



Homeland
Security

24 August 2015

Peter Weaver
Vice President, Regulatory Affairs
International Liquid Terminals Association
1005 N. Glebe Road, Suite 600
Arlington, Virginia 22201

Dear Mr. Weaver:

The Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) has forwarded to the Department of Homeland Security your March 2014 letter regarding the February 2014 Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program Information Collection Request (ICR). We are responding to your letter in concert with OMB's approval of the ICR.

Background--Statutory and Regulatory Framework

In the time since the CFATS Personnel Surety Program ICR was submitted to OMB, the President signed into law the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (the CFATS Act of 2014), Pub. L. No. 113-254, which adds provisions related to CFATS to the Homeland Security Act of 2002, as amended, Pub. L. No. 107-296.¹ The Homeland Security Act of 2002² affirmed that the Department must implement a Personnel Surety Program in which the Department is required to establish a capability for high-risk chemical facilities to comply with Risk-Based Performance Standard (RBPS) 12(iv) of CFATS.³ The CFATS Act of 2014 also established additional provisions for the CFATS Personnel Surety Program, to include allowing a high-risk chemical facility to visually verify certain credentials or documents that are issued by a Federal screening program that periodically vets enrolled individuals against the Terrorist Screening Database (TSDB). Under RBPS 12(iv) high-risk chemical facilities are required to implement security measures to identify individuals with terrorist ties. The approved CFATS Personnel Surety Program ICR aligns with the CFATS regulations and section 2102(d)(2) of the Homeland Security Act of 2002.

¹ Section 2 of the CFATS Act of 2014 adds a new Title XXI to the Homeland Security Act of 2002. Title XXI contains new sections numbered 2101 through 2109. Citations to the Homeland Security Act of 2002 throughout this document reference those sections of Title XXI. In addition to being found in amended versions of the Homeland Security Act of 2002, those sections of Title XXI can also be found in section 2 of the CFATS Act of 2014, or in 6 USC §§ 621 – 629.

² The CFATS Act of 2014 specifically adds Section 2102(d)(2) which requires the Department to implement a Personnel Surety Program.

³ The specific requirement is found at 6 CFR § 27.230(a)(12)(iv).

The CFATS Act of 2014 does not conflict with 6 CFR § 27.230(a)(12)(iv) as promulgated on April 9, 2007 and is consistent with the regulatory text of the CFATS Interim Final Rule (IFR). However, the CFATS Act of 2014 does conflict with IFR preamble because the preamble did not consider visual verification as a means to sufficiently verify an affected individual's enrollment in the Transportation Worker Identification Credential (TWIC) program, Hazardous Materials Endorsement (HME) program, or the Trusted Traveler program. The Department continues to believe that visual verification has significant security limitations. However, as a result of the CFATS Act of 2014, the Department will now accept visual verification of certain credentials or documents as a means to meet RBPS 12(iv).

It bears noting that the burden estimates of the ICR have not changed as a result of the CFATS Act of 2014 or as a result of any programmatic changes to the CFATS Personnel Surety Program. Therefore, the Department has the authority to implement the CFATS Personnel Surety Program as described in the CFATS IFR with modifications to account for new statutory requirements in the CFATS Act of 2104.

Multiple Options for Compliance with RBPS12(iv)

As mentioned above, in view of the Personnel-Surety-focused language of the CFATS Act of 2014, the Department will accept visual verification as a method to comply with RBPS 12(iv). Thus, in addition to the three options for complying with RBPS 12(iv) described in the 30-day Paperwork Reduction Act (PRA) notice,⁴ the Department is making available a fourth option for high-risk chemical facilities to comply with RBPS 12(iv): Option 4 – *Visual Verification Of Credentials Conducting Periodic Vetting*. Option 4 will allow a high-risk chemical facility to satisfy its obligation under 6 CFR § 27.230(a)(12)(iv) to identify individuals with terrorist ties using any Federal screening program that periodically vets individuals against the TSDB if:

- The Federal screening program issues a credential or document;
- The high-risk chemical facility is presented a credential or document by the affected individual; and
- The high-risk chemical facility verifies that the credential or document is current in accordance with its Site Security Plan (SSP).

As noted previously, however, visual verification of existing credentials carries with it inherent security limitations and provides less security value than the other options available under the CFATS Personnel Surety Program because a visual inspection of a credential alone cannot necessarily confirm whether a credential is expired, revoked, fraudulent or otherwise not valid. For example:

- The visual verification of a TWIC will not reveal if the TWIC has been revoked by the Transportation Security Administration (TSA); and
- The visual verification of an HME on a commercial driver's license will not reveal if the endorsement has expired or been revoked.

⁴ The 30-day Federal Register notice that solicited comment about the CFATS Personnel Surety Program ICR may be viewed at <https://federalregister.gov/a/2014-02082>.

High-risk chemical facilities are encouraged to review all the available options and carefully consider which option (or combination of options) best addresses their specific security situation. In addition to the options described in the 30-day notice and in this letter, high-risk chemical facilities are welcome to propose in their SSPs or Alternative Security Programs (ASP) options not described in this document. The Department will assess the adequacy of such alternative or supplemental options on a facility-by-facility basis.

Specific Questions Raised by International Liquid Terminals Association (ILTA)

Having taken note of the changed landscape and additional options afforded by the CFATS Act of 2014 and noting that your letter to OMB was drafted several months prior to enactment of this significant piece of legislation, the Department would like to take this opportunity to address the specific questions and concerns you raised in your March 2014 letter.

- (1) ILTA suggested that the design of the CFATS Personnel Surety Program would “effectively reject the validity of every existing federal terrorism vetting and credentialing program.”**

As mentioned above, in view of the Personnel-Surety-focused language of the CFATS Act of 2014, the Department will accept visual verification as a method—essentially, a fourth option--to comply with RBPS 12(iv). With four options now available to comply with the terrorist ties portion of RBPS 12, high-risk chemical facilities may choose the option or options that best meet their individual circumstances, with the ability to fully leverage existing Federal programs that vet individuals for terrorist ties. High-risk chemical facilities are encouraged to review all the available options available and carefully consider which option (or combination of options) best meets their specific security situation.

- (2) ILTA suggested that “[d]isapproving a site security plan based on the absence of data submitted by a [high-risk chemical] facility would be in direct conflict of [Section 550 of P.L. 109-295] when other means are available for the facility to demonstrate that an individual has been vetted for terrorist ties.”**

The CFATS Personnel Surety Program will not exceed the Department's statutory authority, nor will it violate or conflict with its statutory prohibition to not disapprove a site security plan based on the presence or absence of a particular security measure. With at least four options now available to comply with the terrorist ties portion of RBPS 12, high-risk chemical facilities have a significant amount of flexibility and may choose the option or options that best meet their individual circumstances, with the ability to fully leverage (including through option 4—visual verification) existing Federal programs that vet individuals for terrorist ties. High-risk chemical facilities are encouraged to review all the available options available and carefully consider which option (or combination of options) best meets their specific security situation. In addition to these four options, facilities may propose (and the Department will review and approve on a case-by-case basis) alternative methods to comply with the terrorist ties background check portion of RBPS 12.

- (3) ILTA suggested that “[f]rom the [high-risk chemical] facility’s standpoint, the difference between [Options 1 and Option 2] is immaterial. This is because, regardless of the option selected, the submission of personally identifiable information to the Department would be required.”**

The Department agrees that the data collection requirements of Option 1 and Option 2 are very similar and in practice will often appear identical from the perspective of a high-risk chemical facility. The Department believes there are key differences between Option 1 and Option 2:

- Option 2 will provide to high-risk chemical facilities, for the first time, a way to receive updates to the status of an affected individual’s Security Threat Assessment once the Department is able to initially verify the affected individual’s enrollment;
- Option 2 does not result in additional vetting activities (e.g., creation of a new and separate security threat assessment) which is to the privacy benefit of the affected individual; and
- Option 2 represents a cost saving to the Department because the cost of verifying an affected individual’s enrollment in the TWIC, HME, and Trusted Traveler program is less than the cost to initiate new vetting.

As stated earlier in this letter, however, high-risk chemical facilities may also leverage existing vetting through other means - such as through the use of an electronic TWIC reader under Option 3 or, through the visual verification of existing federally issued credentials or documents under Option 4.

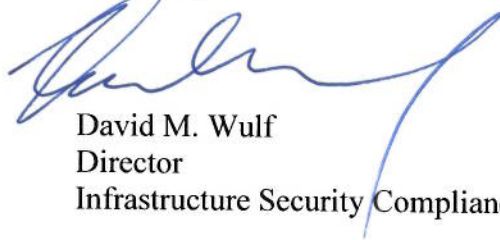
- (4) ILTA suggested that “[t]he proposed requirement that [high-risk chemical] facilities must use PSP exclusively for vetting individuals for terrorist ties would be, in many cases, redundant, wasteful of scarce public and private sector resources, bereft of security value and without a clear and stated purpose.”**

The Department promulgated 6 CFR § 27.230(a)(12)(iv) to require high-risk chemical facilities to conduct checks to identify affected individuals with terrorist ties. Furthermore, the Department has not promulgated a new requirement under the ICR. Rather the Department is fulfilling its obligations to solicit and respond to public comment under the PRA. The Department has sought to:

- Avoid redundancy by providing an opportunity to verify credentials both electronically and visually rather than duplicate the vetting conducted on an affected individual;
- Avoid wasteful spending of resources by the Department by leveraging the existing vetting infrastructure established by the Department within TSA;
- Avoid wasteful spending of resources by high-risk chemical facilities by allowing them to select the best way for them to comply with RBPS 12(iv) in their SSPs; and
- Ensure that there is a clear and stated purpose for this information collection, namely that affected individuals with terrorist ties might be identified.

You and ILTA have been leaders in the personnel surety arena and in furthering the overall objectives of the CFATS program, and the Department is appreciative of your continuing efforts to secure America's highest-risk chemical facilities - an effort that is essential to the Nation's critical infrastructure security and resilience.

Sincerely,

A handwritten signature in blue ink, appearing to read "David M. Wulf", with a long, sweeping flourish extending to the right.

David M. Wulf
Director
Infrastructure Security Compliance Division