

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 backgrounds 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

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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.

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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).

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**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