

April 23, 2012

The Honorable Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Eisenhower Executive Office Building
Washington, DC 20503

Dear Administrator Sunstein:

We are writing regarding Information Collection Request (ICR) Reference Number 201105-1670-002, "Chemical Facility Anti-Terrorist Standards (CFATS) Personnel Surety Program (PSP)," which was submitted by the US Department of Homeland Security (DHS) most recently, last year. Due to the major impacts and absence of any tangible security value this program will have on affected industries, the undersigned organizations request that the Office of Management and Budget not allow action on this ICR.

Under the CFATS program, Risk-Based Performance Standard (RBPS) 12 is the personnel surety standard that governs access to high-risk facilities. Personnel surety is but one part of an overall access control plan at a facility. An appropriate access control system is a critical part of any overall site security plan and must function in concert with the other security measures in that plan. RBPS 12, per the direction of Congress, was written as a performance standard to identify known or suspected terrorists and to allow the impacted facility to make the determination of how they apply access controls systems at their facility to enhance their overall security plan in the most efficient manner. Prescriptive standards would not allow individual facilities to implement a system that provides the appropriate level of security specific to their needs and vulnerabilities. In fact, overly prescriptive standards can reduce the overall security of a facility by requiring the allocation of resources from a more vulnerable area that could carry more risk. As such, the requirements under such a standard must increase the overall security of the facility, be feasible, and meet security objectives for both the enforcing agency and the implementing industry partner. However, these principles are lacking in the PSP proposal currently pending on the ICR docket.

The ICR creates a regulatory standard for access into CFATS facilities, but instead of complying with the risk based framework that is mandated under CFATS, DHS deviates from Congress' intent by prescribing a program based in compliance and information gathering instead of a system that focuses on making a facility more secure. Industry has on a number of occasions raised concerns regarding redundant checks against the Terrorist Screening Database (TSDB), unnecessary burdens and liability due to information collection and submission, and a misrepresentation of the personnel and financial burdens created by this ICR. In addition to the impact to the regulated facility this program would require duplication of existing federal government vetting programs that could be used to meet RBPS 12 standards, needlessly wasting scarce federal resources.

The PSP program under review would require companies to submit to DHS the names of personnel (e.g. employees, contractors and visitors) who are granted unescorted access to critical assets at least 48 hours prior to gaining access. Facilities that have hundreds (and in cases, thousands) of entries daily will suffer major disruptions to operations. As mentioned earlier, this would likely require a re-allocation of resources to this effort with potential detrimental impact to other security countermeasures deployed

at the facility. Providing this information to DHS in some cases is virtually impossible and entirely duplicative as many individuals already possess federally-issued background credentials that are capable of being perpetually vetted by the issuing agency against the TSDB.

Instead, DHS should allow companies the option to accept existing federal finger-print based background check credentials to satisfy all the requirements of RBPS 12. This would in turn allow industry to meet the requirements of RBPS 12 without adding any additional burdens or costs to both DHS and industry, and without creating a redundant program that ultimately provides no additional security value. In addition, the 48 hours “entry” list requirement prior to entry provides minimal increase in security to the individual facility. DHS already has a panoply of programs that screen against the TSDB including the DOT/TSA assessment for the Hazardous Materials Endorsement, the joint TSA-U.S. Coast Guard Transportation Worker Identification Credential and the Customs and Border Protection’s FAST (Free and Secure Trade) card.

Despite ongoing efforts to work with DHS on these concerns, we are disappointed that we have been unable to make progress. As recently as March, DHS claimed that it was unwilling to allow regulated facilities to accept other, federally-issued, fingerprint-based, security credentials as a means to satisfy RBSP 12, without also requiring their own agency double-check under RBSP 12. Moreover, DHS told participants it had made changes to the PSP ICR under review at OMB to accommodate industry concerns. These changes, which would allow third-parties to make submissions to DHS and companies to submit information company-wide and not just site-by-site, provide no accommodation for individuals and companies that intend to meet RBPS 12 by reliance on proven, robust federally-issued, fingerprint-based security credentials. As such, these changes simply do not address industry concerns about the PSP program. Further, in an attempt to address industry concerns, the agency has offered a phased ramp up of the PSP to enable it to make adjustments as the program grows. We find this offer of “corrective action” after the PSP has been inaugurated inappropriate in the realm of facility security. Additionally, recent disclosures from its own leadership indicating a lack of both management skills and expertise within the CFATS program confirm that DHS currently does not have the ability to implement this component of the program. Congress is mindful of these concerns regarding the PSP. In both HR 901 and HR 908 they propose to direct DHS to accept at least DHS-issued security background check credentials rather than waste taxpayer’s money in government duplication.

By addressing the issues identified in the DHS report and by taking advantage of the knowledge and expertise currently in existence within the industry through partnership and communication, we believe the CFATS credentialing requirements of RBPS 12 can be met through existing federal government credentialing programs. As such the undersigned organizations believe this ICR to be inappropriately timed and should not be allowed to move forward until the issues at hand and the concerns described in this letter are addressed.

Sincerely,

Agricultural Retailers Association
American Chemistry Council
American Coatings Association
American Forest & Paper Association
American Fuel & Petrochemical Manufacturers
American Gas Association
American Petroleum Institute

American Trucking Associations
CropLife America
Institute of Makers of Explosives
International Association of Refrigerated Warehouses
International Liquid Terminals Association
International Warehouse Logistics Association
National Agricultural Aviation Association
National Association of Chemical Distributors
National Association of Manufacturers
National Oilseed Processors Association
National Pest Management Association
North American Millers' Association
Petroleum Marketers Association of America
Society of Chemical Manufacturers & Affiliates
The Fertilizer Institute
U.S. Chamber of Commerce