



February 22, 2018

Department of Homeland Security
National Protection and Programs Directorate
245 Murray Lane SW, Mail Stop 0610
Arlington, VA 20528-0610

RE: Request for Comments on Chemical Facility Anti-Terrorism Standards Personnel Surety Program; Department of Homeland Security Docket No. DHS-2017-0037

The International Liquid Terminals Association (ILTA) is pleased to submit these comments on the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program (PSP) Revised Information Collection Request (Revised ICR), published by the Department of Homeland Security (DHS) in the *Federal Register* on December 27, 2017.

ILTA is an international trade association that represents 82 commercial operators of aboveground liquid storage terminals serving various modes of bulk transportation, including tank trucks, railcars, pipelines, and marine vessels. Operating in all 50 states, these companies own more than six hundred domestic terminal facilities and handle a wide range of liquid commodities, including crude oil, refined petroleum products, chemicals, biofuels, fertilizers, animal fats, and vegetable oils. Customers who store products at these terminals include oil companies, chemical manufacturers, petroleum refiners, food producers, utilities, airlines and other transportation companies, commodity brokers, government agencies, and military bases. In addition, ILTA includes in its membership nearly 400 companies that are suppliers of products and services to the bulk liquid storage industry.

Based on direct feedback and experience from our affected members, and other high-risk facilities who have implemented the PSP, ILTA believes that DHS has underestimated the overall burden by excluding certain PSP implementation costs. Specifically, in calculating the overall time burden to implement the PSP, DHS multiplies the estimated total number of affected individuals by the time, per individual, it takes to upload or enter the information into the Chemical Security Assessment Tool (CSAT) PSP application. ILTA neither disputes the accuracy of DHS's affected population estimates nor its estimate for the time burden associated with submitting an individual record (i.e., 10 minutes).

ILTA does, however, dispute DHS's assumption that certain activities and costs related to the PSP data collection process are "usual and customary," – and, therefore, can be properly excluded from the overall burden estimate.

In the Revised ICR, DHS states:

... [T]he Department maintains the same assumptions found in the current information collection request with regards to estimating certain high-risk chemical facility capital costs, such as: ... (3) cost of training high-risk chemical facility personnel to maintain the data collection, submissions, and tracking; and (4) site security officer time to manage the data collection, submissions, and tracking. The Department continues to exclude these costs in accordance with 5 CFR 1320.3(b)(2), which directs Federal agencies to not count the costs associated with the

time, effort, and financial resources incurred in the normal course of their activities (e.g., in compiling and maintaining business records) if the reporting, recordkeeping, or disclosure activities are usual and customary.

The Department continues to exclude these usual and customary costs because the time, effort, and financial resources are costs that high-risk chemical facilities incur to conduct background checks for identity, criminal history, and legal authorization to work under 6 CFR 27.230(a)(12)(i)-(iii), and also under various other Federal, State, or local laws or regulations.

82 Fed. Reg. 61,317.

DHS appears to make the assumption that facilities *already possess* the Personally Identifiable Information (PII) required for PSP compliance: as a result of compliance with the other requirements of Risk-Based Performance Standard (RBPS) 12(i)-(iii) (i.e., identity verification, criminal history, and legal authorization to work), DHS assumes that *additional* data collection is not required and there is no further burden imposed by the PSP beyond submitting the information to DHS in the case of Option 1 (Direct Vetting) or Option 2 (Use of Vetting Conducted Under Other DHS Programs). This assumption is not valid or accurate.

A significant amount of time, effort, and resources *outside the normal course of activities* is necessary to initiate, manage, and maintain PSP data collection, submissions, and tracking. This specifically includes, among other things:

1. Coordinating with CFATS-facility stakeholders, including Human Resources, Procurement, and/or Contract Administration to explain the PSP requirements and determine how best to gather the data from different populations (e.g., employees and resident and non-resident contractors (as discussed below));
2. Developing and providing communications, Privacy Act Notices, and data collection forms to affected individuals;
3. Ensuring that all affected individuals provide the necessary PII – and following-up with those who do not;
4. Training personnel to use the CSAT PSP application; and
5. Ensuring change management (e.g., once the initial data is gathered and uploaded, the facility still must account for new hires and new contractors – and further incorporate this into the facility access process).

Experience has now shown that these efforts are often *outside the normal course of activities* and are undertaken exclusively for the purposes of complying with the PSP.

For some facilities, contractors comprise a large portion of a facility's affected population, but rarely does a facility collect PII from them. Rather, facilities generally rely on the contract company to collect the information to perform the RBPS 12(i)-(iii) background checks on *its* employees. In most cases, a CFATS facility merely verifies that the background check has been completed – but does not have (nor want) the underlying contractor data for privacy and legal reasons (e.g., co-employment). Indeed, in

many cases, the CFATS facility may only receive a “certification letter” from the contract company affirming that its employees have satisfied RBPS 12(i)-(iii) – a practice that is widely accepted by DHS.

Now, in order to comply with the PSP under Option 1 or Option 2, a facility cannot simply rely on an affirmation letter from the contract company – it must actually collect the necessary PII from each affected contractor or designate a representative of each contract company as a PSP Submitter. In the case of the former, this requires coordination and communication with the contract companies as well as internal stakeholders (i.e., Procurement, Contract Administration, etc.) to collect the PII.

In the case of the latter, the facility’s CSAT Authorizer would be tasked with creating separate groups and PSP Submitter accounts for each contract company, which may include hundreds of different contract companies in cases where a large facility is tiered for a release security issue. In addition, the facility’s CSAT Authorizer would need to communicate the PSP requirements to each contract company’s designated PSP Submitter, provide assistance / training to each PSP Submitter regarding the PSP application, and reconcile affected individual lists / follow-up to ensure each contract company submits the PII within required timelines.

In both cases, these efforts are undertaken exclusively for the purposes of complying with the PSP. For this reason, ILTA urges DHS to re-evaluate the accuracy of its assumption that the time, effort, and resources needed to collect PII for the purposes of PSP compliance are *usual and customary costs* that facilities incur *in the normal course of their activities*. To the contrary, there are significant logistical and administrative costs incurred beyond the mere submission of the PII. These costs should not be excluded from the overall burden estimate as *usual and customary*.

Thank you for the opportunity to comment on the CFATS PSP Revised ICR. Should you have any questions or require additional clarification, please do not hesitate to contact me by email (plidiak@ilta.org) or by telephone (703-875-2011).

Sincerely,



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International Liquid Terminals Association