

The initial submission of Personally Identifiable Information (PII) will be a significant burden on regulated facilities. Regulated facilities will also bear the continuing burden of updating submission information. This will include notifying DHS “... when an individual’s information has been removed because he/she no longer has access to the high-risk chemical facility’s restricted areas or critical assets.” (74 Fed. Reg. 27,556).

Unless the entire facility is characterized as a “restricted area” or “critical asset,” the requirement to continually update information into the personnel surety portion of the CSAT could be onerous. DHS should permit a regulated facility to update personnel surety information on a periodic basis (e.g., annually). This mitigates the practical compliance challenges that real-time notification presents while enhancing the quality of information that DHS receives.

CGA recommends that DHS clarify reporting requirements to require an annual frequency for the submission of updated PII reports for each facility.

Comment 3: Employee notification and disputed findings

CGA recommends that all employees and potential candidates be notified in writing that a condition of employment at any CFATS covered facility is that they must undergo a background check consistent with the requirements of 6 CFR § 27.230 including eligibility for employment, criminal history, and terrorist list. They should also be advised of their right to contest the findings of this procedure and how that process will be managed.

Additionally, CGA recommends that DHS develop and publish a procedure to resolve disputed background check findings, similar to those published in the TWIC regulations.

Comment 4: Approved third party vendors

Most compressed gas facilities utilize third party vendors to complete background checks for employees; allowing these vendors to prepare and submit PII reports to DHS would encourage efficiency in the timely submission of PII requirements.

CGA recommends that each facility should be authorized to designate an approved third-party vendor to complete personnel surety requirements (including submission of PII information to DHS).

CGA commends the Department of Homeland Security for the continued development of the Chemical Facility Anti-Terrorism Standards programs and providing stakeholders the opportunity to provide comments on personnel surety practices.

Sincerely,


Marc J. Meteyer
President and CEO

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a03dbd

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0008

Comment Submitted by Boyd Stephenson, American Trucking Associations

Submitter Information

Name: Boyd Stephenson

Address:

950 N Glebe Rd Ste 210

Arlington, VA, 22203

Email: bstephenson@trucking.org

Phone: 703-838-7982

Organization: American Trucking Associations

General Comment

Please find the comments of the American Trucking Associations attached to this submission.

Attachments

DHS-2009-0026-0008.1: Comment Submitted by Boyd Stephenson, American Trucking Associations (Attachment)

August 10, 2009

Via Regulations.gov

Philip Reitinger
Deputy Under Secretary
National Protection and Programs Directorate
Department of Homeland Security

Re: Docket No. DHS-2009-0026: Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

The American Trucking Associations (ATA)¹ is pleased to offer its comments on the Department of Homeland Security's National Protection and Programs Directorate's Office of Infrastructure Protection's Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW.² As the primary representative of the trucking industry, ATA's member companies carry materials regulated in the Chemical Facility Anti-Terrorism Standards' (CFATS) Appendix A as well as other non-regulated loads to and from CFATS-regulated facilities.³

As part of the Risk Based Performance Standards (RBPS) mandated under the CFATS program, facilities must institute background checks and submit biographical information on all employees, vendors, and visitors that will have unescorted access to sensitive areas of the CFATS facility.⁴ This includes truck drivers who visit the facility. DHS exempts individuals who possess a credential that requires a DHS performed Security Threat Assessment (STA) from the facility background check on the grounds that these individuals have already been properly vetted by DHS. The credentials meeting this standard would include the Transportation Worker Identification Credential (TWIC), the Hazardous Materials Endorsement (HME) on a Commercial Driver's License, and the Free and Secure Trade (FAST) card. ATA supports these exemptions for commercial drivers who already have undergone one of the alternative STAs mentioned above. ATA believes that any of these DHS established STAs should continue to comply with the CFATS requirements without any further need for commercial drives to provide

¹ ATA is a federation of motor carriers, state trucking associations, and national trucking conferences that promotes and protects the interests of the trucking industry. Directly, and through its affiliated organizations, ATA represents more than 37,000 motor carriers of every size, type, and class in the U.S., Canada and Mexico.

² See 74 *Federal Register* 27555-27557 (June 10, 2009).

³ See 72 *Federal Register* 65395-65435 (November 20, 2007).

⁴ See 6CFR 27.230(a)(12).

additional information under a biographical submission process.⁵ Specifically ATA believes DHS should:

- Expand the RBPS Guidance document to make clear that all DHS-performed STAs, including TWIC, CDLs with HMEs and FAST cards, are acceptable credentials under the CFATS regulations; and
- include training for CFATS-regulated facility-personnel using the Chemical Security Assessment Tool (CSAT) that clearly notes that anyone holding any of the above forms of identification is not required to undergo a background check under the CFATS program.

Although the CFATS Final Rule clearly states that personnel holding any Department-issued credential issued after an STA would satisfy the requirements for a CFATS background check, the CFATS Risk-Based Performance Standards Guidance mentions TWIC as the only acceptable credential. DHS should revise this section of the Guidance to list all of the credentials that satisfy the personnel surety requirements. Other DHS-issued credentials that would meet this threshold include the STA for CDLs with HMEs, the FAST cards, SIDA cards, and any other credentials that require STAs equivalent to those required in 6 CFR 27.230(a)(12).

Furthermore, DHS should revise its Chemical Security Assessment Tool (CSAT) to make clear that facility-employees need not submit the biographical details for individuals holding a credential that was linked to a DHS performed STA. Lacking direct access to the CSAT portal, ATA cannot directly comment on specific changes to its operation. However, fields that hold the individual's name, the type of credential, and the credential number should meet the requirements for individuals holding an active, valid STA. The Department should also highlight these issues during any training or online help provided in the CSAT tool.

Thank you for considering ATA's concerns on the CSAT Information Collection. Adopting these minor changes to the CFATS program can have major impacts to facilitate the flow of commerce while preserving a high level of security. Should you have any questions related to these issues, please contact the undersigned at 703-838-7982 or bstephenson@trucking.org.

Respectfully submitted,



Boyd Stephenson
Manager
Security and Cross Border Operations
American Trucking Associations

⁵ See 72 *Federal Register* 17709 (April 9, 2007).

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a04b2c

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0009

Comment Submitted by David L. Leiting, BP

Submitter Information

Name: David L. Leiting

Address:

501 Westlake Park Boulevard

Houston, TX, 77253-3092

Email: david.leiting@bp.com

Phone: 281-366-3104

Organization: BP

General Comment

BP's comments to the docket regarding the Chemical Facility Anti-Terrorism Standards and Personnel Surety.

Attachments

DHS-2009-0026-0009.1: Comment Submitted by David L. Leiting, BP (Attachment)



David L. Leiting

Director of Security, Western Hemisphere
Group Security



BP p.l.c.
501 Westlake Park Boulevard
P O Box 3092
Houston, Texas 77253-3092

August 10, 2009

**Re: Docket No. DHS-2009-0026
Chemical Facility Anti-Terrorism Standards
Personnel Surety Program Information Collection**

BP America (“BP”) has closely followed the development and application of the Chemical Facility Anti-Terrorism Standards (“CFATS”). Pursuant to 6 C.F.R. § 27.230(a)(12), covered facilities must “[p]erform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets”

On June 10, 2009, the Department of Homeland Security (“DHS”) published a request for comments in the *Federal Register* seeking information regarding CFATS and personnel surety. BP is pleased to offer the following comments:

Comment: **The Scope Of Personally Identifiable Information That Covered Facilities Must Submit To DHS For The Purposes of 6 C.F.R. § 27.230(a)(12)(iv) Remains Unclear**

Recommendation: **DHS Should Limit The Type Of Personally Identifiable Information That A Covered Facility Must Submit To DHS**

Discussion: To screen certain individuals against the Terrorist Screening Database (“TSDB”) DHS intends to collect Personally Identifiable Information (“PII”). DHS has appropriately considered this regulatory requirement “an inherently governmental function that necessarily includes a check of classified databases that are not commercially available[,]” and DHS will “designate a secure portal or other method for the submission of [PII] for each employee or contractor for whom a TSDB check is required in the [Site Security Plan].” 72 Fed. Reg. 17,709 (Apr. 9, 2007).

The scope of DHS’s PII collection, however, remains unclear. In 2007, DHS stated that the requested PII “will be the name, date of birth, address, and citizenship, and if applicable, the passport number, DHS redress number, and information concerning whether the person has a DHS credential or has previously applied for a DHS credential.” *Id.* (internal citation omitted).

More recently, however, DHS has indicated that it may expand the scope of PII that it collects. In a May 18, 2009 briefing entitled “Chemical Facility Anti-Terrorism Standard: Personnel Surety,” DHS stated that the “PII that may be collected is full name, address, phone numbers, date of birth, physical description, citizenship, and passport and visa information, when applicable.” BP believes

that DHS must limit the scope of collected information—*seeking only what is necessary to conduct an inquiry against the TSDB and no more.*

Several reasons support a narrowly tailored information collection requirement. In the chemical and petrochemical industry, PII sought from employees, contractors, and even facility visitors is limited. Privacy laws and information security considerations restrict how data are collected, used, stored, and destroyed. Many companies do not collect Social Security Numbers unless absolutely necessary, and there is no reasonable alternative (e.g., for tax reporting purposes). Similarly, passport and visa numbers are collected on a case-by-case basis. Employers virtually never collect PII related to physical description. Such information may reflect the subjective view of the person collecting the data and is of little long-term value. Because employers typically do not collect (and therefore do not retain) PII related to physical description, passports, and visas, gathering this information would be practically difficult.

Comment: **The Transfer Of PII From A Covered Facility To DHS Should Be Minimally Disruptive**

Recommendation: **DHS Should Permit Covered Facilities To Submit PII To DHS *En Masse***

Discussion: At a large facility with hundreds (or thousands) of employees, contractors, and unescorted visitors with access to restricted areas or critical assets, communicating PII to DHS could present a logistical challenge. DHS has only indicated that it will “designate a secure portal or other method for the submission of [PII] for each employee or contractor for whom a TSDB check is required” 72 Fed. Reg. 17,709 (Apr. 9, 2007).

The mechanics of this process are unknown. BP encourages DHS to consider the procedural and logistical challenges of large-scale data collection and transmission when developing the personnel surety portal component of the Chemical Security Assessment Tool (“CSAT”). DHS should permit a covered facility to transmit data *en masse* (e.g., via a spreadsheet or other readily available electronic means). That is, a covered facility would collect the required PII in a single file (or series of files) and upload it to DHS. Anything to the contrary—such as the manual entry of discrete information into data fields—would result in an undue burden to the regulated community while increasing human error and information security concerns.

Alternatively, DHS should permit third party vendors to enter PII into the CSAT on a facility’s behalf as an authorized agent. During the notice-and-comment period for the Risk-Based Performance Standards (“RBPS”) Guidance Document, one commentator asked whether “third party providers will be able to play a role in the TSDB process (i.e., can they submit employee information on behalf of a facility).” U.S. DEP’T OF HOMELAND SEC., SUMMARY OF PUB. COMMENTS RECEIVED ON THE DRAFT RISK-BASED PERFORMANCE STANDARDS GUIDANCE DOCUMENT AND THE DEPARTMENT OF HOMELAND SEC.’S RESPONSE TO THE COMMENTS 10 (May 15, 2009).

DHS responded, stating that “[a]s for third-party involvement in the TSDB process, the Department is still determining the mechanism through which facilities will satisfy 6 C.F.R. § 27.230[(a)](12)(iv), and so cannot state with certainty if there will be a role for third-party providers in that process.” *Id.* Considering that many companies will utilize a third-party to

accomplish the commercially available aspects of RBPS 12 (i.e., 6 C.F.R. §§ 27.230(a)(12)(i)–(iii)), it is practical and logical to permit authorized third-parties to help manage TSDB compliance.

Comment: **DHS Should Not Enlarge The Population Affected By 6 C.F.R. § 27.230(a)(12)**

Recommendation: **6 C.F.R. § 27.230(a)(12) Should Apply Only To Individuals Who Have Unescorted Access To Restricted Areas Or Critical Assets**

Discussion: Pursuant to 6 C.F.R. § 27.230(a)(12), a covered facility must “[p]erform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets” DHS has now defined the “Affected Population” and states that this “will include (1) facility personnel (e.g., employees and contractors) with access (unescorted *or otherwise*) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets.” 74 Fed. Reg. 27,556 (June 10, 2009) (emphasis added).

The inclusion of the phrase “or otherwise” is a departure from previous indications regarding the extent of the background check requirement. In the responses to comments published in the April 7, 2007 preamble to the CFATS Interim Final Rule, DHS stated that “the facility shall identify critical assets and restricted areas and establish which employees and contractors may need *unescorted* access to those areas or assets, and thus must undergo a background check.” 72 Fed. Reg. 17,708 (Apr. 7, 2007) (emphasis added).

Screening escorted personnel also contravenes established security regulations in similar contexts. An individual *without* a Transportation Worker Identification Credential may access the secure areas of a Maritime Transportation Security Act-regulated facility so long as the individual is escorted. *See* U.S. COAST GUARD, NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 03-07, Enclosure (3) 10 (July 2, 2007). Similarly, a CFATS facility should have no obligation to subject *escorted* individuals (whether employees, contractors, or visitors) to the personnel surety validation process.

BP appreciates the opportunity to submit comments to the record. Should DHS have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



David Leiting

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a04d2f

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0010

Comment Submitted by Susan Amodeo-Cathey, American Air Liquide USA LLC

Submitter Information

Name: Susan Amodeo-Cathey

Address:

2700 Post Oak Boulevard

Suite 1800

Houston, TX, 77056

Email: susan.amodeo-cathey@Airliquide.com

Phone: 713-624-8214

Organization: American Air Liquide USA LLC

General Comment

Air Liquide is pleased to provide the following comments regarding Risk-Based Performance Standard Number 12 and the Chemical Facility Anti-Terrorism Standards.

Attachments

DHS-2009-0026-0010.1: Comment Submitted by Susan Amodeo-Cathey, American Air Liquide USA LLC (Attachment)



Susan Amodeo-Cathey
Director, Health, Safety, Environmental, & Security
Air Liquide USA LLC

August 10, 2009

Mr. Dennis Deziel
Infrastructure Security Compliance Division
U.S. Department of Homeland Security
Mail Stop 8100
Washington, D.C. 20528

**Re: DHS-2009-0026
Personnel Surety Program; Information Collection Request**

Dear Mr. Deziel:

American Air Liquide Holdings, Inc. and its U.S. subsidiaries (collectively, “Air Liquide” or “the Company”) continue to closely monitor the Chemical Facility Anti-Terrorism Standards (“CFATS”). As a responsible operator, the security of Air Liquide employees, facilities, and the communities in which we operate are among the Company’s highest priorities. We remain committed to chemical facility security regulations that meaningfully enhance the protection of our people and assets.

On June 10, 2009, the Department of Homeland Security (“DHS”) published an Information Collection Request in the *Federal Register* regarding the CFATS personnel surety program established by Risk-Based Performance Standard (“RBPS”) 12. As a member of the Compressed Gas Association (“CGA”), Air Liquide incorporates CGA’s comments by reference and is pleased to offer these additional comments to the record:

Comment: The Definition of “Affected Population” Expands the Scope of RBPS 12

In the Information Collection Request, DHS defines the affected population as “(1) facility personnel (e.g., employees and contractors) with access (unescorted *or otherwise*) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets.” 74 Fed. Reg. 27,556 (June 10, 2009) (emphasis added). In the preamble to the CFATS Interim Final Rule (“IFR”), however, DHS states that “...the facility shall identify critical assets and restricted areas and establish which employees and contractors may need *unescorted access* to those areas or assets, and thus must undergo a background check.” 72 Fed. Reg. 17,708 (Apr. 9, 2007) (emphasis added). These two statements are in conflict: DHS should not use the Information Collection Request to redefine the affected population and should maintain consistency with the original interpretation of the affected population as described in the CFATS IFR.

Comment: DHS Should Provide Terrorism Screening Database (“TSDB”) Results to the Submitting Facility and Affected Individual

The CFATS IFR stated that “[w]here appropriate, DHS will notify the facility and applicant via U.S. mail, with information concerning the nature of the finding and how the applicant may contest the finding.” 72 Fed. Reg. 17,709 (Apr. 9, 2007). Under DHS’s current TSDB proposal, however, neither will occur. Contradicting its earlier intent, DHS now indicates that it “will not provide screening results to high-risk chemical facilities nor to the individuals whose [Personally Identifiable Information (“PII”)] is submitted by high-risk chemical facilities.” Rather, only when part of an “appropriate law enforcement investigation activity” might DHS contact the high-risk facility that submitted the PII. 74 Fed. Reg. 27,555 (June 10, 2009).

While Air Liquide recognizes that there may be circumstances when it is either appropriate or inappropriate to contact the facility in the context of a law enforcement investigation, DHS should not withhold TSDB screening results as a general matter. DHS should communicate its findings as previously indicated in the CFATS IFR: (1) notification to the affected individual affords a meaningful opportunity for redress pursuant to 6 CFR § 27.310(a)(1); and (2) notification to the facility enables the facility itself to take appropriate action – indeed, as the first line of defense against some security threats – such as who has access to restricted areas or critical assets – the facility has a personnel management role and obligation.

Comment: DHS Should Permit Authorized Third Parties to Assist Covered Facilities in Submitting PII to DHS

The CFATS personnel surety requirement includes “[m]easures designed to identify people with terrorist ties[.]” 6 CFR § 27.230(a)(12)(iv). DHS has indicated that it will perform this “inherently governmental function” using PII provided by covered facilities. Covered facilities will submit PII to DHS using “a secure portal or other method for the submission of application data for each employee or contractor for whom a TSDB check is required in the [Site Security Plan].” 72 Fed. Reg. 17,709 (April 9, 2007).

The initial submission of PII—especially for facilities with hundreds or thousands of individuals who must be vetted—could be a significant and time-intensive process. Air Liquide encourages DHS to permit authorized third parties to assist covered facilities with the submission of PII. This could include, for example, permitting a vendor that the covered facility utilizes to perform the commercially available aspects of 6 CFR § 27.230(a)(12) to access the secure portal (i.e., the Chemical Security Assessment Tool) and submit PII on behalf of the covered facility.

Comment: Updating PII Could Create an Undue Burden

The Information Collection Request states that “[t]he CFATS Personnel Surety Program will send a ‘verification of submission’ to the representative(s) of high-risk chemical facilities when: (1) A new individual’s PII has been submitted, (2) *an individual’s information has been updated*, and (3) when an individual’s information has been removed” 74 Fed. Reg. 27,556 (June 10, 2009) (emphasis added). Because DHS has not indicated the specific nature of the PII that will be submitted pursuant to 6 CFR § 27.230(a)(12)(iv), updating an individual’s information could create an undue burden. If the PII includes records that may change frequently, such as a phone number or address, the burden to covered facilities

will be significant. By definition, covered facilities would be forced to monitor employees, contractors, and visitors who are subject to the CFATS personnel surety requirement for changes to their PII and continually update that information.

DHS can mitigate this burden by: (1) seeking only the PII necessary to satisfy a TSDB check; (2) using PII that is unlikely to change (e.g., a person's name and date of birth); and (3) permitting covered facilities to update PII on a periodic basis (e.g., annually). This would alleviate the practical compliance challenges that real-time PII updating presents while enhancing the quality of information that DHS receives.

Air Liquide appreciates the opportunity to comment on the CFATS personnel surety program. We look forward to a continued partnership with DHS and would be pleased to answer any questions. Please do not hesitate to contact me by telephone (713-624-8214) or by email (susan.amodeo-cathey@airliquide.com).

Sincerely,

Susan Amodeo-Cathey
Director of Health, Safety, Environmental, & Security
America Air Liquide, Inc.

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a04daf

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0011

Comment Submitted by Carolyn Myers-Simmonds, First Advantage Background Services Corporation

Submitter Information

Name: Carolyn Myers-Simmonds

Address:

100 Carillon Pkwy

St. Petersburg, FL, 33716-1207

Email: carolyn.myerssimmonds@fadv.com

Phone: 727-214-1067

Organization: First Advantage Background Services Corporation

General Comment

Pursuant to the June 10, 2009 Information Collection Request, First Advantage Background Services Corporation is pleased to provide comments to the record regarding personnel surety.

Attachments

DHS-2009-0026-0011.1: Comment Submitted by Carolyn Myers-Simmonds, First Advantage Background Services Corporation (Attachment)



August 10, 2009

Mr. Dennis Deziel
U.S. Department of Homeland Security
National Protection and Programs Directorate
Office of Infrastructure Protection
Infrastructure Security Compliance Division
Mail Stop 8100
Washington, D.C. 20528

Re: Docket No. DHS-2009-0026

First Advantage Background Services Corporation (“First Advantage”) is a leading provider of risk mitigation and background screening solutions. First Advantage has conducted more than 300,000 individual background checks for clients around the world. Among the U.S. chemical and petrochemical critical infrastructure in particular, over 80 refineries and chemical processing facilities and 4,100 contractor companies are enrolled in a First Advantage background screening program, which operates in conjunction with the Industrial Safety Training Council (“ISTC”) and the thirteen other members of the Safety Council Security Consortium (“SCSC”).¹

On June 10, 2009, the Department of Homeland Security (“DHS”) published an information collection request in the *Federal Register* seeking comment on Risk-Based Performance Standard (“RBPS”) 12 of the Chemical Facility Anti-Terrorism Standards (“CFATS”).² First Advantage is pleased to offer the following comment:

DHS Should Permit Authorized Third-Parties to Assist Covered Facilities in Managing Terrorist Screening Database (“TSDB”) Compliance

Pursuant to 6 CFR § 27.230(a)(12)(iv), covered facilities must submit Personally Identifiable Information (“PII”) to DHS. DHS has indicated that it will send a “verification of submission” when “(1) A new individual’s PII has been submitted, (2) an individual’s information has been updated, and (3) when an individual’s information has been removed because he/she no longer has access to the high-risk chemical facility’s restricted areas or critical assets.”³ This will require covered facilities not only to monitor individuals for changes to their PII but also to inform DHS when new individuals need access to restricted areas or critical assets, or no longer need such access. While the mechanics of this process remain in development, it is clear that the management of PII necessitates the frequent transmission of data between a covered facility and DHS via the Chemical Security Assessment Tool (“CSAT”).

Unfortunately, however, DHS has not indicated the role that third-parties can serve in the context of 6 CFR § 27.230(a)(12)(iv). Responding to a question on this topic, DHS recently stated that “the Department is still determining the mechanism through which facilities will satisfy [the TSDB requirement], and so cannot

¹First Advantage’s relationship with ISTC and the other thirteen SCSC members provides many benefits to the chemical industry, some of which include an effective, systematic screening process, broad geographic coverage, consistency of screening standards, cost effectiveness of screening “reciprocity,” timeliness of processing, and standardized application of compliance efforts.

²74 Fed. Reg. 27,555 (June 10, 2009).

³*Id.* at 27,556.

state with certainty if there will be a role for third-party providers in that process.”⁴ *First Advantage believes that authorized third-parties have an important role in this process and should be permitted to serve as a covered facility’s agent for TSDB compliance purposes. Among other reasons:*

1. Background check providers *will assist* covered facilities with the aspects of RBPS 12 that are not “inherently governmental,” including measures to verify and validate identity, check criminal history, and verify and validate legal authorization to work. *See* 6 CFR § 27.230(a)(12)(i-iii). Allowing third-parties to facilitate the management and submission of PII to DHS is a logical extension of a background check provider’s current role as a trusted agent.
2. Some covered facilities may have hundreds or thousands of individuals that will require unescorted access to restricted areas or critical assets. This, in turn, will result in thousands of discrete PII data sets that must be provided to DHS via the CSAT as an initial matter (i.e., following DHS’s issuance of a Letter of Authorization). Because PII will change, TSDB compliance represents an *ongoing process* of data management. Authorized third-parties can alleviate the operational and practical challenges that may result from these requirements.
3. Background check providers understand the information security and privacy protections that apply to PII. A web of federal, state, and local laws protect PII, and many corporations outsource their personnel surety needs *specifically for this reason*. Experienced background check providers will help covered facilities ensure that compliance with one law – CFATS – does not cause noncompliance with other laws governing the collection, use, storage, or destruction of PII. Indeed, DHS has stated that “[t]he CFATS Personnel Surety Program’s request for an exception to the requirement under 5 CFR § 1320.8(b)(3) would not exempt high-risk chemical facilities from having to adhere to applicable Federal, State, local, or tribal laws, regulations or policies pertaining to the privacy of facility personnel and the privacy of unescorted visitors. In fact, this exception would allow the CFATS Personnel Surety Program *to avoid any conflict with such laws, regulations, and policies.*”⁵

Thank you for the opportunity to submit comments to the record. Should you have any questions or require additional information, please do not hesitate to contact me by telephone (727-214-1067) or by email (carolyn.myerssimmonds@fadv.com).

Sincerely,

Carolyn Myers-Simmonds

Carolyn Myers-Simmonds
Chief Regulatory Counsel
First Advantage Background Services Corporation

⁴U.S. Dep’t of Homeland Sec, Summary of Pub. Comments Received on the Draft Risk Based Performance Standards Guidance Document and the Dep’t of Homeland Sec.’s Response to the Comments 10 (May 15, 2009).

⁵74 Fed. Reg. 27,556 (June 10, 2009) (emphasis added).

PUBLIC SUBMISSION

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a03dd8

Comments Due: August 10, 2009

Submission Type: Web

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0012

Comment Submitted by Russell Melancon, Industrial Safety Training Council

Submitter Information

Name: Russell Melancon

Address:

324 Highway 69

Nederland, 77627

Email: Russell@istc.net

Phone: 409-724-2565

Organization: Industrial Safety Training Council

General Comment

Please see the attached document.

Attachments

DHS-2009-0026-0012.1: Comment Submitted by Russell Melancon, Industrial Safety Training Council (Attachment)



324 Highway 69
 Nederland, TX 77627
 Phone (409) 724-2565
 Fax (409) 724-2671
www.istc.net

8200 North Main
 Baytown, TX 77521
 Phone (281) 421-0459
 Fax (281) 421-8130

600 Marina Street
 Beaumont, TX 77703
 Phone (409) 833-2378
 Fax (409) 833-2376
www.bestcomplex.com



DEPARTMENT OF HOMELAND SECURITY
 National Protection and Programs Directorate
 Office of Infrastructure Protection
 Request for Comments (74 FR 27555) on
 New Information Collection Request 1670-NEW
 [Docket No. DHS-2009-0026]

COMMENTS OF:
 Industrial Safety Training Council
 Safety Council Security Consortium

I. INTRODUCTION

The Industrial Safety Training Council (“ISTC”) and the Safety Council Security Consortium (“SCSC”) appreciate the opportunity to comment on the Department of Homeland Security (“DHS”) information collection request (“ICR”) arising from the background checks to be performed at high-risk chemical facilities under the Chemical Facility Anti-Terrorism Standards’ (“CFATS”) personnel surety Risk-Based Performance Standard (“RBPS”).

The ISTC is a 501(c)3 non-profit training and educational organization located in Southeast Texas. The ISTC and thirteen other safety councils comprise the SCSC. Together, the ISTC and the SCSC operate an established, highly successful and comprehensive identification verification and background screening program for contractors, and their employees, working at over 100 chemical and refining facilities throughout Texas, the Gulf Coast, and also in New Jersey, West Virginia and several other states.

Under Section 550 of the Homeland Security Appropriations Act of 2007,¹ Congress gave DHS regulatory authority over security at high-risk chemical facilities. On April 9, 2007, DHS promulgated the CFATS interim final regulations.² CFATS established 18 RBPSs for chemical facility security, including the personnel surety RBPS. Under the personnel surety RBPS, high-risk chemical facilities will obtain personally identifiable information (PII) from facility personnel, and as appropriate, from unescorted visitors with access to restricted areas or critical assets.³ Using such PII, high-risk chemical facilities will perform appropriate background checks including:

¹ Pub. L. 109-295, Sec. 550.

² 6 CFR Part 27; 72 FR 17688.

³ See comments below.

- (i) Measures designed to verify and validate identity;
- (ii) Measures designed to check criminal history;
- (iii) Measures designed to verify and validate legal authorization to work; and
- (iv) Measures designed to identify people with terrorist ties.⁴

With regards to the personnel surety RBPS requirement that the background check measures include the identification of people with terrorist ties, DHS has requested comments on the submission of PII by representatives of each high-risk chemical facility to DHS, via the Chemical Security Assessment Tool (CSAT), to be screened against the consolidated and integrated terrorist watch list maintained in the federal Terrorist Screening Database (TSDB). The ISTC/SCSC respectfully submits the following comments on the information collection to be conducted in compliance with the personnel surety RBPS.

II. DISCUSSION

- A. *The ISTC supports the DHS interpretation of the population affected by the personnel surety RBPS to include not only employees, but also contractors with access, whether escorted or unescorted, to restricted areas of a high-risk chemical facility.*

The ISTC supports defining the affected population to cast a net broad enough to include contractors and other temporary workers that are a major component of the workforce at chemical and refining facilities.

Up to 80% of the workers in ISTC/SCSC member chemical or refining facilities, on any given day, may be contractor employees and not direct hires of the facility. Chemical and refining facilities customarily require large numbers of temporary workers for short periods of time to handle concentrated, high labor activities quickly and efficiently. Labor surges commonly arise from special construction and maintenance activities, such as turnarounds. Thousands of highly-skilled temporary workers, such as pipe-fitters and welders, often need to enter facilities quickly for time-sensitive repair projects. The economic impact of any definition of the affected population that does not account for these types of workers could be devastating, requiring owners and operators to shut down large facilities for weeks at a time.

- B. *The ISTC recommends that DHS permit private third party background screening companies to act as the representatives of high-risk chemical facilities in submitting PII to DHS under the personnel surety RBPS to further minimize the burden of the collection of information.*

Through a nationally recognized consumer reporting agency vendor (which is fully regulated under the federal Fair Credit Reporting Act), the ISTC/SCSC operates an established, highly successful, comprehensive and privacy-sensitive identification verification and background screening program. The ISTC/SCSC process verifies and validates the identity of employees. The ISTC/SCSC process checks criminal history records and does so in a robust and

⁴ Risk-based performance standards, Chemical Facility Anti-Terrorism Standards Final Rule, Sec. 27.230(a)(12)(iv).

comprehensive way. The ISTC/SCSC process has the ability to verify and validate contractor employees' legal authority to work. However, although the ISTC/SCSC process is already designed to identify people with terrorist ties by checking names against the OFAC list, the ISTC/SCSC would recommend that DHS explicitly allow for third party background screening companies through a non-profit or other identification verification / background screening program, such as the ISTC/SCSC process, to act as the representatives of high-risk chemical facilities in submitting PII to DHS under the personnel surety RBPS to further minimize the burden of the collection of information on the facilities.

CFATS provides high-risk chemical facilities with the discretion to choose and implement security measures that satisfy the RBPSs, which could include products and services provided by a private sector third-party. The CFATS RBPS Guidance Document recognizes that at least one aspect of personnel surety, the background check, involves “acquiring information on an individual through third-party services, government organizations, and private individuals to make a ‘suitability determination’ regarding their ability to access sensitive areas.”⁵ DHS already explicitly permits third parties to verify and validate legal authorization to work through the E-Verify system.⁶ A significant number of chemical and refining facilities currently use private sector third-parties to comply with the personnel surety RBPS. Chemical and refining facilities should be permitted to continue using established personnel surety solutions, such as the ISTC/SCSC program, to satisfy the personnel surety RBPS. As the ICR states, “The CFATS Personnel Surety Program is not intended to halt, hinder, or replace high-risk chemical facilities’ performance of background checks currently required for employment or access to secure areas of those facilities.”⁷

Chemical facilities should be able to designate in their Site Security Plans an approved private sector third-party to provide for the facility’s personnel surety security needs, such as for submission of PII to DHS for a check to identify known and suspected terrorists. Many chemical facilities are not prepared to handle “the potential sensitivity of the information uncovered” during a background check, which “are subject to a unique set of laws and regulations to protect employees and consumers in the event of misuse of data or fraud.”⁸ A private sector third-party that specializes in compliance with the Fair Credit Reporting Act and other applicable federal and state laws would allow participating chemical facilities to preserve valuable administrative resources.

In order for a third-party process to have any meaningful effect, private sector entities require access to CSAT. In order to preserve the highly effective personnel surety processes currently in place at chemical and refining facilities nationwide, the ISTC/SCSC recommends that the personnel surety RBPS include explicit provisions that allow private sector third-parties to submit names to DHS for processing against the TSDB. DHS already provides a process for

⁵ http://www.dhs.gov/xlibrary/assets/chemsec_cfats_riskbased_performance_standards.pdf (emphasis added).

⁶ <http://www.uscis.gov/files/article/E4eng.pdf> (A “Designated Agent” is a liaison between E-Verify and employers wishing to participate, but who choose to outsource submission of employment eligibility verification queries for newly hired employees. Designated Agents conduct the verification process for other employers or clients.)

⁷ 74 FR 27555.

⁸ http://www.dhs.gov/xlibrary/assets/chemsec_cfats_riskbased_performance_standards.pdf.

TWIC vendors to submit names to the TSA to be checked against the TSDB. DHS should assure that private sector third-parties under CFATS have the ability to conduct the same comprehensive terrorist watch list check for applicants and employees of chemical facilities, contractor employees, and visitors requiring unescorted access to chemical facilities.

III. CONCLUSION

We appreciate your consideration of the comments by the ISTC and the SCSC as you finalize the Draft Guidance.

Respectfully submitted,

Russell Melancon Jr., CAE
President & CEO
Industrial Safety Training Council
324 Hwy 69
Nederland, TX 77627

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a03df5

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0013

Comment Submitted by Jeffrey L. Dean, International Society of Explosives Engineers

Submitter Information

Name: Jeffrey L Dean

Address:

30325 Bainbridge Road

Cleveland, OH, 44139

Phone: 440-349-4400

Fax: 440-349-3788

Organization: International Society of Explosives Engineers

General Comment

RE: DHS -2009-0026

Information Collection Activity: Chemical Facility Anti-Terrorism Standards Personnel Surety Program

Attachments

DHS-2009-0026-0013.1: Comment Submitted by Jeffrey L. Dean, International Society of Explosives Engineers (Attachment)



**International Society of
Explosives Engineers**

Friday, August 7, 2008

Infrastructure Security Compliance Division
Office of Infrastructure Protection
National Protection and Program Directorate
US Department of Homeland Security
Washington, DC 20528

RE: DHS -2009-0026

Information Collection Activity: Chemical Facility Anti-Terrorism Standards Personnel Surety Program
OMB Control Number: 1670-NEW

Ladies and Gentlemen:

The International Society of Explosives Engineers (ISEE) is a nonprofit association formed in 1974 as a professional society dedicated to promoting the safety, security and the controlled use of commercial explosives in mining, quarrying, construction, manufacturing, demolition, aerospace, forestry, avalanche control, art, automotives, special effects, exploration, seismology, agriculture, law enforcement, and many other peaceful uses of explosives.

With more than 4,600 members and 34 Chapters, the Society is recognized as a world leader in providing explosives technology, education, and information, and promoting public understanding of the benefits of explosives. In addition, ISEE with individual members acting as resources has consistently been at the forefront of efforts to address legislation and regulation related to explosives safety and security.

The ISEE appreciates the opportunity to comment on this issue. In general, we support the comments submitted by the Institute of Makers of Explosives (IME) and agree that all federal agencies that require security-based background checks should actively look for opportunities to harmonize the requirements and should recognize equivalent programs. This would be a clear benefit to all parties involved.

We also agree with IME in that all agencies should follow the ATF example of notifying the employer and the employee if the employee has not cleared the agency background check. This allows the employer the opportunity to remove the employee from work functions that would allow access to explosives products. This practice also explains the grounds for the determination to the employee and provides information on how the findings can be relieved or appealed.

We would like to encourage DHS to contact us should they desire any further clarification or discussion of the ISEE position on these issues.

Sincerely

Jeffrey L. Dean, IOM, CAE
Executive Director & General Counsel
International Society of Explosives Engineers
30325 Bainbridge Road
Cleveland, Ohio 44139-2295
dean@en.com
CC: Christopher E. Howell

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a03e06

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0014

Comment Submitted by Judah Prero, American Chemistry Counsel

Submitter Information

Name: Judah Prero

Address:

1300 Wilson Blvd.

Arlington, VA, 22209

Email: judah_prero@americanchemistry.com

Phone: 703-741-5166

Fax: 703-741-6166

Organization: American Chemistry Counsel

General Comment

August 10, 2009

Matthew Bettridge

National Protection and Programs Directorate

Office of Infrastructure Protection

Infrastructure Security Compliance Division

Department of Homeland Security

RE: Docket No. DHS-2009-0026—Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Dear Mr. Bettridge,

The American Chemistry Council (“ACC”) is pleased to provide the following comments on the “Submission for Chemical Facility Anti-Terrorism Standards (“CFATS”) Personnel Surety Program Information Collection (the “ICR”).” Many ACC members will have facilities that are subject to these standards and we therefore have significant interest in how this program is developed and implemented.

ACC represents 140 leading companies who manufacture approximately 85 percent of basic industrial chemical production in the U.S. The business of chemistry is an important part of our nation’s economy and employs more than 850,000 Americans, and produces 19 percent of the world’s chemicals. ACC member companies manufacture essential products critical to everyday items that keep the economy moving and are essential to developing the greener, cleaner, more competitive economy the nation seeks. More than 96% of all manufactured goods are directly touched by the business of chemistry. Our members provide the chemistry that is used to produce life saving medications and medical devices, body armor used by our military and law enforcement officers, light weight components for vehicles, energy saving insulation and windows, silicon for solar panels, wind turbine blades and so much more.

Ensuring that well qualified and trustworthy personnel are hired to work at chemical facilities has long been a priority for ACC members. Members companies conduct sophisticated and comprehensive background checks before employees and contractors are allowed access to a facility. Periodic reassessments are also conducted as well. We believe that the core elements of the CFATS program for personnel surety are consistent with the stringent background checks already utilized by ACC members. We support a robust and comprehensive approach to screening potential and current employees that work at our facilities – even those that are not deemed “high risk” under the CFATS program.

The ICR specifically highlights areas of interest to both the Office and Management and Budget (“OMB”) and the Department of Homeland Security (“DHS”). Our comments, addressing these specific areas, are as follows:

OMB Item 1: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

DHS Item 1: The Department’s interpretation of the population affected by RBPS 12

background checks outlined in 6 CFR 27.230(a) (12)

Comment:

The definition of "Affected Population" expands the scope of the requirements beyond those established in the regulation at 6 CFR § 27.230(a) (12).

Pursuant to 6 CFR § 27.230(a)(12), a covered facility must "[p]erform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets" Thus, individuals with escorted access to a restricted area or critical asset fall outside of the scope of the affected population and are not subject to a background check for CFATS compliance purposes.

However, the ICR implies an expansion of this definition by stating that "(1) facility personnel (e.g., employees and contractors) with access (unescorted or otherwise) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets" would need the background checks.

As currently crafted, the statement "or otherwise" can be interpreted to mean that even escorted personnel in restricted areas would need a background check, which is clearly inconsistent with the regulatory language. In light of the absence of the regulatory requirement to conduct background checks of these individuals, the collection of information on these individuals is not necessary for the proper performance of the functions of DHS.

To resolve this issue, ACC recommends that the phrase "or otherwise" be removed from the final language.

OMB Item 2: The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used.

Comment:

Appropriate resources need to be provided to ensure the efficiency of this Program.

In light of our experience with the Transportation Worker Identification Credential program, we are concerned that DHS may be significantly underestimating the amount of personnel that will need to be screened and thus the amount of resources required for both the companies and the government. While the collection and submission of necessary personnel information will pose a substantial cost of time and resources to facilities, particularly as currently proposed, we are also concerned that DHS will not have enough resources dedicated to processing the information, thereby keeping this a timely and efficient program.

We recommend that DHS review and apply some of the lessons learned from the TWIC program development and implementation so that the CFATS personnel surety is smoothly implemented.

OMB Item 3: The quality, utility and clarity of the information to be collected.

Comment:

Determination process and timing of vetting approval is unclear.

The personnel surety program as described doesn't provide a clear process for approving or disapproving personnel nor for the timing of the process for notification. Specifically, the ICR doesn't provide any indication on the amount of time that it will take for the vetting process, which would be integral if a facility would be required to delay hiring decisions – a requirement on which the ICR is silent. The complexities posed by unknown aspects of the program are further complicated by the absence of any requirement that there be clear communication between the DHS and the company submitting the information. The utility of the information, therefore, is unclear at this point.

To compound this, it appears from the ICR that in the event that an employee has been successfully vetted, no credential will be provided (beyond what the employer's already use) as affirmative proof that vetting has resulted in a positive outcome. Similarly, if the employee was not successfully vetted, the owner/operator will not receive notification to that effect. A facility would not know either when, or even if, the employees have been properly vetted. Again, as the ICR does not specifically speak to how the results of the vetting process will be used by the facilities that employ the vetted individuals, the utility of the information is not clear.

We suggest that DHS establish a straightforward process for notifying both the employee and the owner/operator of the status for each vetted individual. The Transportation Worker Identification Credential (TWIC card) program is a current example of how this process could be implemented.

OMB Item 4: Minimize the burden of collection of information on those who are to respond.

Comment:

A requirement that a DHS facility ID would serve as the means of identifying the employees and thus tie the employee to a specific facility is problematic.

Companies do not necessarily hire employees to only work at a specific location. Further, the screening/background checks that companies utilize evaluate all of their employees at both facilities and corporate locations. It is quite common that employees spend time at more than one site and thus are not corporately identified as being solely approved

for a specified facility.

The situation with contract employees poses greater difficulty. These employees can move from job to job on a daily basis and often switch to different employers. Additionally, company employees from "non-regulated" facilities (or countries) would need to be screened if they were to visit the regulated site and intend to be unescorted.

As a practical matter, many companies would prefer to develop groups of employee submittals that would be provided to the DHS. These submittals would not be facility based. A DHS requirement for facility-based identification would essentially undercut existing practices by having the owner/operator submit based upon each site. This leaves little flexibility if employees work at multiple sites. It increases the burden of information submission on companies, as a single employee may need to be submitted in connection with multiple facilities. Further, although it is unclear what benefit is provided to DHS under the requirement to notify DHS when someone leaves company employment, the burden this poses on facilities is clear.

Other comments

The adjudication process regarding the terrorist screening database is unclear.

In the interim final CFATS regulation, DHS stated that when a person was determined to pose a potential security threat following a query against the Terrorist Screening Database ("TSDB"), the affected person may seek adjudication of this negative determination. This appropriately would allow the individual to seek a remedy, which may be as simple as correction of address, date of birth, or other factual pieces of information.

However, in the ICR, DHS states that they "...will not provide screening results to high-risk chemical facilities nor to the individuals whose [Personally Identifiably Information] is submitted... [,]" . This approach undermines the practical application of DHS's personnel surety adjudication procedure. If DHS does not communicate adverse findings to the affected individual, that individual has no ability to appeal.

We recommend that DHS be consistent with the described adjudication procedures as defined in the final regulation. While we recognize that in some circumstances (such as ongoing investigations) it might be inappropriate for DHS to immediately notify an affected individual, in many other instances (mismatched PII), an individual should have the opportunity to appeal a negative determination.

Acknowledgement of state and local privacy laws does not require affirmative certification from Owner/Operators

We appreciate DHS recognizing the need for companies to comply with varied state and local requirements related to privacy and personnel. DHS is taking the appropriate action

by allowing the flexibility required so that companies can meet these obligations while also meeting the DHS requirements to submit personnel for Federal background checks.

An affirmative compliance statement is not needed to address any concern DHS may have regarding the applicability of state, local and tribal law. DHS needs only to state that the Federal requirements in no way preempt existing state and local privacy and personnel requirements. The requirement for affirmative certification on the part of the company does not add to the ability of regulators to enforce against violators of applicable laws; it merely adds a procedural requirement which is not needed for violations to be addressed by regulatory agencies.

In conclusion, ACC continues to be supportive of the efforts undertaken by the Department of Homeland Security in its continued implementation of the Chemical Facility Anti-Terrorism Standards and appreciates the opportunity to provide comments on the important subject of personnel surety.

Sincerely,

Judah Prero
Assistant General Counsel

Attachments

DHS-2009-0026-0014.1: Comment Submitted by Judah Prero, American Chemistry Counsel (Attachment)



August 10, 2009

Matthew Bettridge
National Protection and Programs Directorate
Office of Infrastructure Protection
Infrastructure Security Compliance Division
Department of Homeland Security

RE: Docket No. DHS-2009-0026—Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Dear Mr. Bettridge,

The American Chemistry Council (“ACC”) is pleased to provide the following comments on the “Submission for Chemical Facility Anti-Terrorism Standards (“CFATS”) Personnel Surety Program Information Collection (the “ICR”).” Many ACC members will have facilities that are subject to these standards and we therefore have significant interest in how this program is developed and implemented.

ACC represents 140 leading companies who manufacture approximately 85 percent of basic industrial chemical production in the U.S. The business of chemistry is an important part of our nation’s economy and employs more than 850,000 Americans, and produces 19 percent of the world’s chemicals. ACC member companies manufacture essential products critical to everyday items that keep the economy moving and are essential to developing the greener, cleaner, more competitive economy the nation seeks. More than 96% of all manufactured goods are directly touched by the business of chemistry. Our members provide the chemistry that is used to produce life saving medications and medical devices, body armor used by our military and law enforcement officers, light weight components for vehicles, energy saving insulation and windows, silicon for solar panels, wind turbine blades and so much more.

Ensuring that well qualified and trustworthy personnel are hired to work at chemical facilities has long been a priority for ACC members. Members companies conduct sophisticated

and comprehensive background checks before employees and contractors are allowed access to a facility. Periodic reassessments are also conducted as well. We believe that the core elements of the CFATS program for personnel surety are consistent with the stringent background checks already utilized by ACC members. We support a robust and comprehensive approach to screening potential and current employees that work at our facilities – even those that are not deemed “high risk” under the CFATS program.

The ICR specifically highlights areas of interest to both the Office of Management and Budget (“OMB”) and the Department of Homeland Security (“DHS”). Our comments, addressing these specific areas, are as follows:

OMB Item 1: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

DHS Item 1: The Department’s interpretation of the population affected by RBPS 12 background checks outlined in 6 CFR 27.230(a) (12)

Comment:

The definition of “Affected Population” expands the scope of the requirements beyond those established in the regulation at 6 CFR § 27.230(a) (12).

Pursuant to 6 CFR § 27.230(a)(12), a covered facility must “[p]erform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets” Thus, individuals with escorted access to a restricted area or critical asset fall outside of the scope of the affected population and are not subject to a background check for CFATS compliance purposes.

However, the ICR implies an expansion of this definition by stating that “(1) facility personnel (e.g., employees and contractors) with access (unescorted *or otherwise*) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets” would need the background checks.

As currently crafted, the statement “or otherwise” can be interpreted to mean that even escorted personnel in restricted areas would need a background check, which is clearly inconsistent with the regulatory language. In light of the absence of the regulatory

requirement to conduct background checks of these individuals, the collection of information on these individuals is not necessary for the proper performance of the functions of DHS.

To resolve this issue, ACC recommends that the phrase “or otherwise” be removed from the final language.

OMB Item 2: The accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used.

Comment:

Appropriate resources need to be provided to ensure the efficiency of this Program.

In light of our experience with the Transportation Worker Identification Credential program, we are concerned that DHS may be significantly underestimating the amount of personnel that will need to be screened and thus the amount of resources required for both the companies and the government. While the collection and submission of necessary personnel information will pose a substantial cost of time and resources to facilities, particularly as currently proposed, we are also concerned that DHS will not have enough resources dedicated to processing the information, thereby keeping this a timely and efficient program.

We recommend that DHS review and apply some of the lessons learned from the TWIC program development and implementation so that the CFATS personnel surety is smoothly implemented.

OMB Item 3: The quality, utility and clarity of the information to be collected.

Comment:

Determination process and timing of vetting approval is unclear.

The personnel surety program as described doesn’t provide a clear process for approving or disapproving personnel nor for the timing of the process for notification. Specifically, the ICR doesn’t provide any indication on the amount of time that it will take for the vetting process, which would be integral if a facility would be required to delay hiring decisions – a requirement on which the ICR is silent. The complexities posed by unknown aspects of the program are further complicated by the absence of any requirement that there be clear communication between the DHS and the company submitting the information. The utility of the information, therefore, is unclear at this point.

To compound this, it appears from the ICR that in the event that an employee has been successfully vetted, no credential will be provided (beyond what the employer's already use) as affirmative proof that vetting has resulted in a positive outcome. Similarly, if the employee was not successfully vetted, the owner/operator will not receive notification to that effect. A facility would not know either when, or even if, the employees have been properly vetted. Again, as the ICR does not specifically speak to how the results of the vetting process will be used by the facilities that employ the vetted individuals, the utility of the information is not clear.

We suggest that DHS establish a straightforward process for notifying both the employee and the owner/operator of the status for each vetted individual. The Transportation Worker Identification Credential (TWIC card) program is a current example of how this process could be implemented.

OMB Item 4: Minimize the burden of collection of information on those who are to respond.

Comment:

A requirement that a DHS facility ID would serve as the means of identifying the employees and thus tie the employee to a specific facility is problematic.

Companies do not necessarily hire employees to only work at a specific location. Further, the screening/background checks that companies utilize evaluate all of their employees at both facilities and corporate locations. It is quite common that employees spend time at more than one site and thus are not corporately identified as being solely approved for a specified facility.

The situation with contract employees poses greater difficulty. These employees can move from job to job on a daily basis and often switch to different employers. Additionally, company employees from "non-regulated" facilities (or countries) would need to be screened if they were to visit the regulated site and intend to be unescorted.

As a practical matter, many companies would prefer to develop groups of employee submittals that would be provided to the DHS. These submittals would not be facility based. A DHS requirement for facility-based identification would essentially undercut existing practices by having the owner/operator submit based upon each site. This leaves little flexibility if employees work at multiple sites. It increases the burden of information submission on companies, as a single employee may need to be submitted in connection with multiple facilities. Further, although it is unclear what benefit is provided to DHS under the requirement

to notify DHS when someone leaves company employment, the burden this poses on facilities is clear.

Other comments

The adjudication process regarding the terrorist screening database is unclear.

In the interim final CFATS regulation, DHS stated that when a person was determined to pose a potential security threat following a query against the Terrorist Screening Database (“TSDB”), the affected person may seek adjudication of this negative determination. This appropriately would allow the individual to seek a remedy, which may be as simple as correction of address, date of birth, or other factual pieces of information.

However, in the ICR, DHS states that they “...will not provide screening results to high-risk chemical facilities nor to the individuals whose [Personally Identifiably Information] is submitted... [,]”. This approach undermines the practical application of DHS’s personnel surety adjudication procedure. If DHS does not communicate adverse findings to the affected individual, that individual has no ability to appeal.

We recommend that DHS be consistent with the described adjudication procedures as defined in the final regulation. While we recognize that in some circumstances (such as ongoing investigations) it might be inappropriate for DHS to immediately notify an affected individual, in many other instances (mismatched PII), an individual should have the opportunity to appeal a negative determination.

Acknowledgement of state and local privacy laws does not require affirmative certification from Owner/Operators

We appreciate DHS recognizing the need for companies to comply with varied state and local requirements related to privacy and personnel. DHS is taking the appropriate action by allowing the flexibility required so that companies can meet these obligations while also meeting the DHS requirements to submit personnel for Federal background checks.

An affirmative compliance statement is not needed to address any concern DHS may have regarding the applicability of state, local and tribal law. DHS needs only to state that the Federal requirements in no way preempt existing state and local privacy and personnel requirements. The requirement for affirmative certification on the part of the company does not add to the ability of regulators to enforce against violators of applicable laws; it merely

adds a procedural requirement which is not needed for violations to be addressed by regulatory agencies.

In conclusion, ACC continues to be supportive of the efforts undertaken by the Department of Homeland Security in its continued implementation of the Chemical Facility Anti-Terrorism Standards and appreciates the opportunity to provide comments on the important subject of personnel surety.

Sincerely,

A handwritten signature in blue ink that reads "Judah Prero". The signature is written in a cursive style with a long horizontal stroke at the end.

Judah Prero
Assistant General Counsel

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a03e0a

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0015

Comment Submitted by Peter Weaver, International Liquid Terminals Association

Submitter Information

Name: Peter Weaver

Address:

1444 I Street, NW

Suite 400

Washington, DC, 20005

Email: rpweaver@ilta.org

Phone: 202-842-9200

Fax: 202-326-8660

Organization: International Liquid Terminals Association

General Comment

The International Liquid Terminals Association ("ILTA") is pleased to submit the attached comments on the Department of Homeland Security proposal relating to an information collection request to be submitted to the Office of Management and Budget: Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection, Docket No. DHS-2009-0026

Attachments

DHS-2009-0026-0015.1: Comment Submitted by Peter Weaver, International Liquid Terminals Association (Attachment)

August 10, 2009



Infrastructure Security Compliance Division
Office of Infrastructure Protection
National Protection and Programs Directorate
Department of Homeland Security

Re: Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection, Docket No. DHS-2009-0026

Dear Sir or Madam:

The International Liquid Terminals Association ("ILTA") is pleased to submit the following comments on the above-referenced Department of Homeland Security proposal relating to an information collection request to be submitted to the Office of Management and Budget.

ILTA is an international trade association that represents eighty-five commercial operators of bulk liquid terminals, aboveground storage tank facilities, and pipeline companies located in the United States and 42 other countries. In addition, ILTA includes in its membership more than three hundred companies that supply products and services to the bulk liquid storage industry.

ILTA member facilities include deepwater, barge, and pipeline terminals whose bulk liquid commodities are essential to the national and international economies. These terminals interconnect with and provide services to the various modes of bulk liquid carriers, including oceangoing tankers, barges, tank trucks, rail cars, and pipelines. The commodities handled include chemicals, crude oil, petroleum products, renewable fuels, asphalt, animal fats and oils, vegetable oils, molasses, and fertilizers. Customers who store products at these terminals include oil producers, chemical manufacturers, product manufacturers, food growers and producers, utilities, transportation companies, commodity brokers, government agencies, and the military.

ILTA and its terminal member companies recognize the importance of providing effective personnel surety at our nation's high-risk chemical facilities to ensure that individuals with unescorted access to restricted areas or critical assets have suitable background checks. ILTA further recognizes the importance of implementing a Personnel Surety Program (PSP) that can effectively compare appropriate Personally Identifiable Information (PII) against the PII of known and suspected terrorists maintained in the Terrorist Screening Database (TSDB). However, ILTA believes that the Department's interpretation of the "population affected by RBPS 12 background checks" should be modified as described below.

In the Department's notice and request for comments published in the *Federal Register* on June 10, 2009, interested parties are invited to provide comments that respond to "the Department's interpretation of the population affected by RBPS #12 background checks outlined in 6 CFR 27.230(a)(12)," and "its intention to seek an exemption to the notice requirement under 5 CFR 1320.8(b)(3)." Accordingly, ILTA is providing the following comments:

1. Repetitive Submittals of an Individual's PII Should Not Be Required

Under the Department's interpretation, an employee of a company with multiple, high-risk facilities will be labeled as a "new individual" the first time he or she enters one of the facilities. On each of these occasions, the facility will be required to submit the individual's PII. This multiple submission process will also apply to contractors each time they enter a facility for the first time. ILTA believes that once a TSA background check is completed for an individual through the TSDB, that individual should be recognized as "cleared" for the purpose of access to restricted areas or critical assets of any high-risk chemical facility. ILTA further recommends that "cleared" individuals possess a record, or credential, indicating this status. ILTA does not support the requirement for repetitive submittals for individuals who have access to multiple facilities. Nor does ILTA support the requirement that resubmittals be required for each occasion that an individual's PII changes. Multiple submittals would result in repetitive checks increasing the potential for error, inconsistent results, and complications in the event of an errant threat finding requiring adjudication.

As new terrorist information is obtained in the TSDB, ILTA recommends that chemical facilities be notified of changes to the TSDB watch list so that they may take appropriate action. It is unnecessary to require facilities to redundantly submit an individual's PII for this purpose. Facilities are already, today, implementing technology capable of polling terror watch lists for rapid updates to the individual's access status. With the technology now available, for instance within the Transportation Worker Identification Credential (TWIC) Program, there is no need for facilities to continually update personnel PII.

Furthermore, it is overly burdensome to require duplicative submission of information for individuals who are granted access to multiple facilities. In addition to chemical facility personnel, corporate executives, contractors and truck drivers often require access to several facilities. Mandating the submission of redundant data is certain to generate unnecessary errors and inconsistencies. Once an individual has been cleared, no security purpose is served by repeating the exercise.

ILTA strongly recommends that successful completion of the terrorist background check for an individual be confirmed in a fashion that would preclude any requirement for duplicative data submission or screening and should be conducted only *once* in a given period, e.g. 3-5 years.

2. Vetting Personnel Against the TSDB Should Not Be Associated with Particular Facilities

There is no requirement within current CFATS legislation (or within proposed CFATS reauthorization language) to associate an individual's clearance of a terrorist background check with a particular facility. Any mandate that would require high-risk chemical facilities to maintain current PII records for each individual with restricted access creates a substantial administrative burden for terminal companies. If it is DHS's intent to manage lists of personnel with access to every high-risk chemical facility, then the

CFATS PSP Docket No. DHS-2009-0026
Comments of the International Liquid Terminals Association
August 10, 2009

Agency should explicitly state this intent. Furthermore, such tracking of individuals should be wholly independent of background checks.

3. A Personnel Surety Process Should be Managed as a Single Process for All Four Background Check Elements Required by 6 CFR § 27.230(a)(12)

CFATS requires four background checks for select individuals. These include measures to verify and validate identity, check criminal history, verify and validate legal authorization to work, and check for terrorist ties. The PSP, as outlined in the information collection request, only addresses the check for terrorist ties. It is unclear whether DHS will develop additional personnel surety programs for the other background checks. ILTA believes that all background checks should be available through a singular, consistent process.

4. Results of Security Background Checks Should be Confirmed through the Issuance of a Credential Made Available to the Individual

DHS states that “[it] will not provide screening results to high-risk chemical facilities nor to the individuals whose PII is submitted by high-risk facilities.” Accordingly, an individual’s opportunity to seek adjudication pursuant to 6 CFR 27.310 has been marginalized – or made functionally meaningless.

DHS’s current approach conflicts with the preamble to the CFATS Interim Final Rule. The preamble states that “DHS will screen applicants and determine whether the applicant poses a security threat. Where appropriate, DHS will notify the facility and applicant via U.S. mail, with information concerning the nature of the finding and how the applicant may contest the finding. Applicants will have the opportunity to seek an adjudication proceeding and appeal under Subpart C.” (72 Fed. Reg. 17,709)

5. An Exemption to the Paperwork Reduction Act is Unwarranted

DHS intends to seek an exemption to the Paperwork Reduction Act (PRA) pursuant to 5 CFR 1320.8(b)(3). If granted, this would allow the Department to refrain from notifying affected individuals regarding the reasons for the collection, how the information will be used, or whether responses to the collection are voluntary or mandatory, among other things. Aside from stating that “[n]either Section 550 of the Act nor CFATS creates a requirement for high-risk chemical facilities to provide notice to affected individuals whose PII is submitted to the CFATS Personnel Surety Program,” DHS offers no substantive justification for the exemption. ILTA believes that a PRA exemption that would allow the use of information about an individual without his or her knowledge and consent constitutes a violation of that individual’s right of privacy. Furthermore, an exemption to the Department’s obligation to declare whether information collected is voluntary or mandatory under the PRA is unwarranted.

CFATS PSP Docket No. DHS-2009-0026
Comments of the International Liquid Terminals Association
August 10, 2009

DHS has not specified the PII that must be submitted (e.g., name and date of birth), although it has indicated that information such as a “physical description” may be requested. This lack of definition in a PII submittal requirement precludes complete analysis of the benefits and burdens that a PRA exemption would create.

Comments Regarding Questions of Particular Interest to the Office of Management and Budget:

- 1. Evaluate whether the proposed collection of information is necessary for proper performance of the functions of the agency, including whether the information will have practical utility.**

It would be appropriate for TSA – and not ISCD – to directly gather any and all PII for TSDB screening purposes. TSA should be able to provide an automatic receipt serving as the “verification of submission.” TSA should further notify the applicant of any negative findings to allow for possible adjudication.

- 2. Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.**

ILTA believes that a 35-minute proposed burden for the collection and reporting of PII is based on an incomplete estimate of the actual burden of the program, as outlined. The proposed burden should be multiplied by the number of facilities to which a given individual requires access. This factor, in many cases, could be large. Furthermore, the burden fails to include the ongoing time requirement to maintain current PII for select personnel with access to a given facility, including management, contractors, and truck drivers. These added burdens could be substantial.

In this context, the purpose served by ISCD’s intermediary role between the applicant and TSA is unclear. Such a role by ISCD may unnecessarily add to the overall time burden for collection.

- 3. How can DHS enhance the quality, utility and clarity of this exercise?**

The information collection request fails to address two additional questions: the requisite timeframe for submitting PII relative to the facility’s ability to grant access, and whether interim provisional approval will be granted for regular employees during program implementation (such as under the TWIC program).

CFATS PSP Docket No. DHS-2009-0026
Comments of the International Liquid Terminals Association
August 10, 2009

4. How may the collection burden be minimized?

The information collection request states that a “verification of submission” will be sent by DHS every time that an individual’s information is updated or once that individual no longer requires access to the facility. The ongoing maintenance of individual submissions is burdensome and entirely unnecessary – both for the facility that must notify ISCD of the individual’s changing status and for ISCD who must confirm receipt of such extraneous information.

ILTA Recommendation

ILTA strongly recommends that DHS adopt the TSA’s TWIC program, or implement a corresponding program with recognition reciprocity for TWIC, Hazardous Materials Endorsement, Department of Alcohol, Tobacco and Firearms security clearance, or similar, government sanctioned programs, rather than developing a new and unique program as proposed. Such an approach would allow the CFATS PSP to ensure that background checks on an individual are completed, are not repetitive, and address all four elements as required in 6 CFR 27.230(a)(12).

As outlined in the information collection request, the PSP is not necessary given the alternatives already at hand. Implementation would result in an incomplete process that is administratively cumbersome – if not wholly unworkable. The program would require a significant, unnecessary, and inappropriate allocation of limited resources. And it would produce a national chemical facility personnel database filled with multiple errors, omissions, and redundancies. ILTA is concerned that such a process will ultimately fail to achieve the objectives of the DHS CFATS program.

Thank you for your consideration of these comments.

Sincerely,



R. Peter Weaver
Director of Regulatory Compliance and Safety

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 10, 2009

Tracking No. 80a04ebd

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0016

Comment Submitted by Jeff Gunnulfsen, National Petrochemical and Refinery Association

Submitter Information

Name: Jeff Gunnulfsen

Address:

NPRA

Suite 700, 1667 K St., NW

Washington, DC, 20006

Email: jgunnulfsen@npra.gov

Phone: 202-552-4371

Organization: National Petrochemical and Refinery Association

Government Agency Type: Federal

Government Agency: DHS

General Comment

Please find attached NPRA's comments on the June 10, 2009 FR notice regarding Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW (74 FR 27555). If you have any questions or need further information please contact me at 202-552-4371 or at jgunnulfsen@npra.org.

NPRA looks forward to working with DHS on these important issues.

Sincerely

Jeff Gunnulfsen
Director
Security and Risk Management
NPRA

Attachments

DHS-2009-0026-0016.1: Comment Submitted by Jeff Gunnulfsen, National Petrochemical and Refinery Association (Attachment)



National Petrochemical & Refiners Association

1667 K Street, NW
Suite 700
Washington, DC
20006

202.457.0480 voice
202.457.0486 fax

August 10, 2009

National Protection and Programs Directorate
Office of Infrastructure Protection
Infrastructure Security Compliance Division
Department of Homeland Security

RE: NPRA Comments on Docket No. DHS-2009-0026—Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670

NPRA, the National Petrochemical & Refiners Association, appreciates the opportunity to provide comments on the “Submission of Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection” Notice (74 FR 27555, June 10, 2009).

The Chemical Facility Anti-Terrorism Standards (CFATS) require high-risk chemical facilities to submit personally identifiable information (PII) from facility personnel and, when appropriate, unescorted visitors with access to restricted areas or critical assets to DHS for the express purpose of screening individuals against the Terrorist Screening Database (TSDB). In addition, high-risk chemical facilities also must perform background checks in compliance with the CFATS Personnel Surety risk-based performance standard (RBPS) #12.

NPRA has reviewed the notice and is generally supportive of the practice of DHS screening unescorted personnel who have been granted access to restricted areas or critical assets defined in the facility’s CFATS site security plan (SSP) for links to the TSDB.

However, NPRA is highly concerned that detailed information presented by the Infrastructure Security Compliance Division seems to be significantly more expansive and cumbersome than what is proposed in the publicly available docket and Federal Register notice. Proposed details provided in the PowerPoint presentation by ISCD showcase a detailed, burdensome, and unworkable program that exceeds the scope of this FR notice.

DHS’s stated goal of this notice is to establish a program to conduct a terrorist background check against the Terrorist Screening Data Base for persons accessing regulated facilities. NPRA questions the need of the broad scope of the information requested and the value of updating the home addresses, telephone numbers, physical descriptions and other information of employees, visitors, contractors, truck drivers, and vendors. NPRA is also

concerned that the volume of submissions could easily number in the tens of thousands a month without providing any added security benefit to DHS.

OMB and DHS have requested specific input on several points mentioned in the notice. These comments reflect NPRA's views.

I. OMB Questions

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

This process involves sharing personally identifiable information to numerous agencies with no documented "need to know".

The notice provides examples of redundancy with TSA's existing TWIC program (TSA will actually be tasked with conducting the terrorist check for this Personnel Surety Program as well). The Personnel Surety Program (PSP) contends that TWIC can be used for the separate background check requirement under RBPS #12, but still requires the submission of the information of those persons with a valid TWIC in order to fulfill the site's terrorist check obligations. This submission is required despite the fact that this information already resides with TSA for the TWIC program. NPRA urges OMB and DHS to exempt personnel who hold a TWIC card from this reporting requirement. This would help to reduce the burden and duplication of information.

There are no clear definitions of "restricted areas" or "critical assets" in the CFATS rule or this notice. Additionally, DHS's own definition of an "asset" differs depending upon whether considered in an SVA or SSP within the context of the CFATS program, and is limited to guidance documents.

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

The notice does not specify the role of the "representative of each high risk chemical facility" with access to CSAT. Is this a new role assignment yet to be created in the CSAT tool environment? Or is the Submitter, Preparer or Authorizer expected to enter this information? In DHS's PowerPoint presentation, it suggests batch downloads and third party data entry. This raises serious security, CVI, and privacy concerns for this PII data and existing data already in the system for CFATS compliance.

3. Enhance the quality, utility, and clarity of the information to be collected;

There is no timeframe specified for the initial collection period. The TWIC interim rule permitted facilities only 30 days to gather and submit the information under the interim TWIC provisions. Because contractor, vendor, and visitor information is often limited or not maintained for these audiences' at large sites, this is especially burdensome. NPRA recommends OMB and DHS provide a reasonable timeframe for initial submission given the limitation of information companies have available for non-employees. In addition, DHS should consider turnaround and batch process applications and challenges in the on-going burden for compliance.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

On page 27556, first paragraph the notice states:
“A new individual's PII has been submitted, (2) an individual's information has been updated, and (3) when an individual's information has been removed because he/she no longer has access to the high-risk chemical facility's restricted areas or critical assets.”

The stated goal of the PSP Notice is to **screen** persons against the government's terrorist database. Updating information previously submitted and removing those personnel who no longer have access to a site would provide no value in the context of terrorism screening. To screen personnel, DHS requires the information upon granting access. It is NPRA's strong belief that once the person's information has been submitted, the company has met its obligation under the screening requirement.

Contractors frequently work at more than one contract job on site, or number of sites, concurrently. It is unrealistic for facilities to track and manage personnel records of those who no longer have access to a facility. Requiring this practice may result in dozens of additions and subtractions from multiple sites for the same person and would provide no additional value for terrorism screening purposes. Further it would impose an undue burden on facility operators and require DHS to waste limited resources by performing numerous duplicative and unnecessary screenings.

NPRA respectfully requests DHS to clarify the process facilities will use to correct or otherwise update submitted information. Also, we ask that DHS be as specific as possible for what type of physical characteristics it is requesting for the physical description of personnel. Most company human resource departments will not have physical descriptions of their employees on file and this collection could add months of work to the expected collection of information. Specificity in the DHS data gathering proposal will help companies effectively

plan how they might begin to gather the information and reduce the burden on companies by limiting possible discriminatory claims.

II. DHS Questions

1. Respond to the Department's interpretation of the population affected by RBPS 12 background checks outlined in 6 CFR 27.230(a) (12);

Please see our comments under "Affected Persons" in Section III of this document.

2. Respond to fact that a Federal law enforcement agency may, if appropriate, contact the high-risk chemical facility as a part of a law enforcement investigation into terrorist ties of facility personnel;

NPRA emphasizes that the submitter of PII for a regulated high risk facility should be notified of known terrorists in a timely manner by DHS. A company not provided this information may unknowingly subject personnel and the surrounding community to unnecessary risk by granting access to an individual known by DHS to have terrorist ties. NPRA recommends that DHS permit each company to designate appropriate contacts that DHS may provide local law enforcement and the FBI when an individual at their regulated facility is identified to have terrorist ties.

3. Respond to the Department on its intention to seek an exception to the notice requirement under 5 CFR 1320.8(b) (3).

NPRA is highly concerned that DHS is requesting an exemption from publishing a notice in the FR on how the department will reply to NPRA's and others' concerns. The options being presented by DHS, separate from this notice published in the FR, are unworkable and exceed the scope of terrorism checks. At the very least, a notice is needed on this for multiple reasons---compliance assistance for both sites and inspectors, the need to reach a broader audience, and the need to clarify the site/contractor information needs.

III. Affected Persons

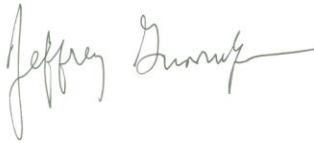
The notice is unclear on the expected audience for applicability. The notice specifically states in the first column of page 27556, "These background checks do not affect facility personnel that do not have access to facilities' restricted areas or critical assets, nor do they affect escorted visitors."

However, in the three other mentions of the scope of affected personnel in this three-page notice, the scope of affected personnel is not limited to the facility personnel in those in "restricted" or "critical asset" areas, and leaving the door wide open for DHS to require the application of this measure to everyone on site.

NPRA is extremely concerned that DHS is requesting an exemption from publishing a notice in the FR on how the Department will reply to NPRA's and others concerns. The options being presented by DHS, separate from this notice published in the FR are unworkable and exceed the scope of terrorism checks. NPRA urges OMB and DHS to coordinate the public notice to include details of the planned measures. In addition, DHS should re-evaluate the planned measures to meet the scope of the project and work closely with industry to develop an appropriate path forward.

NPRA welcomes the opportunity to work with DHS on these issues. Please contact me with any questions at 202-552-4371 or at jgunnulfson@npra.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Gunnulfson", with a long horizontal flourish extending to the right.

Jeff Gunnulfson
Director
Security and Risk Management
NPRA

As of: August 17, 2009

Received: August 10, 2009

Status: Posted

Posted: August 11, 2009

Tracking No. 80a03e3b

Comments Due: August 10, 2009

Submission Type: Web

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0017

Comment Submitted by Robin Rorick, American Petroleum Institute

Submitter Information

Name: Robin Rorick

Address:

1220 L Street, NW

Washington, DC, 20005-4070

Email: rorickr@api.org

Phone: 202-682-8083

Fax: 202-682-8207

Organization: American Petroleum Institute

General Comment

August 10, 2009

Department of Homeland Security
National Protection and Programs Directorate
Office of Infrastructure Protection

Re: Docket No. DHS-2009-0026

The American Petroleum Institute (API) is pleased to offer the following comments in response to the U. S. Department of Homeland Security (DHS) proposed collection of information request. API represents over 400 member companies involved in all aspects of the oil and natural gas industry and, as such, could be adversely impacted by this Agency action.

General Comments

API and its member companies believe it is important to provide effective personnel surety at high-risk chemical facilities to ensure that individuals with unescorted access to restricted areas or critical assets have suitable backgrounds checks. API and its members support a Personnel Surety Program (PSP) that can efficiently and effectively check appropriate Personally Identifiable Information (PII) against the Terrorist Screening Database (TSDB). However, API and its members are concerned about several aspects of how the PSP program will be administered in accordance with 6 CFR 27.230(a)(12)(iv) of the Chemical Facility Anti-Terrorism Standards (CFATS), as described in the June 10, 2009 information collection request.

In general, API is concerned that DHS has not provided enough detail about the program to make a reasonable estimate of either the positive or negative impact it may have. As an example, there is no information provided as to the specifics that is to be collected or otherwise known as Personally Identifiable Information (PII). If a physical description of the individual is required to be given, a host of concerns would arise in regards to the qualifications of those individuals required to make that assessment. Additionally, companies would be very concerned from a profiling standpoint and there would be great sensitivities from both the submitter and the submitted. The extent of PII required is also concerning from the perspective of needless and duplicative reporting burden. Typically, minimal information is useful in making an initial determination as to whether an individual is of concern, and then subsequently more information about that person can be gathered during a more involved investigation. Ultimately, API and its members have great concerns about the total impacted population from this program, and believe strongly that DHS must conduct and show the results of its analysis to this effect to ensure the program is as efficient as possible and not duplicative in any way.

DHS also does not explain how often PII will need to be updated by a facility. Maintenance of PII required by a facility could be extremely cumbersome. Many facilities have authorized contractors who have access to multiple facilities but are not employees of the facility. Under the Transportation Worker Identification Credential (TWIC) program, these types of workers are effectively addressed since the PII vetting process is tied to the individual and NOT the facility. Under this program, each individual will be required to keep his/her PII up to date and submitted to DHS for each facility that s/he has unrestricted access to. It is unclear how this information will be reviewed, checked

for quality, coordinated with other facilities, or how often it will need to be updated.

Personnel vetting should be tied to the individual and not to a facility.

Personnel vetting should be tied to the individual and not to a facility. By requiring each high-risk facility to report PII on all personnel who have unescorted access to restricted areas, including company employees and contractors, it will create duplicative reporting for each facility that an individual has access to. This is unnecessary and inefficient and will likely result in multiple records for the same individual. Additionally, it will vastly increase the potential for error, inconsistent results, and potentially significant complications in the event of an errant threat finding requiring adjudication by the agency. Once a TSA background check is completed for an individual through the TSDB that individual should be recognized as cleared and not a terrorist threat.

Where an individual may be granted access to multiple facilities, it is highly unnecessary to require submission of duplicative information by each facility. In addition to chemical facility personnel, corporate executives, contractors and truck drivers often require access to several facilities. Mandating the submission of redundant data is certain to generate unnecessary errors and inconsistencies. Once an individual has been cleared, there is no security purpose served by repeating the exercise.

API recommends that successful completion of a terrorist background check for an individual be confirmed in a fashion that would preclude any requirement for duplicative reporting and should be performed only once in a given period.

Further, the administrative burden of maintaining up-to-date PII on all individuals with unescorted access to restricted areas at each high-risk chemical facility indefinitely would create a substantial, duplicative and unnecessary burden on the industry since many of these individuals require access to multiple facilities.

Results from Background Checks Should be Made Available to the Individual.

DHS states that “[it] will not provide screening results to high-risk chemical facilities nor to the individuals whose PII is submitted by high-risk facilities.” DHS’s current approach conflicts with the preamble to the CFATS Interim Final Rule, which states that “DHS will screen applicants and determine whether the applicant poses a security threat. DHS will notify the facility and applicant via U.S. mail, with information concerning the nature of the finding and how the applicant may contest the finding. Applicants will have the opportunity to seek an adjudication proceeding and appeal under Subpart C.” (72 Fed. Reg. 17,709). API and its members are concerned that individual rights could be violated and individuals will have no means for repudiation.

DHS intends to seek an exemption to the Paperwork Reduction Act pursuant to 5 CFR

1320.8(b)(3). If granted, this would allow the Department to refrain from notifying affected individuals regarding the reasons for the collection, how the information will be used, or whether responses to the collection are voluntary or mandatory, among other things. API believes such an exemption is unwarranted and may violate the privacy rights of the affected individual.

Recommendation

In conclusion, API and its members believe that the proposed Personnel Surety Program will place an undue burden—in regards to time, money and other resources—on industry by creating a duplicative program. Instead, it is our recommendation that DHS adopt the TSA's TWIC program rather than developing a new and unique program as proposed. API and its members do not believe that a separate PSP program to be administered by the Chemical Compliance Division needs to be established for the proper performance of the Agency. DHS already has the TWIC program in place that effectively provides the appropriate personnel security assurances. TWIC is jointly administered by the US Coast Guard and TSA and is required at all MTSA facilities for individuals that have unescorted access to restricted areas.

API and its members believe that the proposed PSP is not necessary given the alternatives already at hand. It would result in an incomplete process that is administratively cumbersome and it would fail to achieve the objectives of the DHS CFATS program without a significant, unnecessary, and inappropriate misallocation of limited resources. As proposed, the PSP could result in a national chemical facility personnel database filled with multiple errors, omissions, and redundancies.

Thank you for this opportunity to comment on this important program. If you have any questions, please feel free to contact me at your convenience.

Sincerely,

Robin Rorick

Attachments

DHS-2009-0026-0017.1: Comment Submitted by Robin Rorick, American Petroleum Institute (Attachment)



Robin Rorick
Director, Marine and Security

1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone 202-682-8083
Fax 202-682-8051
Email rorickr@api.org
www.api.org

August 10, 2009

Department of Homeland Security
National Protection and Programs Directorate
Office of Infrastructure Protection

Re: Docket No. DHS-2009-0026

The American Petroleum Institute (API) is pleased to offer the following comments in response to the U. S. Department of Homeland Security (DHS) proposed collection of information request. API represents over 400 member companies involved in all aspects of the oil and natural gas industry and, as such, could be adversely impacted by this Agency action.

General Comments

API and its member companies believe it is important to provide effective personnel surety at high-risk chemical facilities to ensure that individuals with unescorted access to restricted areas or critical assets have suitable background checks. API and its members support a Personnel Surety Program (PSP) that can efficiently and effectively check appropriate Personally Identifiable Information (PII) against the Terrorist Screening Database (TSDB). However, API and its members are concerned about several aspects of how the PSP program will be administered in accordance with 6 CFR 27.230(a)(12)(iv) of the Chemical Facility Anti-Terrorism Standards (CFATS), as described in the June 10, 2009 information collection request.

In general, API is concerned that DHS has not provided enough detail about the program to make a reasonable estimate of either the positive or negative impact it may have. As an example, there is no information provided as to the specifics that is to be collected or otherwise known as Personally Identifiable Information (PII). If a physical description of the individual is required to be given, a host of concerns would arise in regards to the qualifications of those individuals required to make that assessment. Additionally, companies would be very concerned from a profiling standpoint and there would be great sensitivities from both the submitter and the submitted. The extent of PII required is also concerning from the perspective of needless and duplicative reporting burden. Typically, minimal information is useful in making an initial determination as to whether an individual is of concern, and then subsequently more information about that person can be gathered during a more involved investigation. Ultimately, API and its members have great concerns about the total impacted population from this program, and believe strongly that DHS must conduct and show the results of its analysis to this effect to ensure the program is as efficient as possible and not duplicative in any way.

DHS also does not explain how often PII will need to be updated by a facility. Maintenance of PII required by a facility could be extremely cumbersome. Many facilities have authorized contractors who have access to multiple facilities but are not employees of the facility. Under the Transportation Worker Identification Credential (TWIC) program, these types of workers are effectively addressed since the PII vetting process is tied to the individual and NOT the facility. Under this program, each individual will be required to keep his/her PII up to date and submitted to DHS for each facility that s/he has unrestricted access to. It is unclear how this information will be reviewed, checked for quality, coordinated with other facilities, or how often it will need to be updated.

Personnel vetting should be tied to the individual and not to a facility.

Personnel vetting should be tied to the individual and not to a facility. By requiring each high-risk facility to report PII on all personnel who have unescorted access to restricted areas, including company employees and contractors, it will create duplicative reporting for each facility that an individual has access to. This is unnecessary and inefficient and will likely result in multiple records for the same individual. Additionally, it will vastly increase the potential for error, inconsistent results, and potentially significant complications in the event of an errant threat finding requiring adjudication by the agency. Once a TSA background check is completed for an individual through the TSDB that individual should be recognized as cleared and not a terrorist threat.

Where an individual may be granted access to multiple facilities, it is highly unnecessary to require submission of duplicative information by each facility. In addition to chemical facility personnel, corporate executives, contractors and truck drivers often require access to several facilities. Mandating the submission of redundant data is certain to generate unnecessary errors and inconsistencies. Once an individual has been cleared, there is no security purpose served by repeating the exercise.

API recommends that successful completion of a terrorist background check for an individual be confirmed in a fashion that would preclude any requirement for duplicative reporting and should be performed only *once* in a given period.

Further, the administrative burden of maintaining up-to-date PII on all individuals with unescorted access to restricted areas at each high-risk chemical facility indefinitely would create a substantial, duplicative and unnecessary burden on the industry since many of these individuals require access to multiple facilities.

Results from Background Checks Should be Made Available to the Individual.

DHS states that “[it] will not provide screening results to high-risk chemical facilities nor to the individuals whose PII is submitted by high-risk facilities.” DHS’s current approach conflicts with the preamble to the CFATS Interim Final Rule, which states that “DHS will screen applicants and determine whether the applicant poses a security threat. DHS will notify the facility and applicant via U.S. mail, with information concerning the nature of the finding and how the applicant may contest the finding. Applicants will have the opportunity to seek an adjudication proceeding and appeal under Subpart C.” (72 Fed. Reg. 17,709). API and its members are concerned that individual rights could be violated and individuals will have no means for repudiation.

DHS intends to seek an exemption to the Paperwork Reduction Act pursuant to 5 CFR 1320.8(b)(3). If granted, this would allow the Department to refrain from notifying affected individuals regarding the reasons for the collection, how the information will be used, or whether responses to the collection are voluntary or mandatory, among other things. API believes such an exemption is unwarranted and may violate the privacy rights of the affected individual.

Recommendation

In conclusion, API and its members believe that the proposed Personnel Surety Program will place an undue burden—in regards to time, money and other resources—on industry by creating a duplicative program. Instead, it is our recommendation that DHS adopt the TSA’s TWIC program rather than developing a new and unique program as proposed. API and its members do not believe that a separate PSP program to be administered by the Chemical Compliance Division needs to be established for the proper performance of the Agency. DHS already has the TWIC program in place that effectively provides the appropriate personnel security assurances. TWIC is jointly administered by the US Coast Guard and TSA and is required at all MTSA facilities for individuals that have unescorted access to restricted areas.

API and its members believe that the proposed PSP is not necessary given the alternatives already at hand. It would result in an incomplete process that is administratively cumbersome and it would fail to achieve the objectives of the DHS CFATS program without a significant, unnecessary, and inappropriate misallocation of limited resources. As proposed, the PSP could result in a national chemical facility personnel database filled with multiple errors, omissions, and redundancies.

Thank you for this opportunity to comment on this important program. If you have any questions, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robin Rorick". The signature is written in a cursive, flowing style.

Robin Rorick

As of: September 16, 2009
Received: September 01, 2009
Status: Posted
Posted: September 01, 2009
Tracking No. 80a19f12
Comments Due: August 10, 2009
Submission Type: E-Mail

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0018

Comment Submitted by Darius D. Sivin, Pd.D, International Union, UAW

Submitter Information

Name: Darius D Sivin, Pd.D

Address:

1757 'N' St. NW

Washington, DC, 20036

Email: dsivin@uaw.net

Phone: 202-828-1618

Fax: 202-293-3457

Organization: International Union, UAW

General Comment

Please see the attachments

Attachments

DHS-2009-0026-0018: Comment Submitted by Darius D. Sivin, Pd.D,
International Union, UAW

DHS-2009-0026-0018.1: Comment Submitted by Darius D. Sivin, Pd.D,
International Union, UAW (Attachment)

Comments Responding to:

Department of Homeland Security
National Protection and Programs Directorate Office of Infrastructure Protection
[Docket No. DHS-2009-0026]

*Submission for Chemical Facility Anti-Terrorism Standards
Personnel Surety Program Information Collection 1670-NEW*

Submitted by

Alan Reuther, International Union, United Automobile Aerospace & Agricultural Implement Workers of America (UAW)

David LeGrande, Communications Workers of America (CWA)

Rick Hind, Greenpeace

John Morawetz, International Chemical Workers Union Council,
United Food and Commercial Workers Union (ICWUC/UFCW)

Brian Turnbaugh, OMB Watch

Mike Wright, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)

The Office of Management and Budget Is Particularly Interested in Comments Which

- 1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;**

The proposed use of the consolidated and integrated terrorist watchlist by DHS represents a major expansion of the population for whom being on the watchlist could adversely affect employment status. An adverse employment decision could occur after federal law enforcement contacts a high risk chemical facility. This is a matter of concern both for those who may ultimately be innocent even though they are properly on the watchlist and for the many who are not properly on the watchlist. We think the information obtained by comparing names collected from high risk chemical facilities to the consolidated and integrated terrorist watchlist will be severely limited in its practical utility due to the large number of names on the watchlist that may not belong there.

These include:

- a. Names of individuals that are not associated with a case containing any of the following current designations: international terrorism, domestic terrorism or

- bombing, and for whom there exists no other justification for them to be on the watchlist.
- b. Names of individuals that should have been removed from the watchlist after their cases were closed but weren't removed at all or whose removal was tardy.
 - c. Nominations submitted directly to the National Counterterrorism Center (NCTC) by FBI field offices bypassing FBI headquarters and FBI quality review.
 - d. Nominations extracted by NCTC from agency reports and attributed to specific agencies without the knowledge of those agencies. Such agencies include the FBI, Drug Enforcement Administration (DEA) and U.S. National Central Bureau (USNCB).

Individuals not associated with a case with a current terrorism related

designation (a above): The Office of the Inspector General (OIG) of the Department of Justice (DOJ) examined 68,669 identities on the consolidated terrorist watchlist for which the Terrorism Screening Center (TSC) indicated that the Federal Bureau of Investigation (FBI) was the source of the nomination. Approximately 35% of these or 23,911 were based on FBI cases that did not contain a current designation that included any of the following: international terrorism, domestic terrorism or bombing.

After examining a sample representing 101 individuals whose nominations for the watchlist came from FBI field offices and were based on FBI cases whose designation was not any of the above, OIG concluded that 60 of those did not belong on the watchlist. OIG found documentation that ten of these people had been stopped a total of 49 times by law enforcement and had been subjected to unnecessary screening and/or questioning. Of the ten, eight were described by OIG as "U.S. persons." An examination of similar sample of 39 individuals whose nominations came from FBI headquarters, indicated that 31 of those did not belong on the watchlist. In all 91, out of 140 individuals nominated by FBI headquarters or field offices did not belong on the watchlist¹. This means that, in the samples examined, 65% of those who were not associated with a current case carrying one of the above designations did not belong on the watchlist. If we assume that the 65% figure applies to all 23,911 watchlist entries not associated with a current case carrying one of the above designations, the result is over 15,000 names on the watchlist that do not belong. This translates to more than 20% of all those nominated by the FBI. There is no particular reason to believe that the FBI's error rate is more or less than any other agency.

The OIG noted that there is no procedure for modifying or removing watchlist records of individuals not currently under an FBI investigation with a terrorism related designation².

¹ U.S. Department of Justice Office of the Inspector General Audit Division (OIG, 2009). THE FEDERAL BUREAU OF INVESTIGATION'S TERRORIST WATCHLIST NOMINATION PRACTICES. Audit Report 09-25 May 2009. <http://www.usdoj.gov/oig/reports/FBI/a0925/final.pdf>. pp.46-60

² U.S. Department of Justice Office of the Inspector General Audit Division (OIG, 2008). AUDIT OF THE

Tardy removals (b above): Although FBI policy requires that the subjects of closed terrorism investigations be removed from the watchlist, the OIG found that, in 8% of cases examined, the subject of a closed investigation was never removed. OIG evaluated 85 cases, closed by three field offices, in order to determine whether the agency removed the subjects of closed cases in a timely manner or provided adequate justification for retaining the subject on the watchlist. Of these, 61 (72%) took more than 10 days to be removed after their cases were closed. 46 of these 61 were “U.S. persons.” The mean number of days for removal was 60 and the median was 26. Nine of the 61 individuals were screened a total of 13 times resulting in 6 travel delays and two secondary screenings. Among those screened, four were “U.S. persons.” In addition, one unrelated person was stopped for having the same name as one of these individuals whose names were on the watchlist but should have been removed³.

Nominations submitted directly by FBI field offices (c above): This nominating practice is not covered by FBI policy and there is no requirement for FBI personnel to insure that any resulting watchlist records are updated or removed as appropriate. Nor is there any mechanism to insure that the nominations themselves are appropriate or that the information is complete and accurate⁴.

Nominations extracted by NCTC from agency reports (d above): The NCTC has treated FBI Intelligence Information Reports, DEA intelligence documents that contain information on known or suspected terrorists, and information provided by USNCB as official watchlist nomination requests. However, these agencies were unaware of this practice. Hence the reports were not reviewed for completeness and accuracy of nomination-related information. Nor were the agencies responsible for these nominations submitting requests to modify or remove these records where appropriate because they were unaware of the existence of the records⁵.

Although the information above comes from the Office of the Inspector General of the Department of Justice and does not necessarily pertain to non-DOJ agencies, we are unaware of any reason to believe that the performance of non-DOJ agencies in submitting watchlist nominations is substantially different from the performance of DOJ agencies. Hence, we believe that the information obtained by comparing names collected from high risk chemical facilities to the terrorism watchlist will be severely limited in its practical utility. One of the reasons that watchlist is overinclusive in the ways identified by the DOJ OIG is that its designers did not imagine that the adverse consequences of being on the watchlist would be greater than being kept off an airplane. The use proposed by the Department would represent a major expansion of the population for whom being on the watchlist could adversely affect employment

U.S. DEPARTMENT OF JUSTICE TERRORIST WATCHLIST NOMINATION PROCESSES. Audit Report 08-16. <http://www.usdoj.gov/oig/reports/plus/a0816/final.pdf>. p.10

³ OIG, 2009. pp. 36-45

⁴ OIG, 2008. p.10

⁵ *Ibid.*, pp.13-14, 17-19

status. Such an increase in consequences should be accompanied by a proportionate increase in protection against being inappropriately placed on the watchlist.

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

We believe that the agency's estimate of the burden of the information collection leaves out the burden on the affected employees whose personally identifiable information (PII) matches that of a record on the watchlist. The information provided in response to question 1 suggests that one in five matches may be matches to records that should not be on the watchlist. These matches may result in unnecessary investigative action. Although DHS will not provide screening results to high risk chemical facilities, federal law enforcement may contact such facilities as part of an investigation. Such contacts may result in adverse employment decisions. Hence the potential burden includes unnecessary intrusive investigations and unjustified adverse employment decisions, that could result from one's, possibly unjustified, presence on the watchlist.

3. Enhance the quality, utility, and clarity of the information to be collected;

Enhancing the quality, utility and clarity of the information to be collected requires correcting the flaws in the watchlist identified above. Such corrections would protect people from the unnecessary intrusive investigations and the unjustified adverse employment decisions that might otherwise result from the Department's proposed use of the watchlist.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The most important burden does not have to do with the time, effort or expense it takes to submit the information. It has to do with the potential for unnecessary intrusive investigations and unjustified adverse employment decisions. It cannot be minimized through the use of technological collection techniques. It can be minimized only by correcting the flaws in the watchlist identified above.

The Department Is Particularly Interested in Comments Which

1. Respond to the Department's interpretation of the population affected by RBPS 12 background checks outlined in 6 CFR 27.230(a)(12);

Providing an informed response to the Department's interpretation of the population affected by RBPS 12 background checks outlined in 6 CFR 27.230(a)(12) would require the Department to provide information about the number of facilities in each tier and the

number of individuals the department estimates are covered per facility and its method for arriving at the number of individuals per facility.

2. **Respond to fact that a Federal law enforcement agency may, if appropriate, contact the high-risk chemical facility as a part of a law enforcement investigation into terrorist ties of facility personnel;**

We are concerned about the possibility that such contact will result in adverse employment decisions. This is a matter of concern in cases in which individuals may eventually turn out to be innocent even though they are properly on the watchlist. It is an even greater matter of concern for the large number of individuals who are improperly on the watchlist.

3. **Respond to the Department on its intention to seek an exception to the notice requirement under 5 CFR 1320.8(b)(3).**

We would be opposed to such a waiver due to the potential of the information to lead to intrusive investigations and and/or adverse employment decisions. We think that the potential consequences are serious enough that each individual whose PII is submitted should be notified of:

- the reason for the submission,
- how the information will be used,
- the fact that the potential burden could be an intrusive investigation or an adverse employment decision, and
- whether responses are voluntary or mandatory.

Contact:

Darius D. Sivin, Ph.D.
International Union, UAW
1757 'N' St. NW
Washington DC 20036
Phone: (202) 828-1618
Fax: (202) 293-3457
dsivin@uaw.net

As of: September 16, 2009
Received: September 01, 2009
Status: Posted
Posted: September 01, 2009
Tracking No. 80a1a0e1
Comments Due: August 10, 2009
Submission Type: E-Mail

PUBLIC SUBMISSION

Docket: DHS-2009-0026

Chemical Facility Anti-Terrorism Standard, PRA 60 Day Notice for Comments on New Personnel Surety Information Collection Request

Comment On: DHS-2009-0026-0001

Submission for Chemical Facility Anti-Terrorism Standards Personnel Surety Program Information Collection 1670-NEW

Document: DHS-2009-0026-0019

Comment Submitted by Rick Engler, New Jersey Work Environment Council

Submitter Information

Name: Rick Engler

Address:

142 West State Street - Third Floor,
Trenton, NJ, 08608-1102

Email: www.njwec.org

Phone: 609-695-7100

Fax: 609-695-4200

Organization: New Jersey Work Environment Council

General Comment

Attachments

DHS-2009-0026-0019.1: Comment Submitted by Rick Engler, New Jersey Work Environment Council (Attachment)

From: Darius Sivin [mailto:DSivin@uaw.net]
Sent: Thursday, August 27, 2009 2:48 PM
To: Armstrong, Sue E
Subject: FRN Comments

Sue,

Given that our submission was already late, I am not going to ask permission to modify it, but I would be grateful if you could print this e-mail and add it to the docket to show that the New Jersey Work Environment Council is in support of our comments. Thanks.

From: RICKENGLER
To: DSivin@uaw
CC: david@dtesq.com
Sent: 8/27/2009 2:21:33 P.M. Eastern Daylight Time
Subj: FRN Comments

Hi Darius, if not too late, please sign WEC on. Thanks, Rick

Rick Engler

Director, New Jersey Work Environment Council
142 West State Street - Third Floor, Trenton, NJ 08608-1102
The best number to reach me is:
Northern Jersey Office: (201) 389-3189 with forward to cell phone
Main Office: (609) 695-7100
Main Office Fax: (609) 695-4200
On the Web: www.njwec.org

Darius D. Sivin, Ph.D.
International Representative
Legislative, Governmental and International Affairs
United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
1757 'N' St. NW
Washington DC 20036
Work: (202) 828-1618
Cell: (734) 845-6080
Fax: (202) 293-3457
dsivin@uaw.net