



June 4, 2013

Submitted electronically via <http://www.regulations.gov>

Subject: *Information Collection Request; Chemical Facility Anti-Terrorism Standards Personnel Surety Program*


Dear Sir or Madam:

The Edison Electric Institute (EEI) submits the attached comments in response to the Department of Homeland Security's notice and request for comments entitled *Chemical Facility Anti-Terrorism Standards Personnel Surety Program; Docket DHS-2012-0061, 78 Fed. Reg. 17680 (Mar. 22, 2013)*. The information collection request seeks comments on the proposed implementation of the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program.

EEI is the association of shareholder-owned electric companies, international affiliates and industry associates worldwide. Our U.S. members serve 98 percent of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. Many of our members own and operate facilities which are subject to the CFATS Personnel Surety Program.

EEI appreciates the opportunity to provide comments on this matter. Questions may be directed to Gail Royster (groyster@eei.org, 202-508-5587) or Victoria Calderón (vcalderon@eei.org, 202-508-5757).

Sincerely,


Gail Royster

GR:vlc
Attachment

**COMMENTS OF THE EDISON ELECTRIC INSTITUTE ON THE
CHEMICAL FACILITY ANTI-TERRORISM STANDARDS
PERSONNEL SURETY PROGRAM**

Docket No. DHS-2012-0061

June 4, 2013

The Edison Electric Institute (“EEI”), on behalf of its member companies, hereby respectfully submits these comments in response to the 60-day notice and request for comments; new information collection request entitled *Chemical Facility Anti-Terrorism Standards Personnel Surety Program*, issued by the Department of Homeland Security (“DHS”) in Docket No. DHS-2012-0061. 78 *Fed. Reg.* 17680 (Mar. 22, 2013) (“ICR”). On May 21, 2013, the deadline for submission of comments was extended to June 4, 2013. 78 *Fed. Reg.* 29759 (May 21, 2013).

Under section 550 of the Department of Homeland Security Appropriations Act of 2007, Public Law 109-295 (2006) (“Section 550”), DHS is authorized to regulate the security of high-risk chemical facilities using a risk-based approach. Pursuant to Section 550, DHS promulgated 18 risk-based performance standards (“RBPS”) under the Chemical Facility Anti-Terrorism Standards (“CFATS”). Chemical facilities which have been classified as high-risk are required to submit a Site Security Plan (“SSP”) to DHS which show compliance with each of the RBPS. The instant ICR relates specifically to one RBPS, suggesting three alternatives for implementing RBPS 12. Pursuant to the Paperwork Reduction Act (“PRA”) of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35), DHS is submitting the suggested information collection methods to the Office of Management and Budget (“OMB”), and requests comments on the estimated burden

that these proposed approaches to information collection would impose. EEI supports DHS' efforts to eliminate access by individuals with terrorist ties to the restricted areas and/or critical assets at the nation's high-risk chemical facilities.

EEI is the association of shareholder-owned electric companies, international affiliates and industry associates worldwide. Our U.S. members serve 98 percent of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. Many of EEI's members own and operate facilities which have been or will be classified as high-risk chemical facilities and are therefore subject to the CFATS Personnel Surety Program. EEI members are required to comply with the Section 550 RBPS. As such, EEI has a critical interest in the procedures by which the RBPS will be implemented.

Background

RBPS 12 requires covered facilities to “perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets.” 6 C.F.R. §27.230. The background checks and credentials include “(i) measures designed to verify and validate identity; (ii) measures designed to check criminal history; (iii) measures designed to verify and validate legal authorization to work; and (iv) measures designed to identify people with terrorist ties.” *Id.* Under Section 550, each facility must submit an SSP which demonstrates compliance with the RBPS, including RBPS 12, the subject of the current ICR. The ICR states that “the purpose of the CFATS Personnel Surety Program is to identify individuals with terrorist ties that have or are seeking

access to the restricted areas and/or critical assets at the nation’s high-risk chemical facilities.”

ICR at 17682.

In order to accomplish this purpose, DHS offers three information collection options for high-risk chemical facilities to use to comply with RBPS 12. Owners and operators of covered chemical facilities would have the option of using any of the three approaches, or some combination of the three. With the ICR, DHS describes the nature of the information collection, the categories of respondents, the estimated burden, and the estimated burden cost necessary to implement RBPS 12. DHS seeks comments on whether the proposed collection of information is necessary for the proper performance of the functions of the agency, and on the accuracy of the agency’s estimate of the burden of the proposed collection of information.

Comments

Facility Personnel Subject to the ICR

DHS plans to submit the instant ICR to OMB in order to ensure that the proposed information collection methods comply with the PRA. Given that goal, it is imperative to keep in mind the overall purpose of the PRA, which is to “minimize the paperwork burden for [the regulated community] resulting from the collection of information by or for the Federal Government.” 44 U.S.C. §3501(1). Inherent in this purpose is the recognition that DHS should seek to avoid unnecessarily duplicative collection of information. Under the PRA, DHS should seek to frame its information collection request as narrowly as possible, allowing DHS to meet the purposes of

the CFATS program without unduly burdening the regulated industry. As such, DHS should be clear and explicit as to which set of individuals will be impacted by the ICR.

Unfortunately, the ICR is unclear as to which set of individuals would be subject to vetting for terrorist ties. There are a number of references to “affected individuals” throughout the ICR, some of which are inconsistent. For example, in the *Supplementary Information* section, the ICR references affected individuals as “facility personnel or unescorted visitors with access to restricted areas or critical assets at high-risk chemical facilities.” ICR at 17681. In the same section, the ICR states that the “CFATS Personnel Surety Program will identify individuals with terrorist ties that have or are seeking access to the restricted areas and/or critical assets at the nation’s high-risk chemical facilities.” *Id.* Yet, in a subsequent section, “*Who is impacted by the CFATS personnel surety program?*” the ICR states that “affected individuals are (1) facility personnel who have access, either unescorted or otherwise, to restricted areas or critical assets, and (2) unescorted visitors who have access to restricted areas or critical assets.” ICR at 17683.

Taken together, these various statements create confusion as to which individuals will be subject to the CFATS personnel surety program. Although the ICR makes clear that unescorted visitors will be subject to the personnel surety program requirements, it is unclear which facility personnel will be subject to the program. It is not clear if all facility personnel are subject to vetting, or only those who have access to restricted areas and critical assets. It is also unclear if facility personnel are subject to the program even if they are only granted access on an escorted basis.

Finally, the ICR is also unclear as to its treatment of nontraditional employees at high-risk chemical facilities. As it stands, the language of the ICR does not provide any guidance to owners and operators of covered facilities with regard to contractors, on-site vendors, or corporate employees who are not typically present at a covered facility.

While EEI supports DHS' efforts to prevent individuals with terrorist ties from accessing restricted areas and critical assets, it is not feasible for EEI members to effectively implement the personnel surety program given the confusion as to which individuals are impacted by the ICR. EEI respectfully suggests that DHS explicitly set out the set of individuals that will be impacted by the ICR. EEI agrees that, in the interest of national security, it is beneficial to vet facility personnel who have unescorted access to restricted areas and critical assets, and supports this narrow implementation of the personnel surety program.

Effect of Personnel Vetting

In estimating the burden of collecting the required information, DHS acknowledges that some individuals may have access to multiple high-risk facilities. For these individuals, the ICR states that each will be required to be vetted at each facility at which he or she will have access to restricted areas or critical assets. In response to previous comments laying out the unnecessary burden that this repeat vetting would impose, DHS responds that, according to its consultation with "industry," "the duplicate submission of records about affected individuals is a common industry practice for companies when managing information about individuals." ICR at 17684.

While EEI appreciates the effort that DHS has conducted in order to accomplish its personnel surety goals, it must be pointed out that EEI members, in fact, do not regularly perform duplicative background checks on employees. In light of the goals of the PRA, and in order to minimize duplicate submissions of information and the commensurate burden on owners and operators of covered facilities, EEI suggests that DHS should not require repeat submissions for the same individual at multiple facilities.

Application to Tiers 3 and 4

Finally, in the ICR, DHS states that it is limiting the implementation of the Personnel Surety Program to Tier 1 and Tier 2 high-risk chemical facilities. While EEI supports the limited approach to these information collection requirements, the ICR is unclear, as written, as to what procedures will be followed for future implementation at Tier 3 and Tier 4 facilities. Moreover, all of the tables of estimated costs and burden present numbers and calculations for facilities at all four tiers. EEI requests that DHS clarify that Tier 3 and Tier 4 facilities will not be subject to the Personnel Surety Program at this time. EEI further requests that DHS clarify the procedure that will be followed if and when it becomes desirable to extend the implementation to other facilities. In order to minimize the burden to owners and operators of Tier 3 and Tier 4 facilities, DHS should make clear whether it intends to utilize the same ICR for these facilities in the future, or if a new ICR will be forthcoming, providing an opportunity for owners and operators to comment on the process for these facilities.

Conclusion

EEI supports DHS' efforts to identify individuals with terrorist ties that have or are seeking access to the restricted areas and/or critical assets at the nation's high-risk chemical facilities. As such, EEI understands the benefits of implementing the CFATS Personnel Surety Program. However, EEI believes that such a program should be crafted in a way that achieves its purpose without imposing undue burdens upon the regulated industry. EEI believes that DHS can minimize confusion, and therefore the costs and burden associated with the ICR, by providing clarification on some key points. DHS should explicitly state that facility personnel will only be required to submit to the information collection requirements if they have unescorted access to critical assets and/or restricted areas. Moreover, DHS should allow owners and operators of high-risk facilities to submit information for individuals one time, rather than conducting duplicative information collections for multiple facilities within a company. Finally, DHS should clarify that the information collection requirements apply only to Tier 1 and Tier 2 facilities, and that any further extension of implementation to Tier 3 and Tier 4 facilities will be accompanied by a new notice and information collection request.