



Homeland  
Security

24 August 2015

Mr. Brad Carlson & Mr. Neil Schulman  
General Information Services, Inc.  
917 Chapin Road, PO Box 353  
Chapin, South Carolina 29036

Dear Mr. Carlson and Mr. Schulman:

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.<sup>1</sup> The Homeland Security Act of 2002<sup>2</sup> 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.<sup>3</sup> 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.

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).

<sup>1</sup> 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.

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

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

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,<sup>4</sup> 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.

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<sup>4</sup> 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 General Information Systems (GIS)*

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) GIS suggested that “some background check companies already provide a service [similar to that proposed by other commenters in response to the 60-day PRA notice].” GIS also suggested that “industry can effectively and efficiently manage the submittal process.”<sup>5</sup>**

The Department agrees that private sector background check companies can provide a viable alternative that high-risk chemical facilities can consider as they balance the multiple issues (e.g., security standards, privacy considerations, and cost) involved in background checks. The Department also agrees that third parties can manage the submission of information to the Department under Option 1 and Option 2.

- (2) GIS stated that the “requirement to enable an individual to remove him or herself from perpetual vetting ... should be the responsibility of the individual/contractor to request removal and not the chemical facility.”**

The CFATS Act of 2014 prohibits the Department from requiring a high-risk chemical facility to submit information about an individual more than one time under Option 1 or Option 2. Therefore, under Option 1 or Option 2, a high-risk chemical facility has the option (but is not required) to notify the Department when the affected individual no longer has access to any restricted areas or critical assets. Notification ensures the accuracy of the Department’s data and to stop the recurrent vetting on the person who is no longer an affected individual.

The Department believes that there are substantial privacy risks if a high-risk chemical facility opts to not provide updates and corrections about affected individuals. Specifically, the accuracy of an affected individual’s personal data being vetted against the TSDB for terrorist ties may be affected. Accurate information both (1) increases the likelihood of correct matches against information about known or suspected terrorists, and (2) decreases the likelihood of false positives. As a result, the Department encourages high-risk chemical facilities to submit updates and corrections as they become known so that the Department’s checks for terrorist ties, which are done on a recurrent basis, are accurate. If a high-risk chemical facility is either unable or

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<sup>5</sup> The proposal may be viewed at <http://www.regulations.gov/#!documentDetail;D=DHS-2012-0061-0029>.

unwilling to update or correct an affected individuals information an affected individual may seek redress as described in the CFATS Personnel Surety Program Privacy Impact Assessment.

- (3) GIS suggested that the Department should “make available to approved submitters an index number unique to each covered facility so that submitters can correctly and uniformly provide the information back to DHS. This process reduces the burden on facilities, and it is important to note that this approach fits within the framework of options 1 and 2 as described in this ICR.”**

High-risk chemical facilities will have the opportunity to allow third parties to perform the submission of information about affected individuals under Option 1 or Option 2. The Department does not intend to make available unique index numbers because such a process would indirectly create a security risk by making publically available a list of high-risk chemical facilities. Furthermore, the Department believes that the design of the user management controls within the Chemical Security Assessment Tool (CSAT) allows for a uniform process to submit information to the Department.

- (4) GIS suggested that high-risk chemical facilities consider whether background checks companies perform their services and operation “off shore.”**

The Department agrees that a high-risk chemical facility can consider where the background check company performs their services; however, the Department does not review or approve a high-risk facility’s SSP based on where the service is performed.

- (5) GIS responded to other comments submitted during the 60-day PRA comment period. Specifically, “the concern about contractors and visitors arriving upon short or no notice such as when a production unit goes down or otherwise requires emergency maintenance.” GIS’s response was that “Facilities using Electronic Verification of TWIC may face a large number of contractors requiring access on short notice[: (1)] A TWIC reader can create a bottleneck at access control[, and (2)] Applying for a TWIC card requires a visit to an enrollment center and second visit once the card is ready, and may not meet the required need for timely access.”**

The Department believes that each high-risk chemical facility will need to carefully consider what is in the best interest of their high-risk chemical facility when complying with RBPS 12(iv). The Department believes that TWICs can be a viable solution to comply with RBPS 12(iv) for some facilities under Option 2, Option 3, or Option 4.

You and GIS 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,



David M. Wulf  
Director  
Infrastructure Security Compliance Division