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SUBJECT: Department of Homeland Security (DHS) Notice: Chemical Facility Anti-Terrorism Standards Personnel Surety Program, Docket No. DHS-2012-0061

The American Petroleum Institute (API) offers the following comments on the Department of Homeland Security's Information Collection Request (ICR) [Docket No. DHS-2012-0061], "Chemical Facility Anti-Terrorist Standards (CFATS) Personnel Surety Program (PSP)." API is a national trade association that represents over 550 members involved in all aspects of the oil and natural gas industry, including producers, refiners, suppliers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of the industry.

API members are committed to implementing the most effective security programs while minimizing vulnerabilities at their facilities. To achieve this objective, any security program must be holistic in its approach. As such, API members reiterate the message we sent to OMB in the Spring of 2012 that personnel surety is but one part of an access control program at a facility, and an appropriate access control program is a critical part of any overall site security plan and must function in concert with the other security measures in that plan.

Under the CFATS program, Risk-Based Performance Standard (RBPS) 12 is the personnel surety standard that governs access control to high-risk chemicals of interest (COI). 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 at their facility to enhance their overall security plan in the most efficient manner. Prescriptive standards will not allow individual facilities to implement a system that provides the appropriate level of security specific to their needs and vulnerabilities because resources are allocated to fit requirements rather than risk. Simply put, a "one size fits all" approach will not work for the oil and gas industry as the industry is filled with great variability from facility to facility. As such, any objectives under CFATS RBPS 12 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 remain absent from the PSP proposal currently pending on the ICR docket. An effective proposal should contain elements that allow facilities and operators to efficiently vet and process workers and contractors without impeding operations. Industry's basic expectation is that the program will ensure individuals with terrorist ties are not granted authorized entry, regardless of investigative status or internal government procedures.

DHS states their intent 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.' However, the proposal as defined in the ICR, does not provide regulated facilities with the same assurances, and it therefore will not provide any additional security for the facility or the personnel operating there. Specifically, there is no procedure outlined in the ICR that describes notification criteria to facilities or organizations when individuals seeking access to COI's have been identified by the federal government as having known or suspected ties to terrorism. This lack of feedback renders the PSP useless to the facility because as written, the PSP does not enable facilities and organizations to effectively manage security risk, whether using existing credentialing programs or any other process. Ultimately, individuals who are known or suspected (to DHS) to have terrorist ties will be granted access to COI's. Without notification to regulated facilities, the PSP program will not meet DHS' or Congress' intended goal to enhance security at chemical facilities and that of the Nation.

The following sections provide more specific descriptions of issues API members believe exist within the CFATS PSP ICR, DHS proposed processes, and the data used to reach certain conclusions within the ICR.

48 Hour Notification Period: API members oppose the 48 hour notification period specified by DHS because it neither enhances facility security, nor supports the efficient operations of facilities. The dynamic nature of operations at oil and natural gas refining and production facilities makes the 48 hour period extremely burdensome without adding any additional security value. Twenty-four hour operations at facilities manned often by hundreds, and sometimes thousands of employees and contractors, create significant challenges for operators when access is restricted by advanced notification requirements. In lieu of advanced notification, escorting groups and individuals will also pose logistical and resource challenges for facilities. Escorting requirements, working with finite resources, may impinge on a facility's ability to effectively manage resources and personnel. API members have access procedures currently in place to



prevent unwarranted and unwanted access to their sites and facilities. Advanced notification to DHS will not improve or alter existing procedures without notification of those individuals who have terrorist ties. Unless DHS alters the proposed policy to provide that information to owners and operators, API members will find it difficult to support the suggested structure of the current PSP program.

Lack of Contingency Plans: The ICR does not provide any guidance for contingencies. Specifically, if operations are interrupted or affected, specialized crews and workers are often brought into facilities to make repairs, resume and maintain operations, and to provide necessary equipment and supplies with little or no notice. These activities are often time-sensitive critical to resuming and maintaining safe, business operations, and they are often unplanned. DHS should provide the policies and procedures to follow in such circumstances, and describe enforcement actions/penalties that will be levied if reporting does not take place. The ICR suggests that each facility should independently address these eventualities in their Site Security Plans, but this alone does not provide adequate guidance for facilities. Plans, guidance and expectations should be consistently applied and uniformly implemented to ensure implementation consistency and understanding. By including the agency's permissible contingency plan details within the ICR, DHS will ease the burden for operators as well as the burden on the government during review.

Analysis of Costs and Burden: By utilizing data from various sources, the PSP ICR describes the methodology DHS has used to reach the number of affected individuals at high-risk facilities. However, there are concerns among API members as to why DHS found it necessary to perform additional analysis when the data regarding the numbers of affected individuals has already been submitted by all tiered facilities in their Site Security Plans. This calls into question the validity of the DHS analysis and the accuracy of the agency's assessment of burden and cost to tiered facilities. Without an accurate, trusted assessment, API members will have little confidence in the conclusions DHS has outlined.

Submission of Personally Identifiable Information: API and its members stress the importance of maintaining safe and secure operations at oil and natural gas facilities across the Nation. Safety and security are key elements in all operations and we will continue to work with DHS and ISCD to ensure we are operating in a manner that protects our workers, promotes safe practices, meets regulatory requirements and improves our country's ability to thwart terrorism, in whatever form it may take. While we feel this ICR does not meet these objectives, we are committed to a partnership to constructively and reasonably work towards processes and



procedures that will enhance the security of high-risk facilities. It is critical that owners and operators maintain the ability to choose to implement protective measures as part of their overall strategy to address the RBPSs. Facility owners and operators should have the flexibility to consider other solutions on the basis of the facility, its security risks, and its security program, so long as the suite of measures implemented achieve the targeted level of performance.

Thank you for the opportunity to comment on this information collection request. As has been the case, API and its members are committed to effectively implementing security programs at its facilities, and we look forward to continuing to work with our public sector partners such as DHS as the issue evolves further.

Regards,

A handwritten signature in blue ink that reads "Robin Rorick".

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American Petroleum Institute