



DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2012-0061]

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

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day notice and request for comments; New Information Collection Request: 1670-NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This is a new information collection and follows the withdrawal of a previous ICR on the same topic.¹ The purpose of this notice is to solicit comments during a 60-day public comment period prior to the submission of this ICR to OMB. The submission describes the nature of the information collection, the categories of

¹ A 60-day public notice for comments was published in the Federal Register on June 10, 2009. *See* 74 FR 27555. Comments submitted by the public may be found on <http://www.regulations.gov> under Docket ID DHS-2009-0026. The Department's responses were included in a Paperwork Reduction Act (PRA) 30-day Federal Register notice. The 30-day public notice for comments was published in the Federal Register on April 13, 2010. *See* 75 FR 18850. Comments submitted by the public may be found on <http://www.regulations.gov> under Docket ID DHS-2009-0026. The Department's responses were published in a separate Federal Register notice on June 14, 2011. *See* 76 FR 34720. Concurrently with publication of the June 14, 2011 Federal Register notice, the Department submitted an Information Collection Request about the CFATS Personnel Surety Program to OMB. *See* http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201105-1670-002. In July 2012, the Department withdrew that ICR.

respondents, the estimated burden (in hours), and the estimated burden cost necessary to implement the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program pursuant to 6 CFR 27.230(a)(12)(iv).

DATES: Comments are encouraged and will be accepted until [INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This process is conducted in accordance with 5 CFR 1320.8.

ADDRESS: Interested persons are invited to submit comments on the proposed information collection through the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions received must include the words “Department of Homeland Security” and the docket number DHS-2012-0061. Except as provided below, comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),² Sensitive Security Information (SSI),³ or Protected Critical Infrastructure Information (PCII)⁴ should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and packaged in accordance with applicable requirements and

² For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at http://www.dhs.gov/xlibrary/assets/chemsec_cvi_proceduresmanual.pdf.

³ For more information about SSI see 49 CFR part 1520 and the SSI Program webpage at <http://www.tsa.gov/ssi>.

⁴ For more information about PCII see 6 CFR part 29 and the PCII Program webpage at <http://www.dhs.gov/pcii>.

submitted by mail to the DHS/NPPD/IP/ISCD CFATS Program Manager at the Department of Homeland Security, 245 Murray Lane, S.W., Mail Stop 0610, Arlington, VA 20528-0610. Comments must be identified by docket number DHS-2012-0061.

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I. SUPPLEMENTARY INFORMATION

Section 550 of the Department of Homeland Security Appropriations Act of 2007, Pub. L. 109-295 (2006) (“Section 550”), provides the Department with the authority to identify and regulate the security of high-risk chemical facilities using a risk-based approach. On April 9, 2007, the Department issued the CFATS Interim Final Rule (IFR) implementing this statutory mandate. *See* 72 FR 17688.

Section 550 requires that the Department establish risk-based performance standards (RBPS) for high-risk chemical facilities and under CFATS the Department promulgated 18 RBPS. Each chemical facility that has been finally determined by the Department to be high-risk must submit a Site Security Plan (SSP), or an Alternative Security Program (ASP) if the facility so chooses, for Department approval that satisfies

each applicable RBPS. RBPS 12 – Personnel Surety – requires high-risk chemical 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, including, (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[.]

See 6 CFR 27.230(a)(12).

As explained by the Department in the preamble to the CFATS IFR, the ability to identify affected individuals (i.e., facility personnel or unescorted visitors with access to restricted areas or critical assets at high-risk chemical facilities) who have terrorist ties is an inherently governmental function and necessarily requires the use of information held in government-maintained databases that are unavailable to high-risk chemical facilities. *See* 72 FR 17709 (April 9, 2007). Thus, under RBPS 12(iv), the Department and high-risk chemical facilities must work together to satisfy the “terrorist ties” aspect of the Personnel Surety performance standard. As a result, 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. Accordingly, in the preamble to the CFATS IFR, the Department outlined two potential approaches to help high-risk chemical facilities satisfy that particular standard, both of which would involve high-risk chemical facilities submitting certain information to the

Department. *See id.*

The first approach would involve facilities submitting certain information about affected individuals to the Department, which the Department would use to vet those individuals for terrorist ties. Specifically, identifying information about affected individuals would be compared against identifying information of known or suspected terrorists contained in the Federal Government's consolidated and integrated terrorist watchlist, the Terrorist Screening Database (TSDB), which is maintained on behalf of the federal government by the Department of Justice (DOJ) Federal Bureau of Investigation (FBI) in the Terrorist Screening Center (TSC).⁵

In order to avoid unnecessary duplication of terrorist screening, the Department also described an additional approach under which high-risk chemical facilities would submit information about affected individuals possessing certain credentials that rely on Security Threat Assessments conducted by the Department. *See* 72 FR 17709 (April 9, 2007).

The Department has now developed a CFATS Personnel Surety Program that will provide high-risk chemical facilities additional options to comply with RBPS 12(iv) while continuing to make available the two alternatives outlined in the preamble to the CFATS IFR. In addition to the alternatives expressly described in this document, the Department also intends to permit high-risk chemical facilities to propose other alternative measures for terrorist ties identification in their SSPs or ASPs, which the Department will consider on a case-by-case basis in evaluating high-risk chemical

⁵ For more information about the TSDB, see DOJ/FBI – 019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007).

facilities' SSPs or ASPs.

As a result of the CFATS Personnel Surety Program, regardless of the option, the Department 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.

The first option is consistent with the primary approach described in the CFATS IFR preamble, as discussed above. Under Option 1 – Direct Vetting, high-risk chemical facilities (or others acting on their behalf) would submit certain information about affected individuals to the Department through a Personnel Surety application in an online technology system developed under CFATS called the Chemical Security Assessment Tool (CSAT). Access to and the use of CSAT is provided free of charge to high-risk chemical facilities (or others acting on their behalf).

Under this option, information about affected individuals submitted by, or on behalf of, high-risk chemical facilities would be vetted against information contained in the Federal Government's consolidated and integrated terrorist watchlist.

The second option is also consistent with the second approach described in the CFATS IFR preamble. Under Option 2 – Use Of Vetting Conducted Under Other DHS Programs, high-risk chemical facilities (or others acting on their behalf) would also submit certain information about affected individuals to the Department through the CSAT Personnel Surety application.

Option 2 would, however, allow high-risk chemical facilities and the Department to take advantage of the vetting for terrorist ties already being conducted on affected individuals enrolled in the Transportation Worker Identification Credential (TWIC) Program, Hazardous Materials Endorsement (HME) Program, as well as the NEXUS,

Secure Electronic Network for Travelers Rapid Inspection (SENTRI), Free and Secure Trade (FAST), and Global Entry Trusted Traveler Programs.⁶ All of these programs conduct terrorist ties vetting equivalent to the terrorist ties vetting that would be conducted under Option 1.⁷ Under Option 2, high-risk chemical facilities, or their designees (e.g., third parties), could submit information to the Department about affected individuals possessing the appropriate credentials to enable the Department to electronically verify the affected individuals' enrollments in these other programs. The Department would subsequently notify the designee of the high-risk chemical facility (e.g., the Submitter) whether or not an affected individual's enrollment in one of these other DHS programs was electronically verified. The Department would also periodically re-verify each affected individual's continued enrollment in one of these other programs, and notify the appropriate designee of the high-risk chemical facility of significant changes in the status of an affected individual's enrollment (e.g., if an affected individual who has been enrolled in the HME Program ceases to be enrolled, the Department would change the status of the affected individual in the CSAT Personnel Surety application and notify the Submitter). Electronic verification and re-verification would enable the Department and the high-risk chemical facility to ensure that an affected individual's credential or endorsement is appropriate to rely on (i.e., an indicator

⁶ U.S. Customs and Border Protection (CBP) has introduced SENTRI and Global Entry as Trusted Traveler Programs since the publication of CFATS in April 2007. The Department, therefore, intends to enable high-risk chemical facilities (or their designees) to submit information about affected individuals' SENTRI and Global Entry enrollments to DHS under Option 2, even though SENTRI and Global Entry were not listed along with the other Trusted Traveler Programs in the CFATS IFR preamble. *See* 72 FR 17709 (April 9, 2007).

⁷ Each of the DHS programs conducts recurrent vetting, which is a Department best practice. Recurrent vetting compares an affected individual's information against new and/or updated TSDB records as those new and/or updated records become available.

that the affected individual is being recurrently vetted for terrorist ties) in compliance with RBPS 12(iv).

In addition to Option 1 and Option 2, the Department has considered other potential options to help high-risk chemical facilities satisfy RBPS 12(iv). In particular, the Department has investigated the feasibility of options that would not involve the submission of information about an affected individual if the affected individual participated in one of the programs identified under Option 2. The Department believes that, for the purpose of compliance with RBPS 12(iv), simply relying on a visual inspection of a credential or endorsement is inadequate because the credential or endorsement could be expired, revoked, or fraudulent. However, the Department has concluded that information about an affected individual, enrolled in a DHS program that conducts vetting for terrorist ties equivalent to the vetting that would be conducted under Option 1, would not need to be submitted to the Department if the credential in the possession of the affected individual is electronically verified and validated.

Accordingly, the Department plans to offer high-risk chemical facilities a third option. Under Option 3 – Electronic Verification of TWIC, a high-risk chemical facility (or others acting on their behalf) would not submit information about affected individuals in possession of TWICs to the Department if the high-risk chemical facility (or others acting on their behalf) electronically verify and validate the affected individuals' TWICs through the use of TWIC readers (or other technology that is periodically updated using

the Canceled Card List).⁸ Any high-risk chemical facilities that choose this option would need to describe in their SSPs or ASPs the procedures they will follow if they choose to use TWIC readers for compliance with RBPS 12(iv).⁹

High-risk chemical facilities would have discretion as to which option(s) to use for an affected individual. For example, even though a high-risk chemical facility could comply with RBPS 12(iv) for certain affected individuals by using Option 2, the high-risk chemical facility could choose to use Option 1 for those affected individuals. Similarly, a high-risk chemical facility, at its discretion, may choose to use either Option 1 or Option 2 rather than Option 3 for affected individuals who have TWICs. High-risk chemical facilities also may choose to combine Option 1 with Option 2 and/or Option 3, as appropriate, to ensure that adequate terrorist ties checks are performed on different types of affected individuals (e.g., employees, contractors, unescorted visitors). Each high-risk chemical facility will need to describe how it will comply with RBPS 12(iv) in its SSP or ASP.

In addition to the options described above for satisfying RBPS 12(iv), high-risk chemical facilities are welcome to propose alternative or supplemental options not described in this PRA notice in their SSPs or ASPs. The Department will assess the adequacy of such alternative or supplemental options on a facility-by-facility basis, in the course of evaluating each facility's SSP or ASP.

⁸ For more information about the Canceled Card List, please visit

http://www.tsa.gov/sites/default/files/publications/pdf/twic/canceled_card_list_ccl_faq.pdf.

⁹ Elsewhere in this issue of the Federal Register, the U.S. Coast Guard has published a notice of proposed rulemaking (NPRM) titled "TWIC Reader Requirements." The procedures for using TWIC readers that are discussed in that NPRM would not apply to high-risk chemical facilities regulated under CFATS. Likewise, the ways in which high-risk chemical facilities could leverage TWICs as part of the CFATS Personnel Surety Program do not apply to maritime facilities or vessels regulated by the U.S. Coast Guard.

Although outside the scope of this PRA notice and the underlying ICR, the Department would like to highlight that high-risk chemical facilities also have other methods to address, or minimize the impacts of, compliance with RBPS 12(iv). For example, facilities may restrict the numbers and types of persons whom they allow to access their restricted areas and critical assets, thus limiting the number of persons who will need to be checked for terrorist ties. Facilities also have wide latitude in how they define their restricted areas and critical assets in their SSPs or ASPs, thus potentially limiting the number of persons who will need to be checked for terrorist ties. High-risk chemical facilities also may choose to escort visitors to restricted areas and critical assets in lieu of performing the background checks required by RBPS 12. For example, high-risk chemical facilities could propose in their SSPs or ASPs traditional escorting solutions and/or innovative escorting alternatives such as video monitoring (which may reduce facility security costs), as appropriate, to address the unique security risks present at each facility.

SUMMARY OF OPTIONS AVAILABLE TO HIGH-RISK CHEMICAL FACILITIES TO COMPLY WITH RBPS 12(IV):

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. As described above, under the CFATS Personnel Surety Program, for each affected individual a high-risk chemical facility would have at least three options under RBPS 12(iv):

- **OPTION 1 – DIRECT VETTING:** High-risk chemical facilities (or their designees) may submit information to the Department about an affected

individual to be compared against information about known or suspected terrorists, and/or

- **OPTION 2 –USE OF VETTING CONDUCTED UNDER OTHER DHS PROGRAMS:** High-risk chemical facilities (or their designees) may submit information to the Department about an affected individual’s enrollment in another DHS program so that the Department may electronically verify and validate that the affected individual is enrolled in the other program, and/or
- **OPTION 3 – ELECTRONIC VERIFICATION OF TWIC:** High-risk chemical facilities may electronically verify and validate an affected individual’s TWIC, through the use of TWIC readers (or other technology which is periodically updated using the Canceled Card List), rather than submitting information about the affected individual to the Department.

Regardless of the option, in the event that there is a potential match, the Department has procedures in place that it will follow to resolve the match and coordinate with appropriate law enforcement entities as necessary. High-risk chemical facilities may be contacted as part of law enforcement investigation activity, depending on the nature of the investigation.

SCOPE OF THIS NOTICE AND COMMITMENT TO EXPLORE ADDITIONAL OPTIONS IN THE FUTURE

Since withdrawing the previous CFATS Personnel Surety Program ICR in July 2012,¹⁰ the Department has had substantial dialogue with key CFATS stakeholders. The

¹⁰ See footnote 1, *supra*.

discussion included program design issues, the CSAT Personnel Surety application, options the Department has been considering to date, and additional options stakeholders have recommended for the Department's consideration, both in the short and long term.

The options described in this notice and, if approved, the subsequent ICR that the Department intends to submit to OMB would allow high-risk chemical facilities and the Department to implement the CFATS Personnel Surety Program within the Department's existing statutory and regulatory authority, and U.S. Government watchlisting policies.

The Department is committed, however, to continuing to work with interested stakeholders to identify additional potential options that could further reduce the burdens related to the CFATS Personnel Surety Program, while still meeting the national security mandate to reduce the risk of an individual with terrorist ties obtaining access to the restricted areas or critical assets at a high-risk chemical facility. The Department will consider and review any alternatives suggested as part of public comments on this notice and on any subsequent notices related to the CFATS Personnel Surety Program. Through both the PRA process and other ongoing dialogues, the Department will, as appropriate, also continue to work with stakeholders to identify potential additional alternatives as new technologies emerge, and as other terrorist ties vetting programs are modified or become available over time, so as to reduce the burden of this new information collection.

WHO IS IMPACTED BY THE CFATS PERSONNEL SURETY PROGRAM?

The CFATS Personnel Surety Program will provide high-risk chemical facilities the ability to submit certain biographic information about affected individuals to the Department. As explained above, 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.

There are also certain groups of persons that the Department does not consider to be affected individuals, such as (1) Federal officials that gain unescorted access to restricted areas or critical assets as part of their official duties; (2) state and local law enforcement officials that gain unescorted access to restricted areas or critical assets as part of their official duties; and (3) emergency responders at the state or local level that gain unescorted access to restricted areas or critical assets during emergency situations.

In some emergency or exigent situations, access to restricted areas or critical assets by other individuals who have not had appropriate background checks under RBPS 12 may be necessary. For example, emergency responders not described above may require such access as part of their official duties under appropriate circumstances. If high-risk chemical facilities anticipate that any individuals will require access to restricted areas or critical assets without visitor escorts or without the background checks listed in RBPS 12 under exceptional circumstances, facilities may describe such situations and the types of individuals who might require access in those situations in their SSPs or ASPs. The Department will assess the appropriateness of such situations, and any security measures to mitigate the inherent vulnerability in such situations, on a case-by-case basis as it reviews each high-risk chemical facility's SSP or ASP.

WHAT/WHO IS THE SOURCE OF THE INFORMATION UNDER OPTION 1 AND OPTION 2

High-risk chemical facilities are responsible for complying with RBPS 12(iv). However, companies operating multiple high-risk chemical facilities, as well as companies operating only one high-risk chemical facility, may comply with RBPS 12(iv)

in a variety of ways. High-risk chemical facilities, or their parent companies, may choose to comply with RBPS 12(iv) by identifying and submitting the information about affected individuals to the Department directly. Alternatively, high-risk chemical facilities, or their parent companies, may choose to comply with RBPS 12(iv) by outsourcing the information submission process to third parties.

The Department anticipates that many high-risk chemical facilities will rely on businesses that provide contract services (e.g., complex turn-arounds, freight delivery services, lawn mowing) to the high-risk chemical facilities to identify and submit the appropriate information about affected individuals they employ to the Department for vetting pursuant to RBPS 12(iv). Businesses that provide services to high-risk chemical facilities may in turn choose to manage compliance with RBPS 12(iv) themselves or to acquire the services of other third party companies to submit appropriate information about affected individuals to the Department.

CSAT USER ROLES AND RESPONSIBILITIES

To minimize the burden of submitting information about affected individuals, under Options 1 and 2 (as described above), high-risk chemical facilities would have wide latitude in assigning CSAT user roles to align with their business operations and/or the business operations of third parties that provide contracted services to them.¹¹ In response to previous comments submitted to the Department about the CFATS Personnel Surety Program, the Department intends to structure the CSAT Personnel Surety

¹¹ CSAT user registration and the assignment of user roles within CSAT are covered under a different Information Collection (i.e., 1670-0007), which can be found at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201001-1670-007#.

application to allow designees of high-risk chemical facilities to submit information about affected individuals to the Department on behalf of high-risk chemical facilities.

High-risk chemical facilities will be able to structure their CSAT user roles to submit information about affected individuals to the Department in three ways:

- (1) A high-risk chemical facility could directly submit information about affected individuals, and designate one or more officers or employees of the facility as a Personnel Surety Submitter; and/or
- (2) A high-risk chemical facility could submit information about affected individuals by designating one or more individuals affiliated with a third party (or with multiple third parties) to a user role(s) designated for third parties; and/or
- (3) A company owning several high-risk chemical facilities could consolidate its submission process for affected individuals. Specifically, the company could designate one or more persons as CSAT users, and those users could submit information about affected individuals on behalf of all of the high-risk chemical facilities on a company-wide basis.

BURDEN RESULTING FROM THE SUBMISSION OF DUPLICATE RECORDS ABOUT AN AFFECTED INDIVIDUAL

The Department is aware that an affected individual may be associated with multiple high-risk chemical facilities, and thus information about an affected individual may be submitted to the Department multiple times by different high-risk chemical facilities and/or their designated third parties. However, the Department has learned in its dialogue with stakeholders (including third-party companies that conduct background

checks for high-risk chemical facilities) that the duplicate submission of records about affected individuals is a common industry practice for companies when managing information about individuals. Specifically, when a person who has already had a background check (e.g., verification of legal authorization to work or criminal history) needs a new background check for different companies or for a new or different purpose (e.g., change in jobs or contract), third parties that routinely conduct background checks routinely will submit information about a person again to agencies responsible for maintaining relevant information (e.g., state motor vehicle databases, e-verify). Therefore, for the purpose of this notice, the Department's estimation of burden accounts for potential multiple submissions of information about affected individuals by high-risk chemical facilities and their designated third parties.

COMPLIANCE WITH RBPS 12(IV) AND THE POTENTIAL FOR INCREASED BURDEN TO ENTER THE RESTRICTED AREAS OR CRITICAL ASSETS AT A HIGH-RISK CHEMICAL FACILITY

Since the Department first began seeking to implement the CFATS Personnel Surety Program, stakeholders have expressed concern that the submission of information about affected individuals under Option 1 and Option 2 to the Department would impede the ability of affected individuals to enter the restricted areas or critical assets at high-risk chemical facilities. The Department does not believe that if a facility complies with RBPS 12(iv) the high-risk chemical facility will, on a routine basis, experience an unreasonable impact in allowing affected individuals access to restricted areas or critical assets.

In general, the Department expects that high-risk chemical facilities or their

designees (e.g., third parties or companies employing affected individuals that provide services to high-risk chemical facilities) will already possess much, if not all, of the necessary information about affected individuals as a result of standard business practices related to employment or managing of service contracts. In the event that high-risk chemical facilities, or their designees, need to collect any additional information for the purpose of complying with RBPS 12(iv), they have significant flexibility in how to collect this information since CFATS does not prescribe how to do so.

The Department also expects that high-risk chemical facilities will likely consolidate RBPS 12(iv) processing with related routine hiring and access control procedures involving background checks that are already occurring prior to access by facility personnel or unescorted visitors to restricted areas or critical assets. Consolidating RBPS 12(iv) processing with these other routine procedures would allow submission of personal information already collected and maintained by facilities or their designees (e.g., a third party, contracted service company, or third party acting on behalf of a contracted service company) to the Department under RBPS 12(iv) before affected individuals require access to restricted areas or critical assets.

As mentioned above, third parties could submit screening information to the Department on behalf of high-risk chemical facilities as part of facilities' routine hiring and access control procedures. Some stakeholders have expressed concerns to the Department about submission of screening information by third parties, suggesting that in such cases facilities would not be able to adequately oversee third parties' work to ensure appropriate information submission to the Department. The Department expects, however, that high-risk chemical facilities could audit and/or review their third party

designees' information collection and submission processes, to ensure that their designees submit appropriate information.

COMPLIANCE WITH RBPS 12(IV) AND INFREQUENT "UNESCORTED VISITORS"

Since the Department first began developing the CFATS Personnel Surety Program, some stakeholders have expressed concern that the submission of information to DHS about unescorted visitors who have only rare or infrequent access to high-risk chemical facilities would be overly burdensome and would make access by such infrequent unescorted visitors too difficult. As a general matter, however, the Department does not believe it likely that many high-risk chemical facilities will propose in their SSPs or ASPs to allow large numbers of visitors who visit the high-risk chemical facility infrequently to have unescorted access to restricted areas and critical assets, because then all four types of background checks listed in RBPS 12 would be required to be conducted for them. High-risk chemical facilities could choose to escort infrequent visitors in lieu of performing the four types of RBPS 12 background checks on them.

However, even for infrequent unescorted visitors that the high-risk chemical facility chooses to conduct all four types of background checks on, the Department does not expect data submission to the Department in compliance with RBPS 12(iv) to impede routine access procedures because the data submission is likely to be accomplished in concert with the other routine hiring and access control involving background check described above.

ADDITIONAL DATA PRIVACY CONSIDERATIONS

There are various privacy requirements for high-risk chemical facilities, their designees, and the Department related to the exchange of personally identifiable

information (PII) for the CFATS Personnel Surety Program. Upon receipt of PII, the Department complies with all applicable federal privacy requirements including the Privacy Act, the E-Government Act, the Homeland Security Act, and Departmental policy. The United States also follows international instruments on privacy, all of which are consistent with the Fair Information Practice Principles (FIPPs).¹² High-risk chemical facilities, or their designees, are responsible for complying with the federal, state, and national privacy laws applicable to the jurisdictions in which they do business. The Department believes that high-risk chemical facilities, or their designees, have multiple, established legal avenues that enable them to submit PII to the Department, which may include the Safe Harbor Framework,¹³ and meet their privacy obligations.

II. INFORMATION COLLECTED ABOUT AFFECTED INDIVIDUALS

OPTION 1: COLLECTING INFORMATION TO CONDUCT DIRECT VETTING

If high-risk chemical facilities select Option 1 to satisfy RBPS 12(iv) for any affected individuals, the following information about these affected individuals would be submitted to the Department:

- For U.S. Persons (U.S. citizens and nationals as well as U.S. lawful permanent residents):
 - Full Name

¹² Examples of the international privacy instruments which the United States has endorsed are: (1) Organization for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data (1980), and (2) Asia Pacific Economic Cooperation (APEC) Privacy Framework (2004).

¹³ The Safe Harbor Framework, which applies to commercial information, was developed by the U.S. Department of Commerce in consultation with the European Commission in order to provide a streamlined means for U.S. organizations to comply with the European Union Data Protection Directive 95/46/EC. More information on the Safe Harbor Framework can be found at <http://export.gov/safeharbor>.

- Date of Birth
- Citizenship or Gender
- For Non-U.S. Persons:
 - Full Name
 - Date of Birth
 - Citizenship
 - Passport information and/or alien registration number

To reduce the likelihood of false positives in matching against records in the Federal Government’s consolidated and integrated terrorist watchlist, high-risk chemical facilities would also be able to submit the following optional information about affected individuals to the Department:

- Aliases
- Gender (for Non-U.S. Persons)
- Place of Birth
- Redress Number¹⁴

If a high-risk chemical facility chooses to submit information about an affected individual under Option 1, the following table summarizes the biographic data that would be submitted to the Department.

¹⁴ For more information about Redress Numbers, please go to <http://www.dhs.gov/one-stop-travelers-redress-process#1>.

Table 1: Affected Individual Required and Optional Data Under Option 1

Data Elements Submitted to the Department	For A U.S. Person	For A Non-U.S. Person
Full Name	Required	
Date of Birth	Required	
Gender	Must provide Citizenship or Gender	Optional
Citizenship		Required
Passport Information and /or Alien Registration Number	N/A	Required
Aliases	Optional	
Place of Birth	Optional	
Redress number	Optional	

OPTION 2: COLLECTING INFORMATION TO USE OF VETTING CONDUCTED UNDER OTHER DHS PROGRAMS

In lieu of submitting information to the Department under Option 1 for terrorist ties vetting, chemical facilities would also have the option, where appropriate, to submit information to the Department to electronically verify that an affected individual is currently enrolled in one of the following DHS programs:

- TWIC Program;
- HME Program;
- Trusted Traveler Programs, including:
 - NEXUS;
 - FAST;
 - SENTRI; and
 - Global Entry.

Information collected by the Department about affected individuals under Option 2 would not be used to conduct duplicative vetting against the Federal Government's consolidated and integrated terrorist watchlist.

To verify an affected individual's enrollment in one of these programs under Option 2, the Department would collect the following information about the affected individual:

- Full Name;
- Date of Birth; and
- Program-specific information or credential information, such as unique number, or issuing entity (e.g., State for Commercial Driver's License (CDL) associated with an HME).

To further reduce the potential for misidentification, high-risk chemical facilities may also submit the following optional information about affected individuals to the Department:

- Aliases
- Gender
- Place of Birth
- Citizenship

If a high-risk chemical facility chooses to submit information about an affected individual under Option 2, the following table summarizes the biographic data that would be submitted to the Department.

Table 2: Affected Individual Required and Optional Data Under Option 2

Data Elements Submitted to the Department	For Affected Individual with a TWIC	For Affected Individual with an HME	For Affected Individual Enrolled in a Trusted Traveler Program (NEXUS, SENTRI, FAST, or Global Entry)
Full Name	Required		
Date of Birth	Required		
Expiration Date	Required		
Unique Identifying Number	TWIC Serial Number: Required	CDL Number: Required	PASS ID Number: Required
Issuing State of CDL	N/A	Required	N/A
Aliases	Optional		
Gender	Optional		
Place of Birth	Optional		
Citizenship	Optional		

Under the CFATS Personnel Surety Program, a high-risk chemical facility would be able to choose to follow the process described for Option 1, and would not have to implement Option 2, even if an affected individual seeking access to the high-risk chemical facility is already enrolled in the TWIC Program, HME Program, or one of the Trusted Traveler Programs.

OPTION 3: ELECTRONIC VERIFICATION OF TWIC

Under Option 3, a high-risk chemical facility would not need to submit information about an affected individual enrolled in the TWIC Program to the Department, if the high-risk chemical facility is able to electronically verify and validate the affected individual’s TWIC through the use of a TWIC reader (or other technology that is periodically updated using the Canceled Card List).

As discussed above, under the CFATS Personnel Surety Program, high-risk chemical facilities would also be able to choose to follow the processes described for

Option 1 and/or Option 2, for some or all affected individuals already enrolled in the TWIC Program, in lieu of or in addition to Option 3.

OTHER INFORMATION COLLECTED

In addition to the information about affected individuals collected under Options 1 and 2, the Department plans to collect certain information that identifies the high-risk chemical facility, or facilities, at which each affected individual has or is seeking access to restricted areas or critical assets.

The Department may also contact a high-risk chemical facility or its designees to request additional information (e.g., visa information) pertaining to affected individuals in order to clarify suspected data errors or resolve potential matches (e.g., in situations where an affected individual has a common name). Such requests will not imply, and should not be construed to indicate, that an affected individual's information has been confirmed as a match to a record of an individual with terrorist ties.

In the event that a confirmed match is identified as part of the CFATS Personnel Surety Program, the Department may obtain references to and/or information from other government law enforcement and intelligence databases, or other relevant databases that may contain terrorism information.

The Department may collect information necessary to assist in the submission and transmission of records, including electronic verification that the Department has received a particular record.

The Department may also collect information about points of contact who the Department or Federal law enforcement personnel may contact with follow-up questions. A request for additional information from the Department does not imply, and should not

be construed to indicate, that an individual is known or suspected to be associated with terrorism.

The Department may also collect information provided by individuals or high-risk chemical facilities in support of any adjudications requested under Subpart C of the CFATS regulation,¹⁵ or in support of any other redress requests.¹⁶

The Department may request information pertaining to affected individuals, previously provided to the Department by high-risk chemical facilities or their designees, in order to confirm the accuracy of that information, or to conduct data accuracy reviews and audits as part of the CFATS Personnel Surety Program.

The Department will also collect administrative or programmatic information (e.g., affirmations or certifications of compliance, extension requests, brief surveys for process improvement) necessary to manage the CFATS Personnel Surety Program.

Under Options 1 and 2, the Department will also collect information that will allow high-risk chemical facilities and their designees to manage their data submissions. Specifically, the Department will make available to high-risk chemical facilities and their designees blank data fields. These blank data fields may be used by a high-risk chemical facility or its designees to assign each record of an affected individual a unique designation or number that is meaningful to the high-risk chemical facility. Collecting this information will enable a high-risk chemical facility to manage the electronic records

¹⁵ See 6 CFR 27.300–345.

¹⁶ More information about access, correction, and redress requests under the Freedom of Information Act and the Privacy Act can be found in Section 7.0 of the Privacy Impact Assessment for the CFATS Personnel Surety Program, dated May 4, 2011, and available at <http://www.dhs.gov/privacy-documents-national-protection-and-programs-directorate-nppd>.

it submits into the CSAT Personnel Surety application. Entering this information into the CSAT Personnel Surety application will be voluntary, and is intended solely to enable high-risk chemical facilities and their designees to search through, sort, and manage the electronic records they submit.

III. REQUEST FOR EXCEPTION TO THE REQUIREMENT UNDER 5 CFR 1320.8(b)(3)

The Department is requesting from OMB an exception for the CFATS Personnel Surety Program to the PRA notice requirement in 5 CFR 1320.8(b)(3), which requires Federal agencies to confirm that their information collections provide certain reasonable notices under the PRA to affected individuals. If this exception is granted, the Department will be relieved of the potential obligation to require high-risk chemical facilities to collect signatures or other positive affirmations of these notices from affected individuals. Whether or not this exception is granted, Submitters must affirm that the required privacy notice regarding the collection of personal information has been provided to affected individuals before personal information is submitted to the Department.¹⁷

The Department's request for an exception to the PRA notice requirement under 5 CFR 1320.8(b)(3) would not exempt high-risk chemical facilities from having to adhere to applicable Federal, state, local, or tribal laws, or to regulations or policies pertaining to the privacy of affected individuals.

¹⁷ For more information, please see the CFATS Personnel Surety Program Privacy Impact Assessment, dated May 4, 2011 at <http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf>.

IV. RESPONSES TO PREVIOUS COMMENTS

In June 2011, the Department submitted an ICR for the CFATS Personnel Surety Program to OMB for review. OMB subsequently received four comments about that ICR from members of the public and forwarded the comments to the Department for response. Each of the comments and the Department's responsive letters will be posted on the Federal eRulemaking Portal at www.regulations.gov under docket number DHS-2012-0061.

In June 2011, the Department solicited comments for 30 days about the CFATS Personnel Surety Program System of Records Notice (SORN) under Docket DHS-2011-0032.¹⁸ Under Docket DHS-2011-0032, the Department received a comment that addressed the CFATS Personnel Surety Program ICR. The comment did not address the SORN or other CFATS Personnel Surety Program privacy issues. Therefore, the Department reviewed the comment and has responded to the comment under this docket in concert with the other comments submitted in June 2011 to OMB and the Department related to the CFATS Personnel Surety Program ICR.

In June 2011, the Department also solicited comments for 30 days about the Notice of Proposed Rulemaking to exempt the CFATS Personnel Surety Program System of Records from portions of the Privacy Act under Docket DHS-2011-0033.¹⁹ Under Docket DHS-2011-0033, the Department received an additional comment that addressed

¹⁸ The docket for the CFATS Personnel Surety Program System of Records Notice may be found at <http://www.regulations.gov/#!docketDetail;D=DHS-2011-0032>.

¹⁹ The docket for the notice of proposed rulemaking to exempt portions of the CFATS Personnel Surety Program System or Records from one or more provisions of the Privacy Act may be found at <http://www.regulations.gov/#!docketDetail;D=DHS-2011-0033>.

the CFATS Personnel Surety Program ICR.²⁰ While the comment did support Privacy Act exemptions, the comment primarily addressed other aspects of the CFATS Personnel Surety Program not related to privacy issues. Therefore, the Department reviewed the comment and has responded to the comment under this docket as well in concert with the other comments submitted to OMB and the Department related to the CFATS Personnel Surety Program ICR.

V. THE DEPARTMENT'S METHODOLOGY IN ESTIMATING THE BURDEN

FREQUENCY

The Department will expect, unless otherwise noted in an authorized or approved SSP or ASP, that high-risk chemical facilities submit information, under Option 1 and/or Option 2, about affected individuals in accordance with the schedule outlined below in Table 3. Facilities may suggest alternative schedules for Option 1 or Option 2 based on their unique circumstances in their SSPs or ASPs. The schedule below would not apply to Option 3. Schedules for implementing Option 3, or alternative security measures other than Option 1 or Option 2, could vary from high-risk chemical facility to high-risk chemical facility, as described in individual facilities' SSPs or ASPs, subject to approval by the Department.

The Department will expect a high-risk chemical facility to begin submitting information about affected individuals under Option 1 and/or Option 2 under the schedule below after: (1) the high-risk chemical facility has received a letter of authorization or

²⁰ Document DHS-2011-0033-0004 is viewable at <http://www.regulations.gov/#!documentDetail;D=DHS-2011-0033-0004>.

approval for its SSP or ASP that directs the high-risk chemical facility to comply with RBPS 12(iv); and (2) the high-risk chemical facility has been notified that the Department has implemented the CFATS Personnel Surety Program.

Table 3: Compliance Schedule for Option 1 and Option 2 Under the CFATS Personnel Surety Program

	Tier 1	Tier 2	Tier 3	Tier 4
Initial Submission Of Affected Individuals' Information	60 days after the day when both conditions are true: (1) DHS issues your facility a letter of authorization or approval which directs you to comply with RBPS 12(iv), AND (2) DHS provides notification that it has implemented the CFATS Personnel Surety Program	60 days after the day when both conditions are true: (1) DHS issues your facility a letter of authorization or approval which directs you to comply with RBPS 12(iv), AND (2) DHS provides notification that it has implemented the CFATS Personnel Surety Program	90 days after the day when both conditions are true: (1) DHS issues your facility a letter of authorization or approval which directs you to comply with RBPS 12(iv), AND (2) DHS provides notification that it has implemented the CFATS Personnel Surety Program	90 days after the day when both conditions are true: (1) DHS issues your facility a letter of authorization or approval which directs you to comply with RBPS 12(iv), AND (2) DHS provides notification that it has implemented the CFATS Personnel Surety Program
Submission Of A New Affected Individual's Information	48 hours prior to access to restricted areas or critical assets	48 hours prior to access to restricted areas or critical assets	48 hours prior to access to restricted areas or critical assets	48 hours prior to access to restricted areas or critical assets
Submission Of Updates And Corrections To An Affected Individual's Information	Within 90 days of becoming aware of the need for an update or correction	Within 90 days of becoming aware of the need for an update or correction	Within 90 days of becoming aware of the need for an update or correction	Within 90 days of becoming aware of the need for an update or correction
Submission Of Notification That An Affected Individual No Longer Has Access	Within 90 days of access being removed			

Therefore, after evaluating the choices available to the Department under

Question 16 on the Paperwork Reduction Act Submission form (Standard Form-83(i)),²¹ the Department believes that the description of “Other: In accordance with the compliance schedule or the facility SSP or ASP” is the most appropriate choice.

AFFECTED PUBLIC

Most high-risk chemical facilities regulated under CFATS are private businesses, or parts of private businesses. Most people that access the restricted areas and critical assets of high-risk chemical facilities do so for business purposes. Therefore, after evaluating the choices available to the Department on Standard Form 83(i), the Department selected the description of “Business or other for-profit” as the most appropriate selection for this proposed Information Collection.

NUMBER OF RESPONDENTS

The number of respondents under this collection is the number of affected individuals that high-risk chemical facilities or their designees submit information about in compliance with RBPS 12(iv). As described more fully below, for the purpose of this notice the number of respondents is estimated by multiplying:

- the estimated number and types of high-risk chemical facilities, and
- the estimated number of affected individuals at each type of high-risk chemical facility.

For the purpose of this notice, the Department estimates the number of affected individuals at each type of high-risk chemical facility as the sum of:

- the number of unescorted visitors at each type of high-risk chemical facility, and

²¹ A blank copy of Standard Form 83(i) may be found at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf>.

- the number of facility personnel and resident contractors at each type of high-risk chemical facility.

NUMBER AND TYPE OF HIGH-RISK CHEMICAL FACILITIES

In previous PRA Federal Register notices about the CFATS Personnel Surety Program, the Department estimated the number and type of high-risk chemical facilities by using the 2007 CFATS Regulatory Assessment, which established a best estimate of 5,000 high-risk facilities for calculating cost estimates.²² In the 2007 CFATS Regulatory Assessment, the Department recognized that each chemical facility is unique; however, since it was impractical to estimate costs for each high-risk chemical facility, the Department created four categories of facilities for each tier; three categories of facilities where loss of containment of the chemicals of interest is the primary concern and one category of facilities where theft and diversion of chemicals is the primary concern. Specifically,

- Group A includes open facilities with 100 or more employees where loss of containment is the primary concern. These facilities are assumed to have five security entrances for the purpose of the cost analysis.
- Group B includes open facilities with 99 or fewer employees where loss of containment is the primary concern. In addition, facilities that store anhydrous ammonia for commercial refrigeration in outdoor vessels are also considered “open” for the purpose of this analysis because it is the outdoor storage that

²² See CFATS Regulatory Assessment Section 5.1 (April 1, 2007), <http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116>.

requires protection. These facilities are assumed to have two security entrances for the purpose of the cost analysis.

- Group C facilities are enclosed facilities where loss of containment is the primary concern (i.e., warehouses, enclosed manufacturing sites) that manufacture, process, use, store and/or distribute chemicals. The Department did not segment enclosed facilities by size because the same degree of variation between a large open facility (i.e., a 2,000-acre petrochemical complex) and a small open 3-5-acre facility does not exist. These facilities are assumed to have one security entrance for the purpose of the cost analysis.
- Theft/Diversion facilities are typically merchant wholesalers (often called chemical distributors), chemical manufacturers, or other manufacturers that manufacture, process, use, store or distribute chemicals that could be the target of theft and diversion. The theft of chemicals could include theft of portable containers by employees, visitors or adversaries. The diversion of chemicals involves what often looks like a legitimate transaction where an adversary, impersonating a legitimate customer, purchases chemicals that could later be turned into weapons. These facilities are assumed to have one security entrance for the purposes of cost analysis.

For the purpose of this notice, the Department updated the number and type of high-risk chemical facilities estimated in the 2007 CFATS Regulatory Assessment. The updated analysis, hereafter referred to as the 2012 CFATS Personnel Surety Program Analysis, determined the high-risk chemical facility count for each of the 16 model facility categories identified in the 2007 Regulatory Assessment by analyzing high-risk

chemical facilities designated with a final tier under CFATS as of August 2012. A comparison of the number of high-risk chemical facilities, estimated by the 2007 CFATS Regulatory Assessment, to the number of high-risk chemical facilities identified within the 2012 CFATS Personnel Surety Program Analysis is presented in Table 4.

Table 4: Number of Facilities in Each Model Facility Category

	2007 CFATS Regulatory Assessment	2012 CFATS Personnel Surety Program Analysis (Raw Data)
Tier 1 Group A	81	4
Tier 1 Group B	89	6
Tier 1 Group C	24	10
Tier 1 Theft	6	93
Tier 2 Group A	166	8
Tier 2 Group B	64	16
Tier 2 Group C	80	15
Tier 2 Theft	189	400
Tier 3 Group A	315	22
Tier 3 Group B	438	33
Tier 3 Group C	329	66
Tier 3 Theft	718	935
Tier 4 Group A	242	72
Tier 4 Group B	690	190
Tier 4 Group C	599	13
Tier 4 Theft	970	1,683
Total	5,000	3,566

As of August 2012, 3,566 high-risk chemical facilities received a final tier determination. For the purpose of this notice, the Department estimates that CFATS will regulate approximately 4,000 high-risk chemical facilities. Therefore, the Department normalized the number of facilities in each model facility category to 4,000 facilities by multiplying the number of high-risk chemical facilities in each category by a factor of

1.22.²³ The 2012 CFATS Personnel Surety Program Analysis revised (i.e., normalized) high-risk chemical facility count is compared to the 2007 CFATS Regulatory Assessment high-risk chemical facility count, by model facility category, in Table 5.

Table 5: Number of High-Risk Chemical Facilities in Each Model Facility Category (Normalized to 4,000 Facilities)

	2007 CFATS Regulatory Assessment	2012 CFATS Personnel Surety Program Analysis (Normalized)
Tier 1 Group A	81	4
Tier 1 Group B	89	7
Tier 1 Group C	24	11
Tier 1 Theft	6	104
Tier 2 Group A	166	9
Tier 2 Group B	64	18
Tier 2 Group C	80	17
Tier 2 Theft	189	449
Tier 3 Group A	315	25
Tier 3 Group B	438	37
Tier 3 Group C	329	74
Tier 3 Theft	718	1,049
Tier 4 Group A	242	81
Tier 4 Group B	690	213
Tier 4 Group C	599	15
Tier 4 Theft	970	1,888
Total	5,000	4,000

In addition to the reduction in the total number of regulated facilities, a comparison of the 2007 CFATS Regulatory Assessment and the 2012 CFATS Personnel Surety Program Analysis identifies one other key difference. In the original 2007 CFATS Regulatory Assessment, conducted prior to implementation of the CFATS Program, the Department assumed that 38 percent of all high-risk chemical facilities

²³ The factor of 1.22 was used because (4,000 facilities/3566 facilities) = 1.22.

would be regulated due to the risk that one or more chemicals could be subject to theft or diversion for purposes of creating an explosion or producing an improvised explosive device. However, the 2012 CFATS Personnel Surety Program Analysis found that 87 percent of all currently regulated CFATS high-risk chemical facilities are regulated due to the risk that a chemical could be subject to theft or diversion for purposes of creating an explosion or producing an improvised explosive device. For the purpose of this notice, the Department used the number and type of high-risk chemical facilities in each facility category estimated through the normalized 2012 CFATS Personnel Surety Program Analysis because the distribution of facility type (i.e., facility count) is based upon actual historical data.

ESTIMATED NUMBER OF AFFECTED INDIVIDUALS AT EACH TYPE OF HIGH-RISK CHEMICAL FACILITY— UNESCORTED VISITORS WITH ACCESS TO RESTRICTED AREAS OR CRITICAL ASSETS

During the 30-day comment period after the Department submitted the previous CFATS Personnel Surety Program ICR to OMB in June 2011, the American Chemistry Council (ACC) provided a detailed burden cost assessment to the Department that included assumptions on visitors.²⁴ Specifically, the ACC provided the Department with an estimate on the number and turnover of frequent and infrequent visitors at high-risk chemical facilities.

ACC's analysis suggests that 1,200 total visitors per year should be expected at large open manufacturing facilities that align with Group A (Tier 1 through 4) model

²⁴ This cost estimate has been posted to Docket DHS-2012-0061, which may be accessed through the Federal eRulemaking Portal at www.regulations.gov.

facility categories; 300 visitors each at small open manufacturing facilities (Group B model facility categories, Tier 1 through 4) and enclosed manufacturing facilities (Group C model facility categories, Tier 1 through 4); and 50 visitors expected at theft/diversion model facilities (Tier 1 through 4). ACC estimated an annual turnover rate of 71 percent for frequent visitors (e.g., delivery personnel) and an annual turnover rate of 20 percent for infrequent visitors that only visit the facility once or twice a year (e.g., corporate auditors). Frequent and infrequent visitors were expected to compose equal volume of traffic at high-risk chemical facilities. ACC also assumed that all visitors count towards the number of affected individuals. However, high-risk chemical facilities will only be responsible for submitting information for unescorted visitors with access to restricted areas or critical assets. The Department does not expect high-risk chemical facilities to allow large numbers of visitors to have unescorted access to restricted areas or critical assets. As a general matter, the Department does not believe it to be likely that many high-risk chemical facilities will propose in their SSPs under CFATS to allow large numbers of visitors to have unescorted access to the restricted areas and critical assets of high-risk chemical facilities because then these visitors would be subject to all four types of background checks listed in RBPS 12. However, for the purpose of estimating the potential burden this information collection could impose, the Department has determined that it is appropriate to include ACC's conservative assumptions about frequent and infrequent visitors and treat them all as unescorted visitors. Table 6 provides the Department's estimated number of visitors.

Table 6: Estimate of Unescorted Visitors with Access to Restricted Areas or Critical Assets

	A	B	C*	D**	E = C + D	A + B + E
	Infrequent	Frequent	Infrequent	Frequent	Unescorted	Unescorted
	Visitors	Visitors	Visitor Annual	Visitor Annual	Visitor	Visitor
			Turnover	Turnover	Annual	Annual
			(20%)	(71%)	Turnover	Estimate
Tier 1 Group A	600	600	120	426	546	1,746
Tier 1 Group B	150	150	30	107	137	437
Tier 1 Group C	150	150	30	107	137	437
Tier 1 Theft	25	25	5	18	23	73
Tier 2 Group A	600	600	120	426	546	1,746
Tier 2 Group B	150	150	30	107	137	437
Tier 2 Group C	150	150	30	107	137	437
Tier 2 Theft	25	25	5	18	23	73
Tier 3 Group A	600	600	120	426	546	1,746
Tier 3 Group B	150	150	30	107	137	437
Tier 3 Group C	150	150	30	107	137	437
Tier 3 Theft	25	25	5	18	23	73
Tier 4 Group A	600	600	120	426	546	1,746
Tier 4 Group B	150	150	30	107	137	437
Tier 4 Group C	150	150	30	107	137	437
Tier 4 Theft	25	25	5	18	23	73

* C = A x 0.20, ** D = B x 0.71

ESTIMATED NUMBER OF AFFECTED INDIVIDUALS AT EACH TYPE OF HIGH-RISK CHEMICAL FACILITIES – FACILITY PERSONNEL WITH ACCESS TO RESTRICTED AREAS OR CRITICAL ASSETS

The 2007 CFATS Regulatory Assessment also provided an estimate of full time employees and resident contractors for the 16 model facility categories, as shown in Table 7.²⁵

²⁵ See CFATS Regulatory Assessment Section 6.3.7, Table 15 (April 1, 2007), <http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116>.

Table 7: 2007 CFATS Regulatory Assessment Estimate of Number of Full Time Employees and Resident Contractors

	A	B	C*	D**	A + C + D
	Number of Full Time Employees Per Facility	Resident Contractors Per Facility (as percent of full time employees)	Resident Contractors Per Facility	20% Annual Turnover (full time employees and resident contractors per facility)	Number of Full Time Employees and Resident Contractors Per Facility (including 20% annual turnover)
Tier 1 Group A	391	30%	117	102	610
Tier 1 Group B	35	20%	7	8	50
Tier 1 Group C	152	10%	15	33	200
Tier 1 Theft	35	10%	4	8	47
Tier 2 Group A	279	30%	84	73	436
Tier 2 Group B	34	20%	7	8	49
Tier 2 Group C	317	10%	32	70	419
Tier 2 Theft	35	10%	4	8	47
Tier 3 Group A	487	30%	146	127	760
Tier 3 Group B	47	20%	9	11	67
Tier 3 Group C	310	10%	31	68	409
Tier 3 Theft	35	10%	4	8	47
Tier 4 Group A	283	30%	85	74	442
Tier 4 Group B	139	20%	28	33	200
Tier 4 Group C	201	10%	20	44	265
Tier 4 Theft	35	10%	4	8	47
Total	n/a	n/a	n/a	n/a	n/a

*C = A x B, **D = (A + C) x 0.20

In the June 2011 ICR, the Department updated the estimate of employees and resident contractors in the 2007 CFATS Regulatory Assessment in response to a survey submitted by the American Fuel and Petrochemical Manufacturers²⁶ during the 30 day comment period associated with the previous CFATS Personnel Surety Program ICR.²⁷ Specifically, the Department increased the estimated number of full time employees/contractors in Group A facilities by 5, as shown in Table 8.

²⁶ The American Fuel and Petrochemical Manufacturers is the name of the former National Petrochemical & Refiners Association, whose comment may be found at <http://www.regulations.gov/#!documentDetail;D=DHS-2009-0026-0029>.

²⁷ See Response To Comments Received During 30 Day Comment Period: New Information Collection Request 1670-NEW, 76 FR 34720, 34725 (June 14, 2011).

Table 8: Revised 2007 CFATS Regulatory Assessment Estimate of Number of Full Time Employees and Resident Contractors

	A	B	C*	D**	A + C + D
	Number of Full Time Employees Per Facility	Resident Contractors Per Facility (as percent of full time employees)	Resident Contractors Per Facility	20% annual turnover (full time employees and resident contractors per facility)	Number of Full Time Employees and Resident Contractors Per Facility (including 20% annual turnover)
Tier 1 Group A	1,955	30%	587	508	3,050
Tier 1 Group B	35	20%	7	8	50
Tier 1 Group C	152	10%	15	33	201
Tier 1 Theft	35	10%	4	8	46
Tier 2 Group A	1,395	30%	419	363	2,176
Tier 2 Group B	34	20%	7	8	49
Tier 2 Group C	317	10%	32	70	418
Tier 2 Theft	35	10%	4	8	46
Tier 3 Group A	2,435	30%	731	633	3,799
Tier 3 Group B	47	20%	9	11	68
Tier 3 Group C	310	10%	31	68	409
Tier 3 Theft	35	10%	4	8	46
Tier 4 Group A	1,415	30%	425	368	2,207
Tier 4 Group B	139	20%	28	33	200
Tier 4 Group C	201	10%	20	44	265
Tier 4 Theft	35	10%	4	8	46
Total	n/a	n/a	n/a	n/a	n/a

*C = A x B, **D = (A + C) x 0.20

In addition to submitting comments on the Department’s June 2011 estimated burden about unescorted visitors, ACC also suggested that 80 percent of employees/resident contractors have access to restricted areas and/or critical assets at Group A, B and C facilities and only 15 percent of employees/resident contractors have access to theft/diversion facilities. To provide an additional estimate of the number of respondents the Department applied this ACC assumption to the revised 2012 CFATS Personnel Surety Program Analysis. The resulting estimate, referred to as the “Adjusted June 2011 ICR Estimate of the Number of Full Time Employees and Resident Contractors” is shown in Table 9.

Table 9: Adjusted June 2011 ICR Estimate of the Number of Full Time Employees and Resident Contractors

	A	B	C*	D**	A + C + D	E	(A + C + D) x E
	Number of Full Time Employees Per Facility	Resident Contractors Per Facility (as percent of full time employees)	Resident Contractors Per Facility	20% annual turnover (full time employees and resident contractors per facility)	Number of Full Time Employees and Resident Contractors Per Facility (including 20% annual turnover)	ACC's Estimate of Full Time Employees and Contractors with Access to Restricted Areas or Critical Assets (Percent)	Number of Full Time Employees and Resident Contractors Per Facility with Access to Restricted Areas or Critical Assets (including 20% annual turnover)
Tier 1 Group A	1,955	30%	587	508	3,050	80%	2,440
Tier 1 Group B	35	20%	7	8	50	80%	40
Tier 1 Group C	152	10%	15	33	201	80%	161
Tier 1 Theft	35	10%	4	8	46	15%	7
Tier 2 Group A	1,395	30%	419	363	2,176	80%	1,741
Tier 2 Group B	34	20%	7	8	49	80%	39
Tier 2 Group C	317	10%	32	70	418	80%	335
Tier 2 Theft	35	10%	4	8	46	15%	7
Tier 3 Group A	2,435	30%	731	633	3,799	80%	3,039
Tier 3 Group B	47	20%	9	11	68	80%	54
Tier 3 Group C	310	10%	31	68	409	80%	327
Tier 3 Theft	35	10%	4	8	46	15%	7
Tier 4 Group A	1,415	30%	425	368	2,207	80%	1,766
Tier 4 Group B	139	20%	28	33	200	80%	160
Tier 4 Group C	201	10%	20	44	265	80%	212
Tier 4 Theft	35	10%	4	8	46	15%	7
Total	n/a	n/a	n/a	n/a	n/a	n/a	n/a

*C = A x B, **D = (A + C) x 0.20

For the purpose of this notice, the Department also evaluated whether or not the 2007 CFATS Regulatory Assessment should continue to be the basis for the estimate of full time employees and resident contractors. To provide an additional estimate of the number of respondents, the 2012 CFATS Personnel Surety Program Analysis analyzed actual information submitted by high-risk chemical facilities in response to Top-Screen²⁸ Question Q:1.45-400.²⁹ Based upon the submitted information, the Department was able to estimate full time employees and resident contractors by each model facility category, as shown in Table 10.

²⁸ Top-Screen is defined at 6 CFR 27.105.

²⁹ Q:1.45-400 refers to the specific question reference number in the online Top-Screen application which is not available to the general public. However, the exact text of the question is available on page 20 of the CSAT Top-Screen Survey Application User Guide v1.99 in the row entitled, "Number of Full Time Employees." See http://www.dhs.gov/xlibrary/assets/chemsec_csattopscreenusersmanual.pdf.

Table 10: 2012 CFATS Personnel Surety Program Analysis' Estimate of The Number of Full Time Employees and Resident Contractors

	A	Resident Contractors Per Facility	B	A + B
	Response to Top Screen Question Q:1.45-400	(as percent of full time employees)	Resident Contractors Per Facility	20% Annual Turnover (full time employees and resident contractors per facility)
				Number of Full Time Employees and Resident Contractors Per Facility (including 20% annual turnover)
Tier 1 Group A	599		120	719
Tier 1 Group B	36		7	43
Tier 1 Group C	300		60	360
Tier 1 Theft	653		131	783
Tier 2 Group A	222		44	267
Tier 2 Group B	30		6	36
Tier 2 Group C	489		98	587
Tier 2 Theft	416	N/A	83	499
Tier 3 Group A	594	Top Screen Question Q1:1.45-400 incorporates estimate of resident contractors	119	713
Tier 3 Group B	33		7	39
Tier 3 Group C	188		38	225
Tier 3 Theft	233		47	279
Tier 4 Group A	737		147	884
Tier 4 Group B	17		3	20
Tier 4 Group C	175		35	211
Tier 4 Theft	195		39	234
Total	n/a		n/a	n/a

* In question Top Screen Question Q:1.45-400, facilities provide both full time employees and resident contractors

Table 11 compares the estimates of full time employees and resident contractors in the: (1) 2007 CFATS Regulatory Assessment; (2) ICR submitted in June of 2011; (3) adjusted June 2011 ICR Estimate of the Number of Full Time Employees and Resident Contractors; and (4) 2012 CFATS Personnel Surety Program Analysis.

Table 11: Average Number of Full Time Employees and Contractors per Facility by Model Facility Category

	2007 CFATS Regulatory Assessment	Estimate Used in June 2011 ICR	June 2011 ICR (adjusted with ACC's assumption on facility personnel with access to restricted areas or critical assets)	2012 CFATS Personnel Surety Program Analysis
Tier 1 Group A	610	3,050	2,440	719
Tier 1 Group B	50	50	40	43
Tier 1 Group C	200	201	161	360
Tier 1 Theft	47	46	7	783
Tier 2 Group A	436	2,176	1,741	267
Tier 2 Group B	49	49	39	36
Tier 2 Group C	419	418	335	587
Tier 2 Theft	47	46	7	499
Tier 3 Group A	760	3,799	3,039	713
Tier 3 Group B	67	68	54	39
Tier 3 Group C	409	409	327	225
Tier 3 Theft	47	46	7	279
Tier 4 Group A	442	2,207	1,766	884
Tier 4 Group B	200	200	160	20
Tier 4 Group C	265	265	212	211
Tier 4 Theft	47	46	7	234

When evaluating the reasonable alternatives (*see* next section) to estimate the total number of respondents, the Department did not consider alternatives that used an assumption about the full time employees and resident contractors estimates from the 2007 CFATS Regulatory Assessment or the estimate in the June 2011 ICR.

Rather, when evaluating the reasonable alternatives to estimate the total number of respondents (see the next section of this document for this evaluation), the Department opted to use the best available industry estimates, as well as actual historical data collected directly from high-risk chemical facilities, to estimate the full time employees and resident contractors. Namely:

- (1) the adjusted June 2011 ICR estimate of full time employees and resident contractors, and

(2) the estimate of full time employees and resident contractors in the 2012 CFATS Personnel Surety Program Analysis.

SUMMARY OF ALTERNATIVES TO ESTIMATE THE NUMBER OF RESPONDENTS

As mentioned above, for the purpose of this notice the number of respondents is estimated by multiplying:

- the number and type of high-risk chemical facilities, and
- the number of affected individuals at each type of high-risk chemical facility.

For the purpose of this notice, the Department estimates the number of affected individuals at each type of high-risk chemical facility as the sum of:

- the number of unescorted visitors at each type of high-risk chemical facility, and
- the number of facility personnel and resident contractors at each type of high-risk chemical facility.

In light of the data submitted by commenters and the Department's own analysis, three alternatives for the total number of respondents were considered by the Department.

First, the total number of respondents is based on:

- a. the number and type of high-risk chemical facilities assumed in the 2012 CFATS Personnel Surety Program Analysis;
- b. the ACC's estimates about unescorted visitors; and
- c. the adjusted June 2011 ICR estimate of the number of full time employees and resident contractors.

This alternative results in an estimate of an initial 972,584 respondents with an annual turnover of 290,459 respondents. *See* Table 12.

Table 12: Estimate of Number of Respondents – Alternative 1

	A	B	A	B	C	(A + B) x C	D	E	(D + E) x C
	Number of Full Time Employees and Resident Contractors CFATS Personnel Surety Program ICR Withdrawn in July of 2012 (including 20% annual turnover) (Table 8)	Estimate of Full Time Employees and Contractors with Access to Restricted Areas or Critical Assets (Percent)	Full Time Employees and Resident Contractors CFATS Personnel Surety Program ICR withdrawn in July of 2012 with Estimates of Percentage of Employees/Resident Contractors with Restricted Area and/or Critical Asset Access (Table 9)	ACC Unescorted Visitor Estimate (including 71% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6)	Number of Facilities (Table 5)	Number of Initial Respondents (includes 20% annual turnover)	CFATS Personnel Surety Program ICR Withdrawn in July of 2011 20% Annual Turnover (Table 9)	ACC Unescorted Visitors Annual Turnover (Table 6)	Annual Respondent Turnover
Tier 1 Group A	3,050	80%	2,440	1,746	4	18,781	508	546	4,730
Tier 1 Group B	50	80%	40	437	7	3,209	8	137	975
Tier 1 Group C	201	80%	161	437	11	6,697	33	137	1,906
Tier 1 Theft	46	15%	7	73	104	8,312	8	23	3,177
Tier 2 Group A	2,176	80%	1,741	1,746	9	31,291	363	546	8,154
Tier 2 Group B	49	80%	39	437	18	8,537	8	137	2,596
Tier 2 Group C	418	80%	335	437	17	12,977	70	137	3,470
Tier 2 Theft	46	15%	7	73	449	35,751	8	23	13,662
Tier 3 Group A	3,799	80%	3,039	1,746	25	118,079	633	546	29,097
Tier 3 Group B	68	80%	54	437	37	18,162	11	137	5,470
Tier 3 Group C	409	80%	327	437	74	56,550	68	137	15,154
Tier 3 Theft	46	15%	7	73	1,049	83,568	8	23	31,936
Tier 4 Group A	2,207	80%	1,766	1,746	81	283,632	368	546	73,809
Tier 4 Group B	200	80%	160	437	213	127,156	33	137	36,201
Tier 4 Group C	265	80%	212	437	15	9,460	44	137	2,635
Tier 4 Theft	46	15%	7	73	1,888	150,422	8	23	57,484
Total	n/a	n/a	n/a	n/a	4,000	972,584	n/a	n/a	290,459

Second, the total number of respondents is based on:

- a. the number and type of high-risk chemical facilities assumed in the 2012 CFATS Personnel Surety Program Analysis;
- b. the ACC’s estimates about unescorted visitors;
- c. the number of full time employees and resident contractors estimated by the 2012 CFATS Personnel Surety Program Analysis; and
- d. ACC’s estimate of the percentage of resident employees and contractors with access to restricted areas or critical assets.

This alternative results in an estimate of an initial 896,286 respondents with an annual turnover of 393,519 respondents. *See* Table 13.

Table 13: Estimate of Number of Respondents – Alternative 2

	A	B	(A x B) = C	D	E	(C + D) x E	F	G	(F + G) x E
	2012 CFATS Personnel Surety Program Analysis Average Number of Full Time Employees and Contractors (including 20% Turnover) (Table 10)	Estimate of Full Time Employees and Contractors with Access to Restricted Areas or Critical Assets (Percent)	Average Number of Full Time Employees and Contractors (including 20% Turnover)	ACC Unescorted Visitor Estimate (including 71% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6)	Number of Facilities (Table 5)	Number of Initial Respondents (includes 20% annual turnover)	2012 CFATS Personnel Surety Program Analysis 20% Annual Turnover (Table 10)	ACC Unescorted Visitors Annual Turnover (Table 6)	Annual Respondent Turnover
Tier 1 Group A	719	80%	575	1746	4	10,413	120	546	2987
Tier 1 Group B	43	80%	34	437	7	3,169	7	137	967
Tier 1 Group C	360	80%	288	437	11	8,124	60	137	2203
Tier 1 Theft	783	15%	118	73	104	19,847	131	23	15993
Tier 2 Group A	267	80%	213	1746	9	17,583	44	546	5298
Tier 2 Group B	36	80%	29	437	18	8,355	6	137	2558
Tier 2 Group C	587	80%	469	437	17	15,243	98	137	3942
Tier 2 Theft	499	15%	75	73	449	66,200	83	23	47494
Tier 3 Group A	713	80%	571	1746	25	57,169	119	546	16408
Tier 3 Group B	39	80%	31	437	37	17,321	7	137	5295
Tier 3 Group C	225	80%	180	437	74	45,660	38	137	12886
Tier 3 Theft	279	15%	42	73	1,049	120,269	47	23	72714
Tier 4 Group A	884	80%	707	1746	81	198,148	147	546	56000
Tier 4 Group B	20	80%	16	437	213	96,461	3	137	29806
Tier 4 Group C	211	80%	168	437	15	8,821	35	137	2502
Tier 4 Theft	234	15%	35	73	1,888	203,505	39	23	116465
Total	n/a	n/a	n/a	n/a	4,000	896,286	n/a	n/a	393,519

Third the total number of respondents is based on:

- a. the number and type of high-risk chemical facilities assumed in the 2012 CFATS Personnel Surety Program Analysis;
- b. the ACC’s estimates about unescorted visitors;
- c. the number of full time employees and resident contractors estimated by the 2012 CFATS Personnel Surety Program Analysis; and
- d. does not include ACC’s estimate of the percentage of resident employees and contractors with access to restricted areas or critical assets.

This alternative results in an estimate of an initial 1,806,996 respondents with an annual turnover of 393,519 respondents. *See* Table 14.

Table 14: Estimate of Number of Respondents – Alternative 3

	A	B	(A x B) = C	D	E	(C + D) x E	F	G	(F + G) x E
	2012 CFATS Personnel Surety Program Analysis Average Number of Full Time Employees and Contractors (including 20% Turnover) (Table 10)	Estimate of Full Time Employees and Contractors with Access to Restricted Areas or Critical Assets (Percent)	Average Number of Full Time Employees and Contractors (including 20% Turnover)	ACC Unescorted Visitor Estimate (including 71% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6)	Number of Facilities (Table 5)	Number of Initial Respondents (includes 20% annual turnover)	2012 CFATS Personnel Surety Program Analysis 20% Annual Turnover (Table 10)	ACC Unescorted Visitors Annual Turnover (Table 6)	Annual Respondent Turnover
Tier 1 Group A	719	100%	719	1,746	4	11,058	120	546	2,987
Tier 1 Group B	43	100%	43	437	7	3,227	7	137	967
Tier 1 Group C	360	100%	360	437	11	8,930	60	137	2,203
Tier 1 Theft	783	100%	783	73	104	89,306	131	23	15,993
Tier 2 Group A	267	100%	267	1,746	9	18,061	44	546	5,298
Tier 2 Group B	36	100%	36	437	18	8,485	6	137	2,558
Tier 2 Group C	587	100%	587	437	17	17,218	98	137	3,942
Tier 2 Theft	499	100%	499	73	449	256,361	83	23	47,494
Tier 3 Group A	713	100%	713	1,746	25	60,689	119	546	16,408
Tier 3 Group B	39	100%	39	437	37	17,611	7	137	5,295
Tier 3 Group C	225	100%	225	437	74	48,997	38	137	12,886
Tier 3 Theft	279	100%	279	73	1,049	369,426	47	23	72,714
Tier 4 Group A	884	100%	884	1,746	81	212,432	147	546	56,000
Tier 4 Group B	20	100%	20	437	213	97,319	3	137	29,806
Tier 4 Group C	211	100%	211	437	15	9,435	35	137	2,502
Tier 4 Theft	234	100%	234	73	1,888	578,440	39	23	116,465
Total	n/a	n/a	n/a	n/a	4,000	1,806,996	n/a	n/a	393,519

These three alternatives are summarized in Table 15.

Table 15: Comparison of Number of Respondents for Alternatives 1, 2 and 3

	Initial Year	Year 2	Year 3	Number of Respondents (Annual Average)
Alternative 1	972,584	290,459	290,459	517,834
Alternative 2	896,286	393,519	393,519	561,108
Alternative 3	1,806,996	393,519	393,519	864,678

For the purpose of this notice the Department selected alternative 3. Alternative 3 reasonably reflects the type and number of facilities regulated by CFATS, is based upon the actual number of full time employees and contractors as reported by high-risk chemical facilities, and explicitly estimates unescorted visitors as a separate population

from facility employees and resident contractors.

LIMITATION OF RESPONDENTS TO TIER 1 AND TIER 2 FACILITIES

The Department is proposing to limit this information collection, and to limit initial CFATS Personnel Surety Program implementation, to only Tier 1 and Tier 2 high-risk chemical facilities. A limited implementation would enable the Department to implement the CFATS Personnel Surety Program for those facilities presenting the highest risk, while not imposing the burden on all CFATS regulated facilities. Assuming this information collection request is approved, a subsequent ICR would be published and submitted to OMB for approval to incorporate any lessons learned and potential improvements to the CFATS Personnel Surety Program prior to collecting information from Tier 3 and Tier 4 high-risk chemical facilities. Table 16 provides the estimate of the number of respondents using alternative 3 for Tier 1 and 2 high-risk chemical facilities.

Table 16: Estimate of Number of Tier 1 & 2 Respondents

	A	B	(A x B) = C	D	E	(C + D) x E	F	G	(F + G) x E
	2012 CFATS Personnel Surety Program Analysis Average Number of Full Time Employees and Contractors (including 20% Turnover) (Table 10)	Estimate of Full Time Employees and Contractors with Access to Restricted Areas or Critical Assets (Percent)	Average Number of Full Time Employees and Contractors (including 20% Turnover)	ACC Unescorted Visitor Estimate (including 71% frequent visitors, 20% turnover for infrequent visitors) (Table 6)	Number of Facilities (Table 5)	Number of Initial Respondents (includes 20% annual turnover)	2012 CFATS Personnel Surety Program Analysis 20% Annual Turnover (Table 10)	ACC Unescorted Visitors Annual Turnover (Table 6)	Annual Respondent Turnover
Tier 1 Group A	719	100%	719	1,746	4	11,058	120	546	2,987
Tier 1 Group B	43	100%	43	437	7	3,227	7	137	967
Tier 1 Group C	360	100%	360	437	11	8,930	60	137	2,203
Tier 1 Theft	783	100%	783	73	104	89,306	131	23	15,993
Tier 2 Group A	267	100%	267	1,746	9	18,061	44	546	5,298
Tier 2 Group B	36	100%	36	437	18	8,485	6	137	2,558
Tier 2 Group C	587	100%	587	437	17	17,218	98	137	3,942
Tier 2 Theft	499	100%	499	73	449	256,361	83	23	47,494
Total	n/a	n/a	n/a	n/a	n/a	412,647	n/a	n/a	81,443

Therefore, the annual average number of respondents is equal to 191,845, as shown in Table 17. The Department’s rounded estimate is 192,000 respondents.

Table 17: Estimate of Annual Number of Respondents for Tier 1 & 2

Facilities

	A	B	C	(A + B + C) / 3
	Total Respondents Year 1	Total Respondents Year 2	Total Respondents Year 3	Number of Respondents (Annual Average)
Tier 1 Group A	11,058	2,987	2,987	5,677
Tier 1 Group B	3,227	967	967	1,720
Tier 1 Group C	8,930	2,203	2,203	4,446
Tier 1 Theft	89,306	15,993	15,993	40,431
Tier 2 Group A	18,061	5,298	5,298	9,553
Tier 2 Group B	8,485	2,558	2,558	4,534
Tier 2 Group C	17,218	3,942	3,942	8,367
Tier 2 Theft	256,361	47,494	47,494	117,116
Total	412,647	81,443	81,443	191,845

ESTIMATED TIME PER RESPONDENT

For the purpose of estimating the time per respondent, the Department considered making an assumption about the percentage of affected individuals under the three options outlined in the summary section of this notice (e.g., information about one-third of affected individuals would be submitted for direct vetting against the Federal Government’s consolidated and integrated terrorist watchlist, information about one-third of affected individuals would be submitted to verify enrollment in other DHS programs, and information about one-third of affected individuals would not be submitted because they possess TWICs that high-risk chemical facilities would electronically verify through the use of TWIC readers). However, the Department concluded that such an assumption was unwarranted because: (1) the assumption would be without any factual basis; (2) the burden to submit information about an affected individual for direct vetting is approximately the same as the burden to submit information in order to verify enrollment (i.e., similar number of required data elements); and (3) the most conservative burden estimate would assume that information is submitted for all affected individuals (i.e., no

facilities will choose to electronically verify the TWIC in the possession of an affected individual).

To avoid making unjustified assumptions, and to avoid underestimating the time per respondent, the Department decided to estimate the average burden per respondent by assuming each and every respondent’s information will be manually submitted, rather than uploaded via a bulk file, to the Department for vetting for terrorist ties.

Accordingly, the Department’s “estimated time per respondent” is the average burden for each respondent/submission, as shown in Table 18. The estimate includes (1) 30 minutes to type and submit each and every affected individual’s required information during initial submission, (2) 10 minutes to type and submit each update/correction for five percent of the affected individuals, (3) 10 minutes to update information on 20 percent of the affected individuals expected to no longer have access to a high-risk chemical facility restricted area(s) or critical asset(s) each year. Therefore, for the purpose of this notice, the estimated time per respondent is 0.54 hours.

Table 18: Estimate of Burden Time per Response

	% of Population	Duration
Initial Submission (100%)	1.00	0.50
Updates / Corrections (5%)	0.05	0.17
Removal - Turnover (20%)	0.20	0.17
Estimated Time Per Respondent		0.5425

TOTAL BURDEN HOURS

Annual burden hours are the sum of: (1) the number of respondents multiplied by the estimated time per respondent; (2) the number of respondents for which a high-risk chemical facility will need to update/correct information (five percent of the number of respondents) multiplied by the number of hours necessary to type and submit each

update/correction (i.e., 0.17 hours or 10 minutes); and (3) the number of respondents that are expected to no longer have access to a high-risk chemical facility’s restricted area(s) or critical asset(s) (i.e., 20 percent of the number of respondents) multiplied by the number of hours necessary to notify the Department (i.e., 0.17 hours or 10 minutes). Therefore, the average annual burden is 104,076 hours, as shown in Table 19. The Department’s rounded estimate is 104,100 hours.

Table 19: Estimate of Annual Burden Hours for Tier 1 & Tier 2 Facilities

	A	B	(A x B)
	Annual Respondents	Duration	Burden (Hours)
Initial Submission (100%)	191,845	0.50	95,922
Updates / Corrections (5%)	9,592	0.17	1,631
Removal - Turnover (20%)	38,369	0.17	6,523
Total Burden Hours			104,076

TOTAL BURDEN COST (CAPITAL/STARTUP)

The Department expects no capital/startup cost for facilities that choose to implement Option 1 or Option 2.

Although there are no costs associated with facilities providing information to the Department under Option 3, the Department has nonetheless estimated the potential capital costs incurred by facilities that choose to implement Option 3 under the CFATS Personnel Surety Program to ensure an appropriate accounting of the costs potentially incurred by this Information Collection. The capital cost of Option 3 can be estimated by multiplying (1) the number of facilities that are likely to implement Option 3 by (2) the cost to acquire, install, and maintain TWIC readers at the facilities.

ESTIMATING CAPITAL COSTS FOR OPTION 3 - NUMBER AND TYPE OF HIGH-RISK
CHEMICAL FACILITIES THAT MAY CHOOSE TO USE OPTION 3

High-risk chemical facilities and their designees have wide latitude in how they may implement Option 3, if they choose to do so. High-risk chemical facilities could propose, in their SSPs or ASPs, to share the costs of TWIC readers and any associated infrastructure at central locations, or high-risk chemical facilities could propose to purchase and install TWIC readers for their own use. The Department will assess the adequacy of such proposals on a facility-by-facility basis, in the course of evaluating each facility's SSP or ASP.

For the purpose of this notice, the Department estimates that the number of high-risk chemical facilities that are likely to implement Option 3 is the number of high-risk chemical facilities likely to have affected individuals who possess TWICs accessing their restricted areas or critical assets. Through the 2012 CFATS Personnel Surety Program Analysis, the Department determined that there are currently 32 high-risk chemical facilities that have claimed a partial Maritime Transportation Security Act (MTSA) exemption³⁰ and have received a final tier determination under CFATS. The Department then normalized the facility count by multiplying the number of facilities that claimed a partial exemption in each category by a factor of 1.22 (as it did in estimating the total number of facilities in Table 5 above), as shown in Table 20.

³⁰ Facilities that are partially regulated under both MTSA and CFATS have the opportunity to identify themselves in the CSAT Top-Screen. The text of the question is available on page 22 of the CSAT Top-Screen Survey Application User Guide v1.99. See http://www.dhs.gov/xlibrary/assets/chemsec_csattopscreenusersmanual.pdf.

Table 20: Estimate of Number of High-Risk Chemical Facilities that May Choose to Use TWIC Readers

	A	A x 1.22
	2012 CFATS Personnel Surety Program Analysis	2012 CFATS Personnel Surety Program Analysis (Normalized)
Tier 1 Group A	0	0
Tier 1 Group B	0	0
Tier 1 Group C	0	0
Tier 1 Theft	0	0
Tier 2 Group A	0	0
Tier 2 Group B	0	0
Tier 2 Group C	1	1
Tier 2 Theft	3	3
Tier 3 Group A	3	3
Tier 3 Group B	0	0
Tier 3 Group C	2	2
Tier 3 Theft	13	15
Tier 4 Group A	1	1
Tier 4 Group B	2	2
Tier 4 Group C	0	0
Tier 4 Theft	7	8
Total	32	35

ESTIMATING CAPITAL COSTS FOR OPTION 3 - TWIC READERS COSTS

For the purpose of this notice, the Department has based the potential per facility capital costs related to Option 3 on the TWIC Reader Requirements notice of proposed rulemaking (NPRM), published elsewhere in this issue of the Federal Register.³¹ In the TWIC Reader Requirements NPRM, the Department estimated the initial phase-in costs annual recurring costs, and annual recurring costs that considers equipment replacement

³¹ See TWIC Reader Requirements NPRM Table 4.

for container terminals, large passenger vessels/terminals, petroleum facilities, break-bulk terminals and small passenger vessels/towboats. For the purpose of this notice, the Department has based the capital costs related to Option 3 on the costs incurred by the petroleum facilities (i.e., bulk liquid facilities) in the TWIC Reader Requirements NPRM. Specifically, the Department estimated the capital costs in this notice to be the average of the initial phase-in cost plus three years of the annual reoccurring cost without equipment replacement. NPPD opted to use the annual reoccurring cost without equipment replacement to align with the TWIC Reader Requirements NPRM assumption that equipment replacement cost occurs every five years. This notice estimates average annual costs for a three year period. Thus, for the purposes of this notice the estimated the capital costs per facility is \$99,953.33, $[(\$256,267 + (\$14,531 \times 3)) / 3]$.

The Department then calculated the capital costs for the 35 high-risk chemical facilities, as shown in Table 21.

Table 21: Capital Cost Burden Estimate for High-Risk Chemical Facilities that May Choose to Use TWIC Readers

	A Number of Facilities	B Average TWIC Reader Implementation Cost Per Facility	(A x B) Capital Cost of TWIC Reader Implementation
Tier 1 Group A	0	\$99,953	\$0
Tier 1 Group B	0	\$99,953	\$0
Tier 1 Group C	0	\$99,953	\$0
Tier 1 Theft	0	\$99,953	\$0
Tier 2 Group A	0	\$99,953	\$0
Tier 2 Group B	0	\$99,953	\$0
Tier 2 Group C	1	\$99,953	\$99,953
Tier 2 Theft	3	\$99,953	\$299,860
Tier 3 Group A	3	\$99,953	\$299,860
Tier 3 Group B	0	\$99,953	\$0
Tier 3 Group C	2	\$99,953	\$199,907
Tier 3 Theft	15	\$99,953	\$1,499,300
Tier 4 Group A	1	\$99,953	\$99,953
Tier 4 Group B	2	\$99,953	\$199,907
Tier 4 Group C	0	\$99,953	\$0
Tier 4 Theft	8	\$99,953	\$799,627
Total	35	n/a	\$3,498,367

The capital cost for the 35 high-risk chemical facilities totals \$3,498,367.67; however, the Department intends to limit this information collection to only Tier 1 and Tier 2 facilities. Therefore, for the purpose of this notice, the Department estimates the capital cost for the implementation of TWIC readers is \$399,813, as shown in Table 22. The Department's rounded estimate is \$399,800.

Table 22: Capital Cost Burden Estimate for Tier 1 & 2 High-Risk Chemical Facilities that May Choose to Use TWIC Readers

	A	B	(A x B)
	Number of Facilities	Average TWIC Reader Implementation Cost Per Facility	Capital Cost of TWIC Reader Implementation
Tier 1 Group A	0	\$99,953	\$0
Tier 1 Group B	0	\$99,953	\$0
Tier 1 Group C	0	\$99,953	\$0
Tier 1 Theft	0	\$99,953	\$0
Tier 2 Group A	0	\$99,953	\$0
Tier 2 Group B	0	\$99,953	\$0
Tier 2 Group C	1	\$99,953	\$99,953
Tier 2 Theft	3	\$99,953	\$299,860
Total	4	n/a	\$399,813

CONSIDERATION OF OTHER CAPITAL COSTS

The burden estimates outlined in this notice are limited in scope to those activities listed in 5 CFR 1320.3(b)(1). Specifically, 5 CFR 1320.3(b)(1) and 5 CFR 1320.8 require the Department to estimate the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. Therefore, many costs (e.g., physical modification of the facility layout) a facility may choose to incur to develop or implement its SSP or ASP should not be accounted for when estimating the capital costs associated with this information collection.

The Department did consider estimating certain facility capital costs such as: (1) capital costs for computer, telecommunications equipment, software, and storage to manage the data collection, submissions, and tracking; (2) capital and ongoing costs for designing, deploying and operating information technology (IT) systems necessary to maintain the data collection, submissions, and tracking; (3) cost of training facility

personnel to maintain the data collection, submissions, and tracking; and (4) site security officer time to manage the data collection, submissions, and tracking. However, the Department has concluded that these costs should be excluded 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 believes that the time, effort, and financial resources are usual and customary costs because these are costs that high-risk chemical facilities would 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.

RECORDKEEPING COSTS

High-risk chemical facilities are not required to create, keep, or retain records under RBPS 12(iv). If a high-risk chemical facility elects, for its own business purposes, to create, keep, or retain records that identify and manage the submission of information about affected individuals, those records are not government records.

The recordkeeping costs, if any, to create, keep, or retain records pertaining to background checks as part of a high-risk chemical facility's SSP or ASP, are properly estimated in the recordkeeping estimates associated with the SSP Instrument under

Information Collection 1670-0007.³²

The Department considered estimating the potential recordkeeping burden associated with RBPS 12(iv), but subsequently concluded that no potential recordkeeping should be estimated in this notice 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 believes that the types of recordkeeping associated with RBPS 12(iv) are usual and customary costs that high-risk chemical facilities would incur to conduct background checks for identity, criminal history, and legal authorization to work as required by RBPS (12)(i)-(iii) and also by various other Federal, state, or local laws or regulations.

TOTAL BURDEN COST (OPERATING/MAINTAINING)

The annual burden cost is equal to the sum of the: (1) annual burden hours multiplied by the hourly wage rate for appropriate facility personnel; (2) the capital costs (\$399,800); and (3) recordkeeping costs (\$0).

Comments associated with the previous ICR suggested an appropriate wage rate between \$20 and \$40 per hour; the Department picked the midpoint of \$30 to estimate the hourly direct wage rate, which corresponds to a fully loaded wage rate of \$42.

Therefore, the annual burden not including capital costs and recordkeeping costs is \$4,371,181 as shown in Table 23. The rounded estimate is \$4,371,000.

³² Information Collection 1670-0007 may be viewed at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201001-1670-007#.

Table 23: Estimate of Annual Burden Cost for Tier 1 & Tier 2 Facilities

	A	B	(A x B)
	Burden (Hours)	Wage Rate	Cost
Initial Submission	95,922	42	\$4,028,738
Updates / Corrections	1,631	42	\$68,489
Removal - Turnover	6,523	42	\$273,954
Total Burden Cost (operating/maintaining)	104,076	42	\$4,371,181

Therefore, the total annual burden cost is \$4,770,994, after the inclusion of the \$399,813 capital cost burden. The Department’s rounded estimate is \$4,771,000.

VI. SOLICITATION OF COMMENTS

OMB IS PARTICULARLY INTERESTED IN COMMENTS WHICH:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

VII. ANALYSIS

Agency: Department of Homeland Security, National Protection and Programs

Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance

Division

Title: Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program

OMB Number: 1670-NEW

Frequency: Other: In accordance with the compliance schedule or the facility Site

Security Plan or Alternative Security Plan

Affected Public: Business or other for-profit

Number of Respondents: 192,000 affected individuals

Estimated Time per Respondent: 0.54 hours (32.4 minutes)

Total Burden Hours: 104,100 annual burden hours

Total Burden Cost (capital/startup): \$399,800

Total Recordkeeping Burden: \$0

Total Burden Cost (operating/maintaining): \$4,771,000

Dated: March 13, 2013.

Scott Libby

Deputy Chief Information Officer,

National Protection and Programs Directorate,

Department of Homeland Security.

[FR Doc. 2013-06184 Filed 03/21/2013 at 8:45 am; Publication Date: 03/22/2013]