



institute of makers of explosives

The safety and security institute of the commercial explosives industry since 1913

February 26, 2018

Department of Homeland Security
National Protection and Programs Directorate (NPPD)
Infrastructure Protection
Infrastructure Security Compliance Division
ATTN: 1670-0029,
245 Murray Lane SW, Mail Stop 0610
Arlington, VA 20528-061

RE: DHS-2017-0037¹

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

Dear Desk Officer:

On behalf of the Institute of Makers of Explosives (IME), I am submitting comments on the U.S. Department of Homeland Security (DHS) Infrastructure Security Compliance Division's (ISCD) information collection request (ICR) that deals with one of four personnel surety standards under risk-based performance standard (RBPS) 12 of the Chemical Facility Anti-Terrorism Standards (CFATS) program. This standard requires "measures ... to identify people with terrorist ties."² ISCD envisions this "Personnel Surety Program" (PSP) as the means to satisfy the "terrorist ties" standards.

Interest of the IME

The IME is a non-profit association founded to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. The IME represents U.S. manufacturers and distributors of commercial explosive materials and oxidizers as well as companies providing related services. These products are used in every state of the Union, and they are literally the workhorse of our industrial society for which there is currently no alternative. Explosives are essential to energy production, metals and minerals mining, construction activities and supplies, and manufacture of consumer products. IME members fully support the vetting standards established by RBPS-12. Our workers have been subject to these vetting standards through other Federal agency programs since 2003. Thus, IME members required to conform to the ISCD personnel surety requirements could be burdened by having to comply with two or more different agency's vetting programs, depending on the option chosen.

Background

Since 1970, the safety and security of explosives has been closely regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) under the Organized Crime Control Act of 1970 (OCCA), and later by the Safe Explosives Act of 2002 (SEA). Despite this regulation by ATF, the CFATS program includes

¹ 82 FR 61312

² 6 CFR 27.230(a)(12)(iv).

certain explosives materials. Explosives manufacturing also involves chemical precursors that are covered by the CFATS program.

ATF mandates requires persons who import, manufacture, store, or distribute explosives to obtain a license, and those who receive or use explosives and do not have a license, to obtain a permit. Among the many requirements that these business entities must meet in order to obtain a license or a permit is to submit to ATF for a background check the names of all employees who are authorized to possess³ explosives or those empowered to make management decisions or set company policies. The standards for the background checks required by ATF are the forerunner of the background check standards that were subsequently adopted by DHS for the plethora of programs it administers for transportation workers.⁴ These same standards are the basis for RBPS 12. All of these programs include a check for “terrorist ties” by vetting against the terrorist screening database (TSDB) the names of individuals needing access privileges to security-sensitive areas, assets, or activities.⁵ These programs are operational and have been used for years to successfully vet populations in need of security assessments. While we believe the CFATS program should exempt facilities regulated by the ATF, including the PSP requirements, we understand that concern is outside of the scope of this ICR.

Comments

Partially due to the hard work of the IME, included in the CFATS Act of 2014 was a provision that allows a covered chemical facility to, “...satisfy its obligation under the standard by using any Federal screening program that periodically vets individuals against the terrorist screening database, or any successor program...”⁶ DHS subsequently amended the CFATS PSP to include an option that meets the requirement set forth in the law. As previously noted, IME members must vet their employees to satisfy ATF mandates, and are expected to use Option 4 outlined in the ICR to meet the requirements of the PSP. IME wishes to alert DHS that this option exists to prevent additional duplication of effort to meet security requirements by yet another Federal agency. For this reason, IME strongly urges DHS to not include additional preconditions to the requirement that would preclude IME members from using ATF vetting to comply with the PSP requirements.

IME further requests that DHS allow a third-party review of the PSP program as it applies to Tier 3 and 4 facilities after a suitable period of time to determine if the program adds commensurate value to the security of the nation.

Thank you for the opportunity to comment.

John Boling

John Boling

Vice President of Government Affairs

³ “Possession” is interpreted as both actual and constructive.

⁴ Hazardous Materials Endorsement (HME) threat assessment, Transportation Worker Identification Credential (TWIC), Free and Secure Trade credential, and Trusted Traveler programs.

⁵ The TSDB is a consolidated database of terrorist watchlist information administered by the Federal Bureau of Investigation (FBI) through the Terrorist Screening Center (TSC). The TSC was created by the September 16, 2003, Homeland Security Presidential Directive-6 (HSPD-6), which directed the TSC to integrate all existing U.S. government terrorist watchlists.

⁶ CFATS Act of 2014, Public L. No. 113-254, Sec. 2102(d)(2), Dec. 18, (2014).