



May 20, 2013

CFATS Program Manager
Department of Homeland Security
245 Murray Lane, SW., Mail Stop 0610
Arlington, VA 20528-0610

**Re: U.S. Department of Homeland Security
Docket No. DHS-2012-0061**

First Advantage Background Services Corporation (First Advantage) is a leading provider of risk mitigation and background screening solutions. Specifically, First Advantage provides background screening solutions to the U.S. chemical and petrochemical industry, including for facilities that are regulated by the Chemical Facility Anti-Terrorism Standards (CFATS) under the jurisdiction of the Department of Homeland Security (DHS). Indeed, scores of refineries, chemical processing facilities, and contractor companies are enrolled in a First Advantage background screening program, which operates in conjunction with the Industrial Safety Training Council (ISTC) and the thirteen other members of the Safety Council Security Consortium (SCSC).¹

First Advantage has closely monitored the development of the CFATS program for several years, particularly the personnel surety requirements established by Risk-Based Performance Standard (RBPS) 12. In 2008, 2009, and 2011 First Advantage submitted comments to the docket in response to Information Collection Requests. More recently, on March 22, 2013, DHS published a new Information Collection Request (ICR) in the *Federal Register* regarding the CFATS Personnel Surety Program (PSP) and seeks comments regarding proposal.

Third Party Submission of Personally Identifiable Information (PII): First Advantage believes, and has previously indicated, that authorized third parties should be able to serve as “Submitters” for the purposes of collecting, storing, and exchanging RBPS 12 data with DHS in order to comply with the Terrorist Screening Database (TSDB) requirement of 6 CFR § 27.230(a)(12)(iv). We are pleased that DHS agrees with this position and that it “intends to structure the CSAT Personnel Surety application to allow designees of high-risk chemical facilities to submit information about affected individuals to [DHS] on behalf of high-risk chemical facilities.” 78 Fed. Reg. 17,683. High-risk chemical facilities will specifically have the option to “...submit information about affected individuals by designating one or more individuals associated with a third party ... to a [CSAT] user role(s) designated for third parties....” *Id.* at 17,684.

How, specifically, authorized third parties will be assigned a CSAT user role is not yet known. First Advantage seeks clarification from DHS on the *mechanics* of this process as well as any security or information protection requirements that DHS may require to serve as a “Submitter.”

Recordkeeping and Estimate of Burden: DHS states in the ICR that “...[h]igh-risk chemical facilities are not required to create, keep, or retain records under RBPS 12(iv). If a high-risk chemical facility elects, for its own business purposes, to create, keep, or retain records that identify and manage the submission of information about affected individuals, those records are not government records.” *Id.* at 17,700. However, DHS also states the following:

[DHS] may request information pertaining to affected individuals, previously provided to [DHS] by high-risk chemical facilities or their designees, in order to confirm the accuracy of that information, or to conduct data accuracy reviews and audits as part of the CFATS [PSP].

Id. at 17,686.

¹First Advantage’s relationship with ISTC and the other thirteen SCSC members provides many benefits to the chemical industry, some of which include an effective, systematic screening process, broad geographic coverage, consistency of standards, cost effectiveness of screening “reciprocity,” and timeliness of processing.

If records for affected individuals are not required to be kept, it is unclear (1) how DHS can expect facilities to provide information on individuals to confirm the accuracy of previously submitted PII; or (2) how DHS can subject facilities to “data accuracy reviews and audits.” In other words, the suggestion that facilities and/or their third party designees are not required to create, keep, or retain records related to PII submissions appears at odds with DHS’s assertion that it may request previously submitted information to conduct data accuracy reviews and audits. If facilities will be subject to data accuracy reviews and audits as part of the CFATS PSP, those facilities would, as a practical matter, create, keep, and retain records under RBPS 12(iv). This raises the question of whether such records would be (or should be) considered Chemical-Terrorism Vulnerability Information (CVI).

Concern over recordkeeping is more acute in light of DHS’s requested exemption from the Office of Management and Budget to the Paperwork Reduction Act (PRA) notice requirements, “...which requires federal agencies to confirm that their information collections provide certain reasonable notices under the PRA to affected individuals.” *Id.* at 17,687. The ICR states that an exception will relieve DHS of “the potential obligation to require high-risk chemical facilities to collect signatures or other positive affirmations of these notices from affected individuals.” *Id.*

However, the ICR further explains that “[w]hether or not this exception is granted, Submitters must affirm that the required privacy notice regarding the collection of personal information has been provided to affected individuals before personal information is submitted to [DHS].” *Id.* While facilities would not be required to “collect signatures or other positive affirmations” from affected individuals evidencing the required privacy notice was provided, the facility (or its designated Submitter) would still be required to affirm that such notices were provided. In order for a facility to make such an affirmation in good faith, the facility would almost certainly need to obtain signatures or other positive affirmations from affected individuals to protect itself against any claims of non-compliance (i.e., failure to provide the required notice). DHS should consider this practical reality in the context of PSP implementation.

Facilities Are Not Managing PII Records in the Normal Course of Business for All Affected Personnel:

To the extent that facilities may collect some of the PII referenced in the ICR for facility *employees*, facilities do not routinely collect such PII from *contractors* or *visitors*. Contrary to DHS assumptions, therefore, facilities would create these records solely to comply with the requirements of the CFATS PSP (i.e., in the absence of CFATS, many facilities likely would not retain such records). Accordingly, DHS did not estimate the potential recordkeeping burden incurred by facilities as a result of the CFATS PSP. DHS cites 5 CFR § 1320.3(b)(2) as its authority in omitting this estimate, which “directs federal agencies to not count the costs associated with the time, effort, and financial resources incurred in the normal course of their activities (e.g., in compiling and maintaining business records) if the reporting, recordkeeping, or disclosure activities are usual or customary.” *Id.* at 17,700. We believe that DHS’s omission of such costs was incorrect, and the existing burden estimate does not present a fair representation of the burden.

Thank you for the opportunity to submit comments to the record. Should you have any questions or require additional information, please do not hesitate to contact me by telephone (202-321-3585) or by email (nicolas.dufour@fadv.com).

Sincerely,



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