



**Homeland
Security**

24 August 2015

Ms. Catherine Cross
Director, Crisis Management & Security,
Regulatory Compliance & Policy
Phillips 66
3010 Briarpark Drive
Houston, Texas 77042

Dear Ms. Cross:

The Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) has forwarded to the Department of Homeland Security your March 2014 letter regarding the February 2014 Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program Information Collection Request (ICR). We are responding to your letter in concert with OMB's approval of the ICR.

Background--Statutory and Regulatory Framework

In the time since the CFATS Personnel Surety Program ICR was submitted to OMB, the President signed into law the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (the CFATS Act of 2014), Pub. L. No. 113-254, which adds provisions related to CFATS to the Homeland Security Act of 2002, as amended, Pub. L. No. 107-296.¹ The Homeland Security Act of 2002² affirmed that the Department must implement a Personnel Surety Program in which the Department is required to establish a capability for high-risk chemical facilities to comply with Risk-Based Performance Standard (RBPS) 12(iv) of CFATS.³ The CFATS Act of 2014 also established additional provisions for the CFATS Personnel Surety Program, to include allowing a high-risk chemical facility to visually verify certain credentials or documents that are issued by a Federal screening program that periodically vets enrolled individuals against the Terrorist Screening Database (TSDB). Under RBPS 12(iv) high-risk chemical facilities are required to implement security measures to identify individuals with terrorist ties. The approved CFATS Personnel Surety Program ICR aligns with the CFATS regulations and section 2102(d)(2) of the Homeland Security Act of 2002.

¹ Section 2 of the CFATS Act of 2014 adds a new Title XXI to the Homeland Security Act of 2002. Title XXI contains new sections numbered 2101 through 2109. Citations to the Homeland Security Act of 2002 throughout this document reference those sections of Title XXI. In addition to being found in amended versions of the Homeland Security Act of 2002, those sections of Title XXI can also be found in section 2 of the CFATS Act of 2014, or in 6 USC §§ 621 – 629.

² The CFATS Act of 2014 specifically adds Section 2102(d)(2) which requires the Department to implement a Personnel Surety Program.

³ The specific requirement is found at 6 CFR § 27.230(a)(12)(iv).

The CFATS Act of 2014 does not conflict with 6 CFR § 27.230(a)(12)(iv) as promulgated on April 9, 2007 and is consistent with the regulatory text of the CFATS Interim Final Rule (IFR). However, the CFATS Act of 2014 does conflict with IFR preamble because the preamble did not consider visual verification as a means to sufficiently verify an affected individual's enrollment in the Transportation Worker Identification Credential (TWIC) program, Hazardous Materials Endorsement (HME) program, or the Trusted Traveler program. The Department continues to believe that visual verification has significant security limitations. However, as a result of the CFATS Act of 2014, the Department will now accept visual verification of certain credentials or documents as a means to meet RBPS 12(iv).

It bears noting that the burden estimates of the ICR have not changed as a result of the CFATS Act of 2014 or as a result of any programmatic changes to the CFATS Personnel Surety Program. Therefore, the Department has the authority to implement the CFATS Personnel Surety Program as described in the CFATS IFR with modifications to account for new statutory requirements in the CFATS Act of 2104.

Multiple Options for Compliance with RBPS12(iv)

As mentioned above, in view of the Personnel-Surety-focused language of the CFATS Act of 2014, the Department will accept visual verification as a method to comply with RBPS 12(iv). Thus, in addition to the three options for complying with RBPS 12(iv) described in the 30-day Paperwork Reduction Act (PRA) notice,⁴ the Department is making available a fourth option for high-risk chemical facilities to comply with RBPS 12(iv): Option 4 – *Visual Verification Of Credentials Conducting Periodic Vetting*. Option 4 will allow a high-risk chemical facility to satisfy its obligation under 6 CFR § 27.230(a)(12)(iv) to identify individuals with terrorist ties using any Federal screening program that periodically vets individuals against the TSDB if:

- The Federal screening program issues a credential or document;
- The high-risk chemical facility is presented a credential or document by the affected individual; and
- The high-risk chemical facility verifies that the credential or document is current in accordance with its Site Security Plan (SSP).

As noted previously, however, visual verification of existing credentials carries with it inherent security limitations and provides less security value than the other options available under the CFATS Personnel Surety Program because a visual inspection of a credential alone cannot necessarily confirm whether a credential is expired, revoked, fraudulent or otherwise not valid. For example:

- The visual verification of a TWIC will not reveal if the TWIC has been revoked by the Transportation Security Administration (TSA); and

⁴ The 30-day Federal Register notice that solicited comment about the CFATS Personnel Surety Program ICR may be viewed at <https://federalregister.gov/a/2014-02082>.

- The visual verification of an HME on a commercial driver's license will not reveal if the endorsement has expired or been revoked.

High-risk chemical facilities are encouraged to review all the available options and carefully consider which option (or combination of options) best addresses their specific security situation. In addition to the options described in the 30-day notice and in this letter, high-risk chemical facilities are welcome to propose in their SSPs or Alternative Security Programs (ASP) options not described in this document. The Department will assess the adequacy of such alternative or supplemental options on a facility-by-facility basis.

Specific Questions Raised by Phillips 66

Having taken note of the changed landscape and additional options afforded by the CFATS Act of 2014 and noting that your letter to OMB was drafted several months prior to enactment of this significant piece of legislation, the Department would like to take this opportunity to address the specific questions and concerns you raised in your March 2014 letter.

- (1) **Phillips 66 asked whether “the approval of the [CFATS Personnel Surety Program] ICR [will] modify or extend the scope of ISCD’s regulatory authority?” and, if so, to what extent. Phillips 66 also asked about the concept of “situational awareness” and about the ultimate objective of the Personnel Surety Program and about whether this objective may be “impeded by using the current consolidated Federal process used by other agencies to verify the existence of terrorist ties?”**

The Department, through this ICR, is not modifying or extending the scope of ISCD’s regulatory authority. The objective of the CFATS Personnel Surety Program is to identify affected individuals with terrorist ties that have or are seeking access to restricted areas or critical assets at high-risk chemical facilities.

The Department does intend to maintain situational awareness about affected individuals with terrorist ties for the purpose of (1) providing CFATS-related background information to federal law-enforcement organizations as needed to support the investigative activities that fall within their scope of authority, and (2) notify high-risk chemical facilities when appropriate, commensurate with law enforcement and intelligence requirements, about those affected individuals with terrorist ties.

- (2) **Phillips 66 asked whether the Department “is granted the authority to collect information [and] what will this authorization allow the [Department] to do with that information, specifically?”**

The approved CFATS Personnel Surety Program ICR allows the Department to collect certain information about affected individuals from high-risk chemical facilities (final Tier 1 and Tier 2) or their designees to either perform vetting under Option 1 for terrorist ties, or electronically verify the affected individuals’ enrollments in other programs that perform equivalent TSDB vetting under Option 2. The approved ICR also allows the Department to collect other

information necessary to manage the ancillary data collection requirements under the CFATS Personnel Surety Program. Additional details related to information the Department will collect is described in the 30 day PRA notice.⁵

- (3) **Phillips 66 asked whether “ISCD currently has the necessary authority and expertise to investigate and act upon terrorist incidents” and whether “approval of this ICR explicitly provides the Department that authority?”**

The Department’s National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (DHS/NPPD/IP/ISCD) does not have and does not plan to seek the authority to investigate or to take law enforcement or intelligence actions following terrorist events. It bears noting, however, that the approval of this ICR does not modify the authorities of other parts of the Department or other parts of the Federal Government to perform their existing investigative or other duties with regard to terrorist incidents.

- (4) **Phillips 66 asked for an update to the figure reported by the Office of the Inspector General (OIG) with regard to the amount of funding that has been provided by ISCD to TSA. Phillips 66 asks how much of the funding “will the underlying “situational awareness” program cost going forward?”**

Since the March 2013 Office of the Inspector General (OIG) report, NPPD has expended an additional \$3.3 million for Transportation Security Administration (TSA) vetting services. These costs include Operations & Maintenance infrastructure costs that are necessary to enable vetting and that are shared amongst all other TSA vetting programs. A small percentage of the costs are for the shared services that provide situational awareness. NPPD also pays a minimal cost for U.S. Customs and Border Protection (CBP) services related to verifying the enrollment of affected individuals in the Trusted Traveler program under Option 2.

- (5) **Phillips 66 asked why “the details of the agency’s intended use and objectives of the collected information [were] repeatedly omitted from this notice (and each of the previous CFATS Personnel Surety Program ICR notices going back several years)[.]”**

The Department has clearly stated that the purpose of the collection is to identify those affected individuals with terrorist ties. The Department has most recently included all required content in its 60-day notice, 30-day notice, and ICR, and has fully complied with the requirements of the PRA.

- (6) **Phillips 66 asked whether the details of the agency’s planned program for managing the data discussed in this ICR have been evaluated for consistency**

⁵ Descriptions of “other information” collected under the CFATS Personnel Surety Program may be viewed at <https://www.federalregister.gov/articles/2014/02/03/2014-02082/chemical-facility-anti-terrorism-standards-personnel-surety-program#p-200>.

against the 9/11 Commission's recommendations, HSPD-6, and HSPD-11 and whether this ICR deviates from the objectives of those Directives in any way.

The CFATS Personnel Surety Program has been evaluated by the Department and has been determined to be consistent with and align with the appropriate agreements, infrastructure, and processes related to terrorist screening within the U.S. Government. Our objective continues to be to identify affected individuals with terrorist ties that have or are seeking access to restricted areas or critical assets at high-risk chemical facilities. The Department has sought to do so in a way that affords high-risk chemical facilities numerous options for compliance and leverages existing programs that vet individuals for terrorist ties.

(7) Phillips 66 asked about what oversight is necessary or expected for the agency in managing the Personnel Surety Program.

The Department will continue to exert appropriate oversight over the CFATS Personnel Surety Program. This oversight will continue to involve the Department's Privacy Office and its Screening Coordination Office as well as standard management oversight by the NPPD, and - as appropriate - by the Department's Office of Civil Rights and Civil Liberties, the Government Accountability Office and the Department's OIG.

(8) Phillips 66 suggested that “[b]efore granting authority for ISCD to begin collecting information [under the CFATS Personnel Surety Program ICR] ... there [should perhaps be a] verification of the [ICR's] objectives[.] Phillips 66 also suggests that OMB should verify “whether the objectives are supported by the agency’s statutory authority. Additionally, Phillips 66 asked whether “the details of the underlying program to achieve ‘situational awareness’” will be proposed in a separate rulemaking or whether it “is implied. . . within this ICR request?” Finally, Phillips 66 asked whether “this ICR, limited to the data collection process, [is] considered sufficient notice for the evaluation and approval of this underlying program?”

In the 2007 CFATS IFR and in subsequent PRA publications—as well as in this letter, the Department has clearly stated that the purpose of the collection is to identify those affected individuals with terrorist ties - an objective which, as detailed in those documents and in the first part of this letter - is firmly supported by statutory authority. With the approval of the ICR, the Department has satisfied the necessary requirements to implement the CFATS Personnel Surety Program with modifications to account for the new statutory provisions set forth in the CFATS Act of 2014.

With regard to “situational awareness,” it should again be noted that the CFATS Personnel Surety Program is designed to identify affected individuals with terrorist ties who have or are seeking access to restricted areas or critical assets at high-risk chemical facilities. The Department does intend to maintain situational awareness about affected individuals with terrorist ties for the purpose of (1) providing CFATS-related background information to federal law-enforcement organizations as needed to support the investigative activities that fall within their scope of authority, and (2) notify high-risk chemical facilities when appropriate,

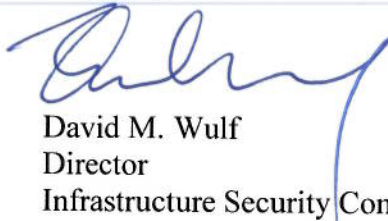
commensurate with law enforcement and intelligence requirements, about those affected individuals with terrorist ties.

Our goal in complying with the PRA has been to solicit and respond to public comment about the information that the Department plans to collect pursuant to the CFATS Personnel Surety Information Collection Request. The Department's PRA publications have detailed, among other things, (1) which data points the Department will collect in order to conduct vetting against the TSDB; (2) how the Department will collect those data points; and (3) how the Department will perform vetting against the TSDB. This type of program description is the type of detail that is appropriate in a PRA notice, because it allows the Department to solicit comments on how to improve the proposed information collection and to consider ways to reduce the burden the CFATS Personnel Surety Program will place on affected individuals and high-risk chemical facilities.

Because the CFATS Personnel Surety Program was established in the CFATS rulemaking conducted in 2007, following public notice and comment, the Department is not seeking evaluation or approval of the regulatory requirements for the CFATS Personnel Surety Program via publication of PRA materials.

You and Phillips 66 have been leaders in the personnel surety arena and in furthering the overall objectives of the CFATS program, and the Department is appreciative of your continuing efforts to secure America's highest-risk chemical facilities - an effort that is essential to the Nation's critical infrastructure security and resilience.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Wulf", with a long vertical line extending downwards from the end of the signature.

David M. Wulf
Director
Infrastructure Security Compliance Division