



June 3, 2013

U.S. Department of Homeland Security
National Protection and Programs Directorate
245 Murray Lane, S.W.
Arlington, VA 20528

Re: Docket No. DHS-2012-0061; U.S. Department of Homeland Security, Information Collection Request; CFATS Personnel Surety Program.

To CFATS Program Manager:

The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry, a \$760 billion enterprise and a key element of the nation's economy. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. It is one of the nation's largest exporters, accounting for twelve cents out of every dollar in U. S. exports. Chemistry companies are also among the largest investors in product research and development. Because of our critical role in the national economy and our responsibility to employees and communities—safety and security continue to be a top priority for members of the American Chemistry Council.

ACC appreciates this opportunity to submit these comments on the Department of Homeland Security (DHS) Information Collection Request (ICR) regarding the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program (PSP). This ICR provides an opportunity to collect more accurate data and improve the utility, quality and clarity of information being collected while minimizing the burden on the regulated community. ACC believes this ICR is necessary to support a robust CFATS program and to ensure that all persons requiring access to sensitive areas of high-risk chemical facilities are trustworthy and do not present a threat to the facility, its workers or to the surrounding community. While ACC believes the new ICR estimates are more accurate than the previous ICR and that the new proposal demonstrates good progress, we believe there are additional improvements, including the use of available technology that would make the collection of said information more efficient and further help to reduce burden while enhancing security at all high-risk chemical facilities.

ACC believes the new provisions in this ICR will help improve flexibility, increase efficiency and reduce burden for facilities. This is highlighted by DHS allowing for the expanded use of existing Federal vetting programs, specifically by recognizing the Transportation Worker Identification Credential (TWIC) Program and the Hazardous Materials Endorsement (HME)

Program as viable compliance options to validate personnel security information. DHS also states facilities may use “other technology that is periodically updated using the Cancelled Card List,” in order to vet personnel that do not hold valid TWIC Cards. ACC supports this provision, however, DHS does not define what technology is included. ACC believes if facilities can base their vetting on the Cancelled Card List (CCL), it would alleviate significant time and financial burdens associated with many Federal vetting programs. In addition, ACC greatly appreciates the additional leeway in assigning CSAT user roles to include third-party submitters and consolidated (corporate) submissions. These provisions will help to reduce the reporting burden on facilities as well as limit the number of persons requiring unescorted access to restricted areas and critical assets thus reducing the impact of complying with RBPS 12.

ACC also commends DHS for proposing the gradual implementation for the PSP, beginning with Tier 1 and Tier 2 high-risk chemical facilities. These incremental actions will allow DHS and CFATS Regulated Facilities to incorporate lessons learned and make improvements to the program prior to implementation in Tier 3 and Tier 4 facilities. This is significant since the number of Tier 3 and 4 facilities represents around 85% of the CFATS population and will therefore result in increased efficiency across all Regulated Facilities.

While ACC agrees DHS has made considerable improvements, perhaps the most concerning aspect of this proposal is the lack of engagement by DHS with a covered facility regarding the results of vetting an individual for terrorist ties who is requesting access to sensitive areas of high-risk chemical facilities. The goal of PSP is to ensure that personnel who have access to sensitive areas of high-risk chemical facilities do not pose a security threat to the facility, its workers or to the surrounding community. However, the current proposal does not provide the level of assurance necessary to ensure such threats are minimized. This is due to the fact that DHS has not provided any detail regarding their vetting procedures, including how and under what circumstances DHS will notify a facility that their personnel have been successfully vetted and how matches against the TSDB are resolved. It is crucial, that such personnel are vetted and cleared *prior* to being granted access to such sensitive areas. ACC believes that DHS must provide proper and timely notification to the covered facility that such persons have been vetted and are cleared for access *prior* to entry.

Previous versions of the ICR seriously underestimated the cost burden on facilities to implement the PSP and provided facilities with limited options for implementation. In the current DHS ICR, DHS significantly improved its numbers and also includes three alternative compliance approaches, which ACC supports. The three options include:

- 1) A high-risk chemical facility could directly submit information about affected individuals by designating “one or more officers or employees of the facility as a Personnel Surety Submitter;” and/or



- 2) A high-risk chemical facility could submit information about affected individuals by “designating one or more individuals affiliated with a third party (or multiple third parties) to a user role(s) designated for third parties;” and/or
- 3) A company owning several high-risk chemical facilities could consolidate its submission process for affected individuals by designating “one or more persons as CSAT users, and those users could submit information about affected individuals on behalf of all of the high-risk chemical facilities on a company-wide basis.”

Despite the new options in the ICR, DHS only provided a cost estimate for Alternative 3, which includes the highest number of potential respondents. In its cost estimate calculations, DHS estimates that the average annual burden is 104,076 hours costing \$4.37 million. Including the capital cost of TWIC readers for a handful of facilities, the total cost burden averages \$4.77 million per year over three years. This new burden estimate depends on several new assumptions that significantly lower the costs in addition to several errors. Attachment A presents the cost analysis including TWIC readers and new assumptions, demonstrating that correcting these errors yields an annualized burden of \$5.22 million over three years.

ACC Recommendations:

ACC recommends the following options to help enhance the PSP proposal in a manner that meets DHS’s goals for personnel surety, improves the utility of the information collected while minimizing burdens on regulated industry:

- Expand the TWIC program to CFATS
- Establish a “public” website to allow individuals to voluntarily enter Personally Identifiable Information (PII)

DHS’s TWIC program is currently in use at thousands of facilities to vet all MTSA port facility employees, long shore workers, truck drivers, and others requiring underscored access to secure areas of maritime facilities.¹ By leveraging the existing TWIC program and applying it to chemical facilities throughout the country, it will minimize security differences between facilities and allow for more fluid business operations. Facilities and DHS will benefit from increased reliance on the TWIC program since it will set a high standard of security by requiring all employees who have access to any restricted areas to hold a TWIC card, while also relieving reporting burdens on facilities since security requirements will be the same at all facilities. The TWIC program has already proven to be successful in implementation, meaning there would be minor adaptations to apply it to the chemical sector. This would decrease the burden on DHS and also help reduce the amount of time necessary to effectively implement the PSP.

ACC’s additional recommendation is for DHS to assess the feasibility of developing a “public” website that would allow individuals, on a voluntary basis, to enter their own PII and submit it

¹ Transportation Security Administration, 2013, *Transportation Worker Identification Card (TWIC)*.
http://www.tsa.gov/stakeholders/frequently-asked-questions-0#who_gets_twic



directly to DHS for a check against the Terrorist Screening Data Base (TSDB). This would be a voluntary method for submitting required information; therefore DHS would only be responsible for setting up the site and not entering information.

Once an individual submits information to the website, DHS could automatically issue the individual a “PSP Number” which the individual would then provide to any CFATS facility visited. This would allow the facility security to simply verify the ID of the individual requesting access and then by using the PSP number he or she provides, run an online check of the “DHS PSP Number Database” to confirm the number is valid and that the individual has been vetted against the TSDB. This proposal is very similar in concept to the current CVI training program in which an individual completes an online form and the system automatically issues a CVI number that he or she can provide to any CFATS facility where CVI information access is requested.

Through the use of web based technology, the burden of collecting information could be significantly diminished and would offer a host of advantages to both DHS and regulated sites, including:

- It would reduce the burden on both the regulated facilities and 3rd party submitters by allowing individuals to voluntarily enter their own PII prior to arrival at a CFATS site.
- It would greatly reduce data privacy collection/retention concerns expressed by both facilities and 3rd party submitters as the volume of PII collected and retained would be reduced.
- It would reduce the number of entry errors due to unfamiliarity with unique spelling or name formats, as well as from simple “typos.”
- As part of the on-line application process, DHS could include the necessary releases, consent forms, privacy notices and/or and other administrative documents associated with collecting PII.
- The use of a PSP Number could provide a simple method for DHS to determine specific facilities to which an individual has been granted access.
- Allowing direct submission by individuals would greatly reduce the amount of time required to process an individual when they arrive on site. This is significant for large facilities that may process hundreds or even thousands of persons through each day.
- This process would facilitate a dramatic reduction in the duplication of PII submissions made to DHS. For example, a UPS driver’s PII would only need to be submitted



once. On future visits to CFATS sites the UPS driver would simply provide his PSP number and verify his identity.

- While DHS cannot require an individual to submit PII, as the employer, CFATS facilities would be able to do so for its employees, as well contractors as a requirement of employment.

The CFATS PSP proposal is unlike any other federal credential program as it attempts to place responsibility for initiating the vetting process on the facility rather than the individual. While the additional options offered in this ICR do a better job in reducing burden, the website approach could have a major impact on further efficiency.

Conclusion:

Overall, ACC supports the March 2013 ICR, which proves to be a vast improvement from previous PSP proposals. ACC is committed to creating an effective chemical security program that allows our industry to continue to develop innovative solutions, create jobs and enhance security. ACC appreciates the opportunity to provide these comments on DHS' proposal. We look forward to working with DHS in order to address PSP enhancements and implementation at chemical facilities.

Regards,

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Attachment A: ACC Cost Impact Analysis

Number of CFATS Facilities by Type

Based on information from CSAT, DHS has revised the number and type of facilities that would be required to participate in the PSP. Using the new information from DHS, there are 4,000 facilities and only a small fraction of them are categorized in Group A – large open facilities with 100 or more employees where loss of containment is the primary concern. Group A facilities have the most activity in terms of employees, contractors, and visitors. Thus, the reduction in Group A facilities sharply reduced the cost of the PSP.

Number of High-Risk Chemical Facilities in Each Model Facility Category

	# Facilities
Group A	119
Group B	275
Group C	117
Theft	3,490
Total	4,000

Average Number of Employees and Resident Contractors

Based on information from the 2012 CFATS Personnel Surety Program Analysis that analyzed Top Screen submissions, DHS reduced the average number of full-time employees and resident contractors per facility type/tier. For example, the average number of employees and resident contractors for large Group A facilities were reduced significantly. However, it should be noted that the average number of employees and contractors was increased in other Groups such that the total number of employees and contractors is greater than used in the June 2011 ICR.

Average Employees and Resident Contractors for Group A facilities

Tier	Estimate used in June 2011 ICR	2012 CFATS personnel surety program analysis
Tier 1	3,050	719
Tier 2	2,176	783
Tier 3	3,799	713
Tier 4	2,207	884

Limitation to Tiers 1 and 2

In addition, DHS restricts the PSP to only those facilities in Tiers 1 and 2. Thus, of the 4,000 facilities, only 619 would be expected to participate in the PSP. This limitation also sharply reduces the cost burden associated with the PSP.

Number of Facilities per Tier Level

Tier	# Facilities
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Tier 1	126
Tier 2	493
Tier 3	1,185
Tier 4	2,197
Total	4,000

Thus, the number of respondents in Tiers 1 & 2 is reduced to an average of 191,845 per year.

Number of Respondents per Year

Time	Number of Respondents Tiers 1 & 2
Year 1	412,647
Year 2	81,443
Year 3	81,443
Total	575,533
Average	191,845

Updates and Turnover

DHS assumes that 5% of the respondents will be required to update or correct information. Further, they assume that facilities will be required to notify DHS that 20% of respondents no longer have access. This underestimates, however, the 71% turnover associated with frequent visitors that DHS included elsewhere in its analysis. The remaining 51% of the turnover of frequent visitors should be included in all calculations.

Time Per Response

To estimate the total time burden, DHS assumes each initial submission takes 0.5425 hours. In the calculations, however, DHS uses 0.50 hours per initial submission. DHS assumes that updates and removals from turnovers take 0.17 hours (10 minutes).

Cost per Response

DHS assumes \$42 per hour based on comments received in response to the June 2011 ICR.

TWIC Readers

DHS assumes that four Tier 1 and two CFATS facilities that are also regulated under MTSA will choose to install TWIC readers, there is an additional annualized \$399,813 in capital costs that is also included to the total industry burden. This is based on an average annualized capital cost of \$99,953 per facility.

Total Annualized Cost Burden

DHS calculates that the total annualized cost burden associated with time spent complying with the PSP to be \$4.37 million per year over three years. Including the average annual capital cost



of TWIC readers for 4 facilities, the total annualized cost rises to \$4.77 million. However, DHS made two errors which lowered their annualized costs. By using 0.5 hours in the calculations rather than the 0.5425 that they report they have assumed, an additional \$342,443 of cost is added. In addition, by including the remaining turnover of frequent visitors, costs rise by another \$107,693.

Annualized Cost of Personnel Surety Program

	Average Annualized Respondents	Time per Response	Burden (hours)	\$/hour	Total Cost
Initial Submission (100%)	191,845	0.50	95,923	42	\$4,028,745
Updates/Corrections (5%)	9,592	0.17	1,631	42	\$68,487
Removal-Turnovers (20%)	38,369	0.17	6,523	42	\$273,955
Subtotal					\$4,371,187
TWIC Readers					\$399,813
Total Including TWIC					\$4,771,000
Initial Submission (100%)	191,845	0.0425	8,153	42	\$342,443
Turnover of Frequent Visitors (+51%)	15,083	0.17	2,564	42	\$107,693
Subtotal					\$450,136
Total including Error Corrections					\$5,221,135

In using the correct values for Initial Submission and Turnover calculations, the total cost burden on all facilities should be \$5.22 million as compared to the \$4.77 million originally published in the ICR. This is a major difference and adds a substantial cost for each facility. Unfortunately, this significant expense could cause some facilities to divert precious resources away from security investment, as well as job creation and place an additional burden on current business practices.

