



Homeland
Security

24 August 2015

Mr. William E. Allmond IV
Vice President of Government & Public Relations
Society of Chemical Manufacturers & Affiliates
1850 M Street, NW, Suite 700
Washington, DC 20036

Dear Mr. Allmond:

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 Society of Chemical Manufactures & Affiliates (SOCMA)

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) SOCMA expressed both appreciation for the Department’s adoption of SOCMA’s suggestion regarding “foreseeable but unpredictable” events that might justify exceptions to the 48-hour prior notice requirement. However, SOCMA also pointed out an error the Department made in responding to comments submitted in response to the 60-day notice.**

The Department continues to believe that the submission of information about affected individuals to the Department in advance of access to the restricted areas or critical assets at a high-risk chemical facility under Option 1 and Option 2 is valuable because having more time between identification of an affected individual with terrorist ties and that individual’s access to restricted areas or critical assets within a high-risk chemical facility increases and improves the quality of the possible responses by the Federal Government. Nonetheless, in response to comments that the Department has also removed the requirement that a high-risk chemical facility must submit information about new affected individuals 48 hours in advance of access being granted to the restricted areas or critical assets at a high-risk chemical facility.

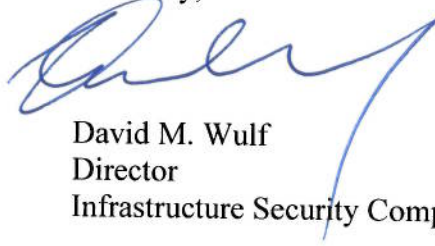
- (2) SOCMA suggested that the Department erroneously claimed that no commenter argued that the proposed approach is not “necessary for the proper performance of the functions of the agency.” SOCMA cited the comment to the 60-day notice as evidence.**

The Department reviewed your comment submitted in response to the 60-day comment period per your request, particularly pages 7 through 10.⁵ On page 9 you stated, “Thus – at least with respect to individuals who possess credentials like the TWIC or HME – the PSP continues to be not ‘necessary for the proper performance of the functions of the agency[.]’” In the response to comment section of the 30-day notice, the Department should have specified that there was no commenter who objected to both Options 1 and Option 2 as not necessary for the proper performance of the functions of the agency. The scope of your objection was limited to Option 2.

⁵ The SOCMA comment which was submitted in response to the 60-day may be viewed at <http://www.regulations.gov/#!documentDetail;D=DHS-2012-0061-0051>.

You and SOCMA 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 'D. Wulf', with a long, sweeping underline that extends to the right.

David M. Wulf
Director
Infrastructure Security Compliance Division