



DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2012-0061]

Chemical Facility Anti-Terrorism Standards Personnel Surety Program

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-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). The Department previously published a notice about the CFATS Personnel Surety Program Information Collection Request in the Federal Register on March 22, 2013, for a 60-day public comment period.¹ On May 21, 2013, the Department extended the comment period an additional 14 days.² In this notice, NPPD is (1) responding to 28 comments submitted in response to the 60-day notice previously published about this ICR, and (2) soliciting public comments concerning this ICR for an additional 30 days. This notice also describes the nature of the CFATS Personnel Surety Program Information Collection Request, the categories of respondents, the estimated

¹ See 78 FR 17680 (March 22, 2013). The 60-day Federal Register notice for Information Collection 1670-NEW, which solicited comments for 60 days, may be found at <https://federalregister.gov/a/2013-06184>.

² See 78 FR 29759 (May 21, 2013). The Federal Register notice that extended the comment period an additional 14 days may be viewed at <https://federalregister.gov/a/2013-12059>.

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 DATE 30 DAYS AFTER 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 written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be identified by the docket number DHS-2012-0061 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- E-mail: oir_submission@omb.eop.gov. Include the docket number in the subject line of the message.
- Fax: (202) 395-5806.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number for this action. 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),³ Sensitive Security Information (SSI),⁴ or Protected Critical Infrastructure Information (PCII)⁵ 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 submitted by mail to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, care of 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.

OMB is particularly interested in comments that:

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

³ 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.

⁴ For more information about SSI see 49 CFR part 1520 and the SSI Program webpage at <http://www.tsa.gov/ssi>.

⁵ For more information about PCII see 6 CFR part 29 and the PCII Program webpage at <http://www.dhs.gov/protected-critical-infrastructure-information-pcii-program>.

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.

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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 (April 9, 2007).

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).⁶

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 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

⁶ For more information about the TSDB, see DOJ/FBI – 019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007).

Department will consider on a case-by-case basis in evaluating high-risk chemical facilities' SSPs or ASPs.

As a result of the CFATS Personnel Surety Program, regardless of the option selected by the high-risk chemical facility, 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.⁷ All of these programs conduct terrorist ties vetting equivalent to the terrorist ties vetting that would be conducted under Option 1.⁸ 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 Submitter of the high-risk chemical facility 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

⁷ 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).

⁸ Each of the DHS programs referenced conducts recurrent vetting, which is equivalent to the terrorist ties vetting conducted under Option 1. Recurrent vetting compares an affected individual's information against new and/or updated TSDB records as those new and/or updated records become available. Recurrent vetting is a Department best practice.

Submitter).⁹ 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 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

⁹ When the Department notifies the appropriate designee of the high-risk chemical facility of significant changes in the status of an affected individual's enrollment, such a notification should not be construed to indicate that an individual has terrorist ties or be treated as derogatory information.

acting on their behalf) electronically verify and validate the affected individuals' TWICs¹⁰ through the use of TWIC readers (or other technology that is periodically updated using the with revoked card information).¹¹ 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).¹²

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.

¹⁰ Verification and validation of an affected individual's TWIC requires authentication that the affected individual's TWIC is (1) a valid credential issued by TSA, and (2) contains the Card Holder Unique Identifier and correct digital signature.

¹¹ The Department currently offers two ways to determine if a TWIC has been revoked (or reported lost or stolen). One is the Canceled Card List (CCL), the other is the Certificate Revocation List (CRL). More information about the Canceled Card List may be found at http://www.tsa.gov/sites/default/files/publications/pdf/twic/canceled_card_list_ccl_faq.pdf. More information about the CRL may be in the TWIC NPRM published on March 29, 2009 at 74 FR 13364 which may be accessed at <https://www.federalregister.gov/articles/2009/03/27/E9-6852/transportation-worker-identification-credential-twic-reader-requirements#p-122>.

¹² On March 22, 2013, the U.S. Coast Guard 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.

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.

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 with revoked card information), 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.

The Department intends to provide high-risk chemical facilities, and their designees, the ability to create an alert within the CSAT Personnel Surety application that can notify them when the Department has received information about an affected

individual(s), under Option 1 or Option 2. Further, the Department will also allow high-risk chemical facilities the ability to view the status (e.g., that some information about an affected individual has been inputted into CSAT but not yet submitted to the Department under Option 1 or Option 2; that information about an affected individual has been submitted; etc.) of records about affected individuals associated with their facility within the CSAT Personnel Surety application.

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

Between August 2012, and publication of the 60-day notice in March 2013, the Department had substantial dialogue with key CFATS stakeholders. The 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 ICR that the Department will 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.

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 (e.g., foreseeable but unpredictable 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.¹³

Furthermore, the Department intends to structure the CSAT Personnel Surety application to allow designees of high-risk chemical facilities to submit information about affected individuals directly to the Department on behalf of high-risk chemical facilities.

High-risk chemical facilities and their designees will be able to structure their CSAT user roles to submit information about affected individuals to the Department in several 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 with appropriate CSAT user roles; and/or
- (2) A high-risk chemical facility could ensure the submission of information about affected individuals by designating one or more persons affiliated with a third party (or with multiple 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 to submit information about affected

¹³ 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#.

individuals on behalf of all of the high-risk chemical facilities on a company-wide basis.

The Department may, upon request, also consider allowing CSAT users with the ability to submit information about affected individuals to the Department via a web-service. The ability to submit information about affected individuals via a web-service will be provided on a case by cases basis, when in the opinion of the Department, sufficient additional security and privacy safeguards have been agreed to by the CSAT user.¹⁴

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

¹⁴ A web-service is software system designed to support interoperable machine-to-machine interaction over a network.

routinely will submit information about a person again to agencies responsible for maintaining relevant information (e.g., state government agencies responsible for maintaining state motor vehicle databases). 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.

The Department has provided below several illustrative examples about how high-risk chemical facilities or designees are likely to consolidate RBPS 12(iv) processing with routine background check activities related to those required by RBPS

12(i)-(iii), namely, (i) measures designed to verify and validate identity; (ii) measures designed to check criminal history; and (iii) measures designed to verify and validate legal authorization to work. By consolidating RBPS 12(iv) with routine background check activities related to RBPS 12(i)-(iii), high-risk chemical facilities will likely choose to incorporate the submission of information about affected individuals to the Department under RBPS 12(iv) into the routine background check activities required by RBPS 12(i)-(iii).

Although estimating the burden of RBPS 12(i)-(iii) is not within the scope of this Paperwork Reduction Act notice, when and how high-risk chemical facilities could collect information for submission to the Department has influenced the Department's design of the CFATS Personnel Surety Program. The Department believes that the illustrative examples provided below show how, if the CFATS Personnel Surety Program is implemented, a high-risk chemical facility and its associated third party companies could access the CSAT Personnel Surety application for purposes of submitting terrorist ties screening information to the Department on its behalf under RBPS 12(iv), in coordination with other normal business activities not required by RBPS 12(iv).

SCENARIO #1: EMPLOYEES WHO ARE "FACILITY PERSONNEL"

This scenario could apply to a high-risk chemical facility that has a number of employees it deems in its SSP or ASP to be "facility personnel" with access to restricted areas and/or critical assets.

In its SSP or ASP, the high-risk chemical facility could choose to comply with RBPS 12(i)-(iii) for these employees by either:

- Hiring a third party background check company to perform identity, criminal

history, and legal authorization to work background checks on these employees.

- A contract or agreement between the high-risk chemical facility and the third party could establish the criteria for these background checks, and could establish which background check results qualify individuals to access the restricted areas or critical assets at the high-risk chemical facility or disqualify individuals from accessing the restricted areas or critical assets at the high-risk chemical facility.
- The third party could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.
- The high-risk chemical facility could audit or review the background checks being conducted to ensure contractual compliance.

Or,

- Performing identity, criminal history, and legal authorization to work background checks itself.
 - The high-risk chemical facility could establish the criteria for these background checks, and could establish which background check results qualify individuals to access the restricted areas or critical assets at the high-risk chemical facility or disqualify individuals from accessing the restricted areas or critical assets at the high-risk chemical facility.
 - The facility could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.

Prior to an employee being granted access to restricted areas or critical assets (i.e., prior to being issued a facility-specific access credential/card, or door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the third party or the high-risk chemical facility in accordance with the high-risk chemical facility's SSP or ASP. If appropriate, based upon the results of those background checks, the employee could then be determined suitable to access the high-risk chemical facility's restricted areas and/or critical assets.

The third party or the high-risk chemical facility could then report its suitability finding to the appropriate party at the high-risk chemical facility so that facility-specific access credentials/cards, or door/gate key(s) could be granted, if appropriate. Completion of submission of information about the affected individual to the Department in compliance with RBPS 12(iv) therefore would not impede the routine access control procedures of the high-risk chemical facility because the information submission would likely be accomplished in concert with the other background check activities, prior to access.

SCENARIO #2: RESIDENT CONTRACTORS WHO ARE "FACILITY PERSONNEL"

This scenario could apply to a high-risk chemical facility that has a number of resident contractors it deems in its SSP or ASP to be "facility personnel" with access to restricted areas or critical assets.

In its SSP or ASP, the high-risk chemical facility could choose to comply with RBPS 12(i)-(iii) for resident contractors by:

- Stipulating in a contract between the high-risk chemical facility and the company employing the resident contractors that the contractors' employer will perform or

provide for identity, criminal history, and legal authorization to work background checks to be conducted on the resident contractors.

- A contract or agreement between the high-risk chemical facility and the company employing the resident contractors could establish the criteria for these background checks, and could establish which background check results qualify individuals to access the restricted areas or critical assets at the high-risk chemical facility or disqualify individuals from accessing the restricted areas or critical assets at the high-risk chemical facility.
- The high-risk chemical facility could audit or review the background checks being conducted to ensure contractual compliance.
- Prior to a resident contractor being granted access to the restricted areas or critical assets of the high-risk chemical facility (i.e., being issued a facility-specific access credential/card, door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the company employing the resident contractor in accordance with the high-risk chemical facility's SSP or ASP.
 - The company employing the resident contractor could conduct these identity, criminal history, and legal authorization to work background checks.
 - The company employing the resident contractor could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.

- The company employing the resident contractor, however, might not perform the actual background checks itself. Rather, the company employing the resident contractor could hire a third party background check company to perform identity, criminal history, and legal authorization to work background checks on its employees (including the resident contractors at the high-risk chemical facility).
 - If the company employing the resident contractor hires a third party background check company for this purpose, a contract or agreement between the company employing the resident contractor and the third party background check company could establish the criteria for these background checks and could establish which background check results are acceptable for access to the restricted areas and critical assets at the high-risk chemical facility for which the resident contractor performs services.
 - The third party background check company could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.

Prior to the resident contractor being granted access to restricted areas or critical assets of the high-risk chemical facility (i.e., being issued a facility-specific access credential/card, or door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the company employing the resident contractor, or by a third party background check company in accordance with the high-risk chemical facility's SSP or ASP. If appropriate, based on the results of those

background checks, the resident contractor could then be determined suitable to access the high-risk chemical facility's restricted areas and/or critical assets.

The company employing the resident contractor, or a third party background check company, could then report suitability findings to the high-risk chemical facility. The appropriate party at the high-risk chemical facility could then grant the resident contractor facility-specific access credentials/cards, or door/gate key(s), if appropriate based on those suitability findings. The submission of information about the affected individual to the Department in compliance with RBPS 12(iv) therefore would not impede the routine access control procedures of the high-risk chemical facility because the submission of information would likely be accomplished in concert with the other background check activities, prior to access.

SCENARIO #3: FREQUENT "UNESCORTED VISITORS"

This scenario could apply to a high-risk chemical facility that has a number of frequent unescorted visitors that have or are seeking repeated access to the restricted areas or critical assets of the facility, pursuant to a contractual relationship with a company employing the frequent unescorted visitors.

In its SSP or ASP, the high-risk chemical facility could choose to comply with RBPS 12(i)-(iii) for frequent unescorted visitors by:

- Stipulating in a contract between the high-risk chemical facility and the company employing the frequent unescorted visitors that the frequent unescorted visitors' employer will perform or provide for identity, criminal history, and legal authorization to work background checks to be conducted on the frequent unescorted visitors.

- A contract or agreement between the high-risk chemical facility and the company employing the frequent unescorted visitors could establish the criteria for these background checks, and could establish which background check results qualify individuals to access the restricted areas or critical assets at the high-risk chemical facility or disqualify individuals from accessing the restricted areas or critical assets at the high-risk chemical facility.
- The high-risk chemical facility could audit or review the background checks being conducted to ensure contractual compliance.
- Prior to a frequent unescorted visitor being granted access to the restricted areas or critical assets of the facility (i.e., being issued a facility-specific access credential/card, door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the company employing the frequent unescorted visitor in accordance with the high-risk chemical facility's SSP or ASP.
 - The company employing the frequent unescorted visitor could conduct these identity, criminal history, and legal authorization to work background checks.
 - The company employing the frequent unescorted visitor could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.

- The company employing the frequent unescorted visitor, however, might not perform the actual background checks itself. Rather, the company employing the frequent unescorted visitor could hire a third party background check company to perform identity, criminal history, and legal authorization to work background checks on its employees (including the frequent unescorted visitors that access the restricted areas or critical assets of a high-risk chemical facility).
 - If the company employing the frequent unescorted visitor hires a third party background check company for this purpose, a contract or agreement between the company employing the frequent unescorted visitor and the third party background check company could establish the criteria for these background checks and could establish which background check results are acceptable for access to the restricted areas and critical assets at the high-risk chemical facility for which the frequent unescorted visitor performs services.
 - The third party background check company could submit appropriate information, under Option 1 and/or Option 2, to the Department while it conducts these identity, criminal history, and legal authorization to work background checks.

Prior to the frequent unescorted visitor being granted access to restricted areas or critical assets of the high-risk chemical facility (i.e., being issued a facility-specific access credential/card, or door/gate key(s)), identity, criminal history, and legal authorization to work background checks could be completed by the company employing the frequent unescorted visitor, or by a third party background check company in

accordance with the high-risk chemical facility's SSP or ASP. If appropriate based on the results of those background checks, the frequent unescorted visitor could then be determined suitable to access the restricted areas or critical assets at the high-risk chemical facility.

The company employing the frequent unescorted visitor, or a third party background check company, could then report suitability findings to the high-risk chemical facility. The appropriate party at the high-risk chemical facility could then grant the frequent unescorted visitor facility-specific access credentials/cards, or door/gate key(s), if appropriate based on those suitability findings. The submission of information about the affected individual to the Department in compliance with RBPS 12(iv) therefore would not impede the routine access control procedures of the high-risk chemical facility because the information submission would likely be accomplished in concert with the other background check activities, prior to access.

SCENARIO #4: 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 on whom the high-risk chemical facility chooses to conduct all four types of background checks, 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 background checks related to RBPS 12(i)-(iii) described above. The Department believes that the data submission for RBPS 12(iv) will likely be accomplished in concert with the routine hiring and access control background checks related to RBPS 12(i)-(iii) because doing them in concert is likely to generate the potential for cost savings.¹⁵

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 those contained in 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

¹⁵ This ICR does not estimate the potential cost savings high-risk chemical facilities or their designees could achieve as a result of submitting data in concert with the other routine hiring and access control background checks related to RBPS 12(i)-(iii) because the scope of this ICR is limited to the Department's obligation to estimate the burden of submitting information about affected individuals to identify terrorist ties under RBPS 12(iv) in accordance with the Paperwork Reduction Act.

(FIPPs).¹⁶ 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,¹⁷ 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
 - Date of Birth
 - Citizenship or Gender
- For Non-U.S. Persons:
 - Full Name

¹⁶ 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).

¹⁷ 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
- 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 Number¹⁸

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.

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

¹⁸ For more information about Redress Numbers, please go to <http://www.dhs.gov/one-stop-travelers-redress-process#1>.

Aliases	Optional
Place of Birth	Optional
Redress number	Optional

OPTION 2: COLLECTING INFORMATION TO USE 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 Programs (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		

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 Programs (NEXUS, SENTRI, FAST, or Global Entry)
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 with revoked card information).

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,¹⁹ or in support of any other redress requests.²⁰

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 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.

¹⁹ See 6 CFR 27.300–345.

²⁰ 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/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf>.

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.²¹

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.

IV. RESPONSES TO COMMENTS SUBMITTED DURING 60-DAY COMMENT PERIOD

The Department solicited comments on four questions:

²¹ For more information, please see the Privacy Impact Assessment for the CFATS Personnel Surety Program, dated May 4, 2011 and available at <http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf>.

- (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.

In response to the 60-day notice that solicited comments about the CFATS Personnel Surety Program ICR, the Department received 28 comments from 2 private citizens, 8 private sector companies²², 14 trade associations, 1 union, 1 training council, and the Ranking Member of the House of Representatives Committee on Homeland Security.

COMMENTS RELATED TO 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

The Department did not receive any comments suggesting that the proposed collection of information was not necessary for the proper performance of the functions

²² One private sector company submitted two distinct comments.

of the agency.

COMMENTS RELATED TO 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

Comment: Several commenters suggested that the annual turnover rate of 71% for frequent unescorted visitors estimated by the Department in the 60-day notice underestimated the annual turnover rate for delivery personnel.²³ One commenter suggested that the Department adopt a higher annual turnover rate of 81.75% for all frequent unescorted visitors.

Response: The Department agreed to adopt the higher estimated rate for frequent unescorted visitor annual turnover of 81.75%. The Department's burden estimates reflect this revised assumption.

Comment: One commenter suggested that the Department made an error in Table 18 of the 60-day notice by not differentiating between the turnover rates of employees, frequent visitors, and infrequent visitors.

Response: In this notice, the Department explicitly distinguishes the turnover rates of employees, frequent visitors, and infrequent visitors when estimating the annual burden estimate.

Comment: One commenter suggested that the Department did not accurately estimate the annual burden estimate in Table 19 of the 60-day notice. Specifically, the commenter suggested that Table 19 of the 60-day notice reflects a figure "0.50" hours for

²³ See Table 6 in the 60-day notice published on March 22, 2013 at 78 FR 17690.

initial submission rather than “0.5425” hours which was the estimated time per respondent calculated in Table 18 of the 60-day notice.

Response: The Department disagrees and believes that in Table 19 it was accurate to use the figure “0.50” hours when estimating the annual burden. The figure 0.50 hours is distinct and is only associated with initial submission and not the other types of transactions covered by the ICR such as updates, corrections, and removals. The figure 0.5425 hours represented the weighted average of all types of transactions and thus would have been inappropriate to use in Table 19 of the 60-day notice when estimating the annual burden.

Comment: One commenter suggested that the Department did not account for costs imposed by information submission requests the Department may require. Specifically, when the Department “may” require facilities to provide other pieces of information pertaining to affected individuals including visa information, the submission and transmission of records such as electronic verification that the facility provided a particular record, points of contact at a facility, and information supporting any adjudications or redress requests.

Response: In the 60-day notice, Department estimated the average time per respondent to be 0.54 hours. The Department believes that the burden associated with requests from the Department for additional information about the affected individuals will be very rare and thus de minimus in nature. The Department also believes that the burden associated with information requests to support adjudication or redress requests will also be very rare and thus de minimus as well. Finally, the Department will collect submission and transmission of records, including electronic verification that the

Department has received a particular record, automatically via system log files. This collection will not impose a burden on the high-risk chemical facility or designee.

Therefore, for the reasons expressed above, the Department believes it has accurately estimated the estimated time per respondent.

Comment: One commenter states that the Department did not account for the cost facilities will incur for a “facility-by-facility vetting of individuals accessing multiples facilities.”

Response: As mentioned earlier in this notice, 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. Therefore, for the purposes of this notice, the Department’s estimation of burden accounts for the notion that an affected individual’s information may be submitted by multiple times by high-risk chemical facilities and their designated third parties.

Comment: Several commenters objected to the Department’s assumptions related to the potential recordkeeping burden associated with RBPS 12(iv). Namely, they objected to the idea 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. Furthermore, commenters objected to the Department’s belief 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.

Response: As mentioned earlier in this notice, 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. Furthermore, 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). In this notice, the Department provides several illustrative examples to further clarify the Department's continued belief that the types of recordkeeping associated with RBPS 12(iv) are usual and customary costs that high-risk chemical facilities (or designees) would incur to conduct background checks for identity, criminal history, and legal authorization to work as required by RBPS 12(i)-(iii).

***COMMENTS RELATED TO THE QUALITY, UTILITY, AND CLARITY OF THE INFORMATION
TO BE COLLECTED***

Comment: One commenter requested specifics about the mechanics of the process on how to submit information about affected individuals to the Department.

Response: The Department will publish a user manual when the CFATS Personnel Surety Program is implemented. The user manual will contain the necessary details about how information about affected individuals may be submitted, under Option 1 or Option 2, through CSAT to the Department.

Comment: One commenter requested specific information about the security or information protection requirements necessary to serve as a Submitter.

Response: While an owner or operator of a chemical facility may designate someone to submit information on its behalf, the owner or operator is responsible for satisfying all the requirements of 6 CFR 27.230(a)(12)(iv). The Department provides at 6 CFR 27.200(b)(3) that any such submitter must be an officer of the corporation or other person designated by an officer of the corporation, and must be domiciled in the United States, and is responsible for attesting to the accuracy of the submitted information.

When a high-risk chemical facilities relies on third party companies to submit appropriate information about affected individuals to the Department the same requirements will apply. The submitter(s) must be designated by an officer of the corporation, must be domiciled in the United States, and is responsible for attesting to the accuracy of the submitted information.

COMMENTS RELATED TO MINIMIZING 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

Comment: One commenter requested the ability to submit information about affected individuals “via some type of file (spreadsheet) upload as opposed to direct data entry into CSAT.”

Response: When implemented, high-risk chemical facilities (and their designees), under Option 1 and Option 2, will have the ability to input records about affected individuals in three ways: (1) manual entry, (2) bulk upload via Microsoft Excel file or an Extensible Markup Language (XML) file, and (3) a direct Web Service connection.

Comment: One commenter requested clarification about Option 3, specifically, if the phrase “other technology” means computer access to the Internet.

Response: The Department’s phrase “other technology which is periodically updated using the CCL” was intended to cover a variety of ways a high-risk chemical facility could, in its SSP or ASP, describe how it would determine if a TWIC was revoked for cause, or revoked because it was reported lost or stolen. Revoked cards could be determined from the CCL by using an electronic card reader to compare the TWIC’s Federal Agency Smart Credential Number (FASC-N) to those listed on the CCL. This could be accomplished by periodically downloading the current CCL from the

Internet to either a TWIC reader or a Physical Access Control System (PACS).²⁴ The status of a TWIC can also be confirmed by using a TWIC reader or PACS to check the Certificate Revocation List (CRL) for TWIC cards. The Department will also consider, in an SSP or ASP, any other specific innovative technologies that could allow high-risk chemical facilities to leverage the CCL or CRL for compliance with RBPS 12.

OTHER COMMENTS SUBMITTED IN RESPONSE TO THE INFORMATION COLLECTION REQUEST

Comment: Several commenters suggested the Department develop substantially different processes than the processes described by the Department in the CFATS IFR published in April 2007. One commenter suggested that the Department establish a process to certify vendors so that high-risk chemical facilities could rely on the certification as proof that the vendor has implemented security measures to ensure that its employees do not have terrorist ties. Several commenters suggested establishing a voluntary process by which the Department could collect information directly from affected individuals, and subsequently issue individuals unique submission numbers. The commenters suggested that an affected individual could then present the unique submission number to the high-risk chemical facility as evidence that the Department had conducted a security threat assessment to determine whether or not they had any terrorist ties.

Response: Neither the notice published by the Department on March 22, 2013, nor this notice are rulemaking notices. These notices are published in accordance with

²⁴ See footnote 8, *supra*.

the Paperwork Reduction Act and are not seeking to expand or change CFATS. Rather, these Paperwork Reduction Act notices are seeking comments on the burden associated with collecting information necessary to implement the CFATS Personnel Surety Program described in the CFATS IFR.

Comment: One commenter suggested that the Department’s “preconditions” (i.e., the collection of information under Option 2 to verify enrollment in the TWIC, HME, and Trusted Traveler Programs) “ipso facto do not provide reciprocal recognition of these vetting programs.” The commenter further suggested that the Department was not following White House recommendations to promote comparability and reciprocity across credentialing and screening programs.²⁵ Specifically, recommendation 16 of the Surface Transportation Security Priority Assessment, which recommends that the federal Government “create a more efficient Federal credentialing system by reducing credentialing redundancy, leveraging existing investments, and implementing the principle of ‘enroll once, use many’ to reuse the information of individuals applying for multiple access privileges.”

Response: The collection of information under Option 2 to verify enrollment of an affected individual in the TWIC, HME, and the Trusted Traveler Programs does recognize and leverage the vetting activities of the TWIC, HME, and Trusted Traveler Programs. Further, the CFATS Personnel Surety Program aligns with the recommendations of the Surface Transportation Security Priority Assessment.

In discussions with high-risk chemical facilities over the past several years, the

²⁵ Recommendation 16 of the Surface Transportation Security Priority Assessment may be found on page 21 of the 2010 White House report at http://www.whitehouse.gov/sites/default/files/rss_viewer/STSA.pdf.

Department has attempted to correct the persistent misinterpretation held by commenters about the concept of “enroll once, use many” as meaning that an individual should only need to submit information to the Department once, and that the Department should never collect information from that individual again. Rather, the Department has defined, and continues to define, the “enroll once, use many” concept as the ability to reuse previously submitted program enrollment information and/or vetting results upon collection of sufficient information to confirm an individual’s prior enrollment in a Department program or prior vetting results.

One example of how the Department has implemented “enroll once, use many” in a DHS program other than the CFATS Personnel Surety Program is when a person whose is enrolled in the TWIC Program seeks to obtain an HME. TSA collects sufficient information from the person enrolled in the TWIC Program to verify the person’s identity and verify the existence of a current and valid security threat assessment.²⁶ If verified, the existing STA is leveraged for the HME, which provides for efficiencies such as reduced enrollment cost and shorter processing time.

Comment: Several commenters suggested that the collection of information under Option 2 to verify an affected individual’s enrollment in the TWIC, HME, and the Trusted Traveler Programs qualifies as a duplicative background check.

Response: The information collected by the Department under Option 2 is used to verify an affected individual’s enrollment in a DHS program. The information collected under Option 2 is not used to conduct a duplicative background check.

²⁶ The online form may be found at <https://hazprints.tsa.dhs.gov/Public/STAStatus.aspx>

Comment: Another commenter suggested that the collection of information under Option 2 from affected individuals in possession of an HME as a proposal to “screen drivers carrying hazardous materials” violates 49 USC 5103a(g)(1)(B)(i) which states that “[a]n individual with respect to whom the Transportation Security Administration - (I) has performed a security threat assessment under this section; and (II) has issued a final notification of no security threat, is deemed to have met the requirements of any other background check that is required for purposes of any Federal law applicable to transportation workers if that background check is equivalent to, or less stringent than, the background check required [to receive an HME].”

Response: Collecting information to verify an affected individual’s enrollment, so that if verified the Department may rely on the results of the security threat assessment already performed and being recurrently performed, is not prohibited by 49 USC 5103a(g)(1)(B)(i), and comports with the means of vetting verification described in the CFATS IFR.

Comment: One commenter suggested that the credentials be accepted “at face value.” The commenter further suggested that, “[t]he fact [that affected individuals] have a valid card meets the requirement specifically detailed in RBPS 1[2] and any further collection and submission of PII not only exceeds DHS’ authority but results in duplication of effort and unnecessary cost to both the facilities and to DHS.” Another commenter suggested that possession of a credential was “proof” that the affected individual was vetted and is being re-vetted for terrorist ties. Another commenter took an opposing view, and supported Option 2. The commenter agreed with the Department’s intention to collect information to electronically verify and re-verify affected individuals’

enrollments in the TWIC, HME, and Trusted Traveler Programs.

Response: While visual inspection has some security benefits, electronic verification is significantly more reliable than visual inspection for ensuring that a TWIC, HME, or Trusted Traveler Credential is not counterfeit or expired, or has not been reported lost, stolen, damaged, or revoked. Accordingly, if a high-risk chemical facility chooses to implement Option 2, the high-risk chemical facility (or its designees) must submit information to the Department about affected individuals possessing the appropriate credentials to enable the Department to electronically verify, with the relevant component of DHS (i.e., CBP or TSA) using their authoritative and original data, the affected individuals' enrollments in these other programs.

Comment: Several commenters suggested that the Department was requiring all visitors to have their information submitted to the Department 48 hours in advance of entering the site, which does not comport with the operational realities of the trucking industry.

Response: The Department disagrees that this ICR does not comport with the operational realities of the trucking industry. The Department disagrees for four reasons. First, if a high-risk chemical facility chooses to allow visitors (e.g., truck operators) access to the high-risk chemical facilities, for only those visitors with unescorted access to restricted areas or critical assets will the facility need to comply with RBPS 12. Second, 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. If the historical practice of a chemical facility has been to allow unescorted visitors access to the restricted areas or critical assets, without performing any background checks on them, the Department recognizes that the business practices of such a high-risk chemical facility will need to change as a result of RBPS 12(i), (ii), (iii), and (iv). Third, the Department generally expects that high-risk chemical facilities and designees will likely consolidate RBPS 12(iv) processing with related routine hiring and access control procedures already occurring prior to access by facility personnel or unescorted visitors to restricted areas or critical assets. As a result of discussions with industry stakeholders the Department understands that, in general, routine hiring and access control procedures are already in place for individuals, likely to be designated as affected individuals because of access to restricted areas or critical assets, working on behalf of trucking companies. Fourth, in the default schedule provided later in this notice, the Department suggests that information about a new affected individual could be provided to the Department no later than 48 hours prior to that affected individual obtaining access to the restricted areas or critical assets at a high-risk chemical facility. The Department would like to highlight that information about a particular affected individual does not need to be re-submitted to the Department 48 hours prior to each instance of access by that particular affected individual. Rather, if a high-risk chemical facility, or its designees, are able to determine that an affected individual requires repeated access to restricted areas or critical assets, the high-risk chemical facility may structure the data submission to CSAT so as to indicate that the affected individual about whom the high-risk chemical facility or designee is submitting information to the Department will have access to restricted areas or critical assets on an

ongoing basis. A high-risk chemical facility, or its designees, may also structure the data submission to CSAT to indicate that the affected individual will have access to restricted areas or critical assets for a discreet period of time.

Therefore, for the reasons provided above, the Department disagrees that this ICR does not comport with the operational realities of the trucking industry.

Comment: Several commenters raised objections to submitting a new affected individual's information at least 48 hours prior to their access to restricted areas or critical assets at high-risk chemical facilities. Some commenters suggested that submission of a new affected individual's information should occur, rather, only at the time the new affected individual actually accesses restricted areas or critical assets. Alternatively, some commenters suggested that that submission of a new affected individual's information should occur after the affected individual accessed restricted areas or critical assets.

Response: The Department, in the default schedule provided later in this notice, suggests that information about new affected individuals could be provided to the Department no later than 48 hours prior to the affected individual obtaining access to the restricted areas or critical assets at the high-risk chemical facility. The Department believes that 48 hours is a reasonable amount of time, which is necessary for the Department to successfully perform a background check for terrorist ties. Therefore the Department has suggested a period of time (i.e., 48 hours) as a default for when high-risk chemical facilities could submit information to the Department for new affected individuals rather than at the time, or after the time, a new affected individual obtains access to restricted areas or critical assets. Later in this notice, the Department also

reiterates that it will consider alternative schedules suggested by high-risk chemical facilities in their SSPs or ASPs, for Option 1 or Option 2, based on their unique circumstances.

Comment: Several commenters expressed concern about contractors and visitors arriving upon short or no notice such as when a production unit goes down or otherwise requires emergency maintenance.

Response: The Department understands that contractors and visitors may arrive with only short or no notice such as when a production unit goes down or otherwise requires emergency maintenance. The Department described, in the illustrative examples provided earlier in this notice, how a high-risk chemical facility could comply with RBPS 12, ensuring that all four background checks are conducted in such situations. High-risk chemical facilities should describe in their SSP or ASP the procedures and process²⁷ to plan for and prepare for exceptional circumstances (e.g., unpredictable but foreseeable situations) that result in situations that require an affected individual to have short or no notice before accessing the restricted areas or critical assets at high-risk chemical facilities such as when a production unit goes down or otherwise requires emergency maintenance.

Comment: Several commenters pointed out to the Department that TSA recently modified the TWIC application form²⁸ to expand the population of individuals eligible to

²⁷ One example applied from the illustrative scenarios would be that the high-risk chemical facility would have in its contract clauses that require any contractors that provides emergency repair or maintenance to have background checks completed prior to arrival at the high-risk chemical facility, to include the submission of information about the affected individuals to the Department under Option 1 or Option 2.

²⁸ The revised TWIC application form may be viewed at (http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201210-1652-001&icID=182269).

apply for a TWIC. The commenters uniformly suggested that the Department expand the population of individuals eligible to apply for a TWIC to include affected individuals that have or are seeking access to the restricted areas or critical assets of high-risk chemical facilities.

Response: Any determination the Department or TSA makes to expand or revise the population of individuals eligible to apply and pay for TWICs is outside the scope of this notice.

Comment: Some commenters supported the Department's determination that certain groups are not affected individuals, specifically, (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. One commenter did not support the determination and suggested that this determination only incentivized terrorists to assume the identities of law enforcement officials rather than workers.

Response: The Department has opted to align how CFATS treats certain groups of persons with how those same populations are treated under the TWIC Program.²⁹

Comment: One commenter objected to the inclusion of railroad employees as potentially affected individuals.

Response: Railroad employees may be affected individuals if the high-risk

²⁹ See [33 CFR 101.514](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=ef5225aac07eddf7f914e57c3fda36bf&ty=HTML&h=L&r=PART&n=33y1.0.1.8.49#33:1.0.1.8.49.5.26.4) at (<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=ef5225aac07eddf7f914e57c3fda36bf&ty=HTML&h=L&r=PART&n=33y1.0.1.8.49#33:1.0.1.8.49.5.26.4>)

chemical facility has defined railroad employees in their SSP or ASP as either (1) facility personnel who have access, either unescorted or otherwise, to restricted areas or critical assets, or (2) unescorted visitors who have access to restricted areas or critical assets.

Each high risk chemical facility can choose which option or options it wishes to implement with regard to railroad employees that would be affected individuals. The Department notes that many railroad employees have TWICs and encourages high-risk chemical to consider whether Option 2 or Option 3 may provide a reasonable solution.

Comment: One commenter suggested that the 60-day notice was unclear as to which set of individuals would be subject to vetting for terrorist ties. The commenter pointed out that the Department used the term “affected individuals” inconsistently. In parts of the 60-day notice, the Department described the term to mean “facility personnel or unescorted visitors with access to restricted areas or critical assets at high-risk chemical facilities.” In other parts of the 60-day notice the Department described the term to mean “(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.”

Response: 6 CFR 27.230(a)(12) defines the scope of individuals for whom RBPS 12 (and thus RBPS 12(iv)) background checks are required. 6 CFR 27.230(a)(12) defines the scope as “facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets” at high-risk chemical facilities. The Department has provided additional clarity in previous notices that 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.

In response to public comments received on earlier notices, the Department clarified, and does so here in this notice, that individual high-risk facilities may classify particular contractors or categories of contractors either as “facility personnel” or as “visitors.” This determination should be a facility-specific determination, and should be based on facility security, operational requirements, and business practices.

Comment: One commenter objected to the Department’s intention to collect information that identifies the high-risk chemical facility or facilities at which each affected individual has or is seeking access.

Response: The Department requires this information so that in the event of a positive match, the Department may provide the information to appropriate federal law enforcement entities.

Comment: One commenter suggested that the ICR approach was deficient because the Department, based on public comments received, is unable to amend the text of 6 CFR part 27. The commenter suggested that without the benefit of a rule published in the Code of Federal Regulations, covered facilities will not know what identifying information is to be provided on individuals, and within what timeframes thus rendering the standards for personnel surety invisible.

Response: The ICR and the associated 60-day and 30-day notices do not modify 6 CFR part 27. The ICR and associated notices provide descriptions of the nature of the CFATS Personnel Surety Program’s information collection, categories of respondents, estimated burden, and costs. The Department is publishing this notice in accordance with the Paperwork Reduction Act because, although the Department has the authority to implement the CFATS Personnel Surety Program, the Department must still comply with

the Paperwork Reduction Act and its implementing regulations before collecting the necessary information from high-risk chemical facilities or designees.

Comment: One commenter suggested that the three options described in the 60-day notice are an impermissible mandate. The commenter states that RBPS 12 does not require that a facility continuously vet covered individuals against the TSDB.

Response: In April 2007, the CFATS IFR outlined two options, described earlier in this notice, for high-risk chemical facilities to identify individuals with terrorist ties. Both options rely on recurrent vetting, which was one of the underlying bases for including those options in the CFATS IFR.

Comment: Several commenters suggested that the CFATS Personnel Surety Program outlined in the ICR exceeds the Department's statutory authority, because the proposed CFATS Personnel Surety Program design conflicts with Section 550. Commenters suggested that the CFATS Personnel Surety Program's design eliminates a high-risk facility's flexibility to achieve compliance with RBPS-12. The commenters cited the following examples: (1) the "48-hour rule," (2) "submission of PII on valid TWIC, DOT HAZMAT, or Trusted Traveler card holders," and (3) "notification when personnel depart a regulated site[.]"

Response: The CFATS Personnel Surety Program will not exceed the Department's statutory authority, nor will it violate or conflict with Section 550. With respect to the specific examples cited by commenters, the Department does not believe these examples demonstrate a violation of the statutory requirement that the Department not disapprove a Site Security Plan on the basis of the presence or absence of a particular security measure.

Not only does the Department disagree that 48-hour advance submission violates Section 550, the Department also disagrees with the characterization of the default schedule as a “rule.” As discussed earlier in this notice, the Department is not seeking to implement a new regulation. Rather, this notice is published in accordance with the Paperwork Reduction Act.

The Department disagrees that a default expectation that high-risk chemical facilities or designees submit information about new affected individuals at least 48 hours in advance of access eliminates a high-risk facility’s flexibility to achieve compliance with RBPS-12. A high-risk chemical facility may suggest alternative schedules, for Option 1 or Option 2, based on their unique circumstances in their SSPs or ASPs.

The Department also disagrees that the “submission of PII on valid TWIC, DOT HAZMAT, or Trusted Traveler card holders” violates Section 550. The CFATS Personnel Surety Program will not exceed the Department’s statutory authority, nor will it violate or conflict with Section 550 because the Department will provide and approve sufficient alternative methods for a high-risk chemical facility to satisfy the terrorism ties background check portion of RBPS 12. A high-risk chemical facility does not have to select Option 2. Rather, if a high-risk chemical facility or its designees is unable or unwilling to submit information about affected individuals to verify their enrollment, a high-risk chemical facility may select Option 1, Option 3, or propose another alternative.

The Department also notes the commenter’s use of the term “valid.” Collection of information is necessary under Option 2 because it would be inappropriate to have confidence in the *validity* of a credential based solely on a visual inspection of the credential. Electronic verification of the affected individuals’ enrollments in other

programs provides significantly greater confidence that the credential in the possession of the affected individual is not counterfeit or expired, or has not been reported lost, stolen, damaged, or revoked.

Finally, the Department disagrees that “notification when personnel depart a regulated site” violates Section 550. The CFATS Personnel Surety Program does not require “notification when personnel depart a regulated site.” Rather the Department requires notification when an affected individual whose information has been submitted under Option 1 or Option 2 no longer has access to restricted areas or critical assets. This distinction is important – the Department has not suggested that it expects high-risk chemical facilities to update the information it sends to DHS through CSAT in real time as individuals depart the workplace, nor has it suggested that notifications are required under Option 3 or under any other options high-risk chemical facilities might propose to DHS in their SSPs or ASPs. Notifications about individuals whose information has been submitted to DHS under Option 1 and Option 2, and who will subsequently lose access to restricted areas or critical assets, could occur before or after access is lost – high-risk facilities could propose schedules for this type of notification to DHS in their SSPs or ASPs, and DHS would evaluate these proposals on a case-by-case basis, taking into account unique facility operational and security needs.

The primary distinction between “notification when personnel depart a regulated site” and the Department’s requirement to be notified under Options 1 and 2 when an affected individual no longer has access is that the CFATS Personnel Surety Program is not tracking the real-time access of an affected individual at a high-risk chemical facility. Rather, the Department, under the CFATS Personnel Surety Program is seeking to ensure

that affected individuals (whether they enter several times a day or only once over the time period in which they have the capability to enter) are checked for terrorist ties. This difference means that high-risk chemical facilities or their designees only need to notify the Department when to cease vetting once. This is in stark contrast to the multiple notifications that would be necessary if the Department required notification when “personnel depart a regulated site.”

High-risk chemical facilities and their designees have at least two alternatives in how to notify the Department that an affected individual whose information has been submitted to DHS under Option 1 or Option 2 no longer has access. The first alternative is to submit the notification when the affected individual no longer has access. Under this alternative, a high risk chemical facility or designee would submit information about the affected individual initially and later in a separate communication notify the Department that the affected individual no longer has access. A second alternative the Department has provided is to allow the high-risk chemical facility or designee the ability to specify when the Department should stop vetting at the time of the initial submission.

There are also additional alternatives available to high-risk chemical facilities. Under Option 3, the 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 with revoked card information), rather than submitting information about the affected individual to the Department. Consequently, there is no need for a high risk chemical facility to notify the Department when the affected individual no longer has access if the affected individual’s TWIC is electronically verify and validated, through the use of TWIC readers (or other technology which is

periodically updated with revoked card information). As previously discussed in this notice, high-risk chemical facilities are also able to propose other options for DHS consideration as part of their SSPs or ASPs.

In conclusion, the only way the Department will know that an affected individual no longer has or is seeking access, under Option 1 or Option2, is if the facility (or their designee) notifies the Department when personnel no longer have (or no longer are seeking) access to a regulated facility's restricted areas or critical assets. The Department disagrees that this aspect of the CFATS Personnel Surety Program exceeds the Department's statutory authority, violates, or conflict with Section 550.

Comment: Several commenters suggested that the Department, in particular NPPD, has in the design of the CFATS Personnel Surety Program refused to leverage credentials from comparable programs. The commenter implied that NPPD could consider how TSA opted to implement the "Air Cargo Screening Program", and how ATF implemented the Employee Possessor Program.

Response: Not all federal background checks conduct checks for terrorist ties that are equivalent to the background check for terrorist ties being conducted by the CFATS Personnel Surety Program. The Department has evaluated the ATF Employee Possessor Program and identified that the Employee Possessor Program conducts point-in-time vetting against the TSDB, which means that ATF's checks are conducted at only specified times, not on a recurrent basis. Recurrent vetting is a DHS best practice and compares an affected individual's information against new and/or updated TSDB records as new and/or updated records become available.

The Indirect Air Carrier (IAC) and the Certified Cargo Screening Program

(CCSP) programs both conduct terrorist ties vetting equivalent to the terrorist ties vetting that would be conducted under Option 1. After the initial implementation of the CFATS Personnel Surety Program, if (A) the Department learns through interactions with CFATS stakeholders that a reasonable percentage of affected individuals participate in the IAC and CCSP programs, and (B) there is substantial interest from members of the regulated community in leveraging the IAC and CCSP programs, then NPPD may consider allowing high-risk chemical facilities to submit the full name, date of birth, and appropriate program-specific information or credential information necessary to enable the Department to electronically verify the affected individuals' enrollments in IAC and CCSP programs.

Comment: Several commenters suggested that the ICR claims to leverage the TWIC, HME, and the Trusted Traveler Programs, but facilities or their designees must submit more information under Option 2 than if the high-risk chemical facility or designee opted to submit the minimum information required under Option 1. The commenters conclude those who have already been screened face more burdens and greater scrutiny than those lacking any screening at all.

Response: The Department has long conceded that the minimum number of data elements necessary to conduct vetting under Option 1 may, in some cases, be less than the minimum number of data elements to electronically verify an affected individual's enrollment in the TWIC, HME or Trusted Traveler Programs. This is because of how the TWIC, HME, and Trusted Traveler databases were initially constructed, not because affected individuals undergo extra scrutiny when the Department electronically verifies their enrollment

Comment: One commenter requested clarification about the process of releasing employee information.

Response: The scope of this notice is limited to the information submitted by a high-risk chemical facility (or designee) to the Department, which is subject to the Privacy Act of 1974 (5 U.S.C. § 552a). The Department will only release or disclose this information in accordance with the applicable Privacy Act System of Records Notice. The Submitter(s) of each high-risk chemical facility (or their designee) will be required to affirm that, in accordance with their Site Security Plans, notice required by the Privacy Act of 1974 has been given to affected individuals before their information is submitted to DHS. DHS has made available to high-risk chemical facilities a sample notice that complies with subsection (e)(3) of the Privacy Act (5 USC 552a(e)(3)) in the CFATS Personnel Surety Program PIA.³⁰ This notice would: (1) notify those individuals that their information is being submitted to DHS for vetting against the Terrorist Screening Database, and that in some cases additional information may be requested and submitted in order to resolve a potential match; (2) instruct those individuals how to access their information; (3) instruct those individuals how to correct their information; and (4) instruct those individuals on procedures available to them for redress if they believe their information has been improperly matched by the Department of Homeland Security to information contained in the Terrorist Screening Database. Individuals have the opportunity and/or right to decline to provide information, however, if an individual declines to provide information, he or she may impact a high-risk chemical facility's

³⁰ Available at <http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf>.

compliance with CFATS.

In addition, high-risk chemical facilities (or designees) may have information about an affected individual obtained for other purposes (e.g., compliance with RBPS 12(i)-(iii)) that was never submitted to the Department and thus not subject to the Privacy Act. While under CFATS no specific controls are required for information collected by high-risk chemical facilities with regard to RBPS 12(i)-(iii), the Department expects that high-risk chemical facilities will protect and safeguard the information as outlined in their SSP and in accordance with any other federal, State, or local privacy laws which do have jurisdiction relative to the collection of the information.

Comment: One commenter expressed concern about the Department's request for an exception to the PRA notice requirement in 5 CFR 1320.8(b)(3) when the Department is also requiring that 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. Specifically, the commenter suggested that "in order to make such an affirmation in good faith, the facility would almost certainly need to obtain signatures or other positive affirmations from affected individuals to protect itself against any claims of non-compliance."

Response: The Department believes that it is possible for a high-risk chemical facility or designee to affirm, in good faith, that the affected individual has been given adequate notice pursuant to the Privacy Act without collecting a signature from each and every affected individual. For example, a high-risk chemical facility or its designees could consider including an appropriate statement in pay checks, posting a sign near a restricted area or critical asset, including an appropriate statement within existing

standard privacy notices provided to individuals when collecting information during a routine and normal hiring process, or including an appropriate statement in a letter.

Comment: One commenter requested clarification about what the Department will do with the information it collects. The commenter further suggested that reducing the security risk associated with personnel RBPS 12 could be in conflict with selecting the “best qualified personnel / contractor” to work in the restricted area or critical asset.

Response: The Department will, under this ICR, collect the information necessary to implement the CFATS Personnel Surety Program. The CFATS Personnel Surety Program will use the information to identify affected individuals with terrorist ties.

With respect to the potential conflict between reducing security risk and selecting the best qualified personnel / contractor, the Department stated in the CFATS IFR, “that the level of screening for employees and contractors should be commensurate with the access provided. As part of this approach, the facility shall identify critical assets and restricted areas and establish which employees and contractors may need unescorted access to those areas or assets, and thus must undergo a background check...”.³¹ A facility's approach to personnel surety, including its defined restricted areas and critical assets, shall be detailed in the Site Security Plan that the facility submits to the Department for approval.

Comment: Some commenters suggested that without a commitment from the Department to be notified when an affected individual has terrorist ties, there was little

³¹ See 72 FR 17688 (April 9, 2007) at <https://www.federalregister.gov/articles/2007/04/09/E7-6363/chemical-facility-anti-terrorism-standards#p-302>.

value to the default schedule which has high-risk chemical facilities submitting information about new affected individuals 48 hours prior to access to restricted areas or critical assets.

Response: The CFATS Personnel Surety Program, when implemented, will identify affected individuals with terrorist ties. The Department has procedures in place that it will follow to resolve the match and coordinate with appropriate law enforcement entities as necessary. The Department believes that 48 hours is a reasonable amount of time for the Department to successfully perform a background check for terrorist ties, and to coordinate with appropriate law enforcement entities as necessary.

Comment: Several commenters suggested that by not committing to notify high-risk chemical facilities or designees when an affected individual has terrorist ties, the Department is increasing the risk of an affected individual with terrorist ties obtaining access to the restricted areas or critical assets at a high-risk chemical facility.

Response: The Department's design of the CFATS Program is intended to promote and enhance the security of high-risk chemical facilities; the Personnel Surety Program is one element of the larger CFATS Program. To prevent a significant threat to a facility or loss of life, a high-risk chemical facility will be contacted where appropriate and in accordance with federal law and policy, as well as law enforcement and intelligence requirements.

Comment: One commenter suggested that the design of the CFATS Personnel Surety Program appears to indicate the Department is playing an investigative role rather than a preventative role.

Response: The CFATS Personnel Surety Program is designed to identify affected

individuals with terrorist ties who have or are seeking access to restricted areas or critical assets at high-risk chemical facilities. The Department does not lead the investigation of any affected individual with terrorist ties; rather the Department supports law enforcement investigation activity. The Department recognizes the significant and vested interest the high-risk chemical facility or designee may have in ensuring an affected individual with terrorist ties does not successfully carry out a terrorist attack against or involving a high-risk chemical facility.

Comment: One commenter requested that the Department define what a high-risk chemical facility is.

Response: P.L. 109-295 required the Department to identify and regulate the security of high-risk chemical facilities. The CFATS regulations implement this statute and describe how DHS determines which chemical facilities are high-risk chemical facilities. Defining high-risk chemical facilities is beyond the scope of this notice and is beyond the scope of the ICR for the CFATS Personnel Surety Program.

Comment: Several commenters pointed out that under Option 1, the Department will not be providing the results (i.e., that the affected individual does or does not have terrorist ties) to the high-risk chemical facility or designee, while under Option 2, the Department will be providing the results (i.e., that the Department was able to electronically verify that the affected individual is currently enrolled in either the TWIC, HME, or Trusted Traveler Programs). Some commenters suggested that not providing results under Option 1 but providing results under Option 2 was confusing. Some commenters suggested that by providing results under Option 2, high-risk chemical facilities will have greater confidence that the affected individual does not have terrorist

ties (and the credential is not expired, has not been revoked, and is not fraudulent). The commenters pointed out that high-risk chemical facilities would also have greater confidence than when only relying on the visual inspection of the TWIC or other federal credential.

Response: The Department has designed the CFATS Personnel Surety Program to support high-risk chemical facilities' compliance with RBPS 12(iv) through a variety of options. The Department does agree that the flexibility high-risk chemical facilities and designees have does increase the complexity of the CFATS Personnel Surety Program, however, this flexibility increases the ability of each high-risk chemical facility to be able to tailor their SSP or ASP to their unique business operations when considering how to comply with RBPS 12(iv).

The Department also believes that this flexibility provides ancillary benefits. Specifically, a high-risk chemical facility may choose to rely on the electronic verification and re-verifications provided by the Department under Option 2 to demonstrate compliance with RBPS 12(i)-(iii). A high-risk chemical facility may choose to rely on the Department's electronic verification and re-verification (provided via CSAT) under Option 2 not only for RBPS 12(iv) but also RBPS 12(i)-(iii) because an affected individual's enrollment in the TWIC, HME, and Trusted Traveler Programs is dependent not only on an equivalent check for terrorist ties, but on several other factors such as a verification of identity, legal authorization to work, and a criminal history check.

Therefore, a high-risk chemical facility may, in their SSP or ASP, choose to rely on the Department's electronic verification and re-verification that an affected individual

is currently enrolled in the TWIC, HME, and Trusted Traveler Programs as a means of complying with RBPS 12(i)-(iii). High-risk chemical facilities should carefully consider whether the specific elements of the security threat assessments performed under the TWIC, HME, or Trusted Traveler Programs meet their business and security needs before choosing to rely on them for compliance with RBPS 12(i)-(iii) in their SSP or ASP.

The Department would like to highlight that, under Option 2, high-risk chemical facilities or designees will be able to, for the first time, electronically verify an affected individual's enrollment in either the HME Program or Trusted Traveler Programs. Consequently, a high-risk chemical facility or designee may choose to rely on the Department verification of enrollment, Under Option 2, to comply with RBPS 12(iv) and RBPS 12(i)-(iii).

Comment: Several commenters suggested that providing information about an affected individual to the Department prior to access would complicate the ability of a high-risk chemical facility or designee to substitute contract workers, service providers, third party carriers, and the like on short notice in the event of an accident, illness or change in work assignment/scope.

Response: Earlier in this notice the Department outlined its understanding about how high-risk chemical facilities and designees could include steps for RBPS 12(iv) in their normal business operations when conducting the routine and normal background checks required for RBPS 12(i)-(iii). The steps a high-risk chemical facility normally takes to comply with RBPS 12(i)-(iii) when faced with substitute contract workers, service providers, third party carriers, and the like on short notice in the event of an accident, illness or change in work assignment/scope should be a part of a high-risk

chemical facility's SSP or ASP. These steps, or specific alternative steps to comply with RBPS 12(iv) could also be a part of, or incorporated within, those steps a high-risk chemical facility implements to comply with RBPS 12(i)-(iii) in their SSP or ASP.

In addition, 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.

Comment: Submitters further suggested that providing information about an affected individual to the Department prior to access could also complicate the admittance of specialized crews brought in to accomplish emergency repairs or provide emergency response services. Some commenters suggested that the Department's approach to allow each high-risk chemical facility to address these issues in their SSP or ASP is not adequate because the absence of uniform guidance across all the sectors, programs and procedures will result in inconsistent processes and procedures.

Response: Section 550 of Public Law 109-295 established a standards based regulatory regime to allow each high-risk chemical facility to propose in their SSP or ASP those security measures which make sense for its business operations and security risk. This will naturally result in inconsistent processes and procedures across high-risk chemical facilities. The Department believes that the intent of Section 550 is that flexibility (and thus some subsequent variation) is in fact a desired outcome of CFATS rather than a negative and unanticipated result of the CFATS regulatory program.

The Department would also like to point out that P.L. 109-295 and its implementing regulations do not prohibit high-risk chemical facilities from developing

consistent approaches or from adopting consistent security measures or security protocols.

Comment: Several commenters pointed out an apparent inconsistency between the Department's statement that high-risk chemical facilities are not required to create, keep, or retain records under RBPS 12(iv) and the Department's statement that it 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. Commenters suggested that if records are not required to be kept it is unclear (1) how the Department can expect facilities to provide information on affected individuals to confirm the accuracy of previously submitted information or (2) how the Department can subject high-risk chemical facilities to data accuracy reviews and audits.

Response: The Department disagrees that there is a contradiction because high-risk chemical facilities or their designees will already possess or have access to information about many affected individuals as a result of standard business practices related to employment or managing of service contracts. The Department also recognizes that, unrelated to this Information Collection, high-risk chemical facilities may propose to maintain different sorts of records or information related to RBPS 12 as part of their SSPs or ASPs, and the Department expects that the records or information available could vary from one high-risk chemical facility to another. The types of information the Department could request from high-risk chemical facilities as part of data accuracy reviews or audits could thus vary from facility to facility, based on each facility's standard business

practices and SSP or ASP.

Comment: Several commenters stated that they do not routinely collect information about affected individuals who are not employees (e.g., contractors and visitors).

Response: The Department understands that high-risk chemical facilities may not routinely collect information about affected individuals who are not employees. Earlier in this notice the Department outlined several illustrative scenarios which describe some common business operations as part of which high-risk chemical facilities could manage the background check requirements of contractors and visitors under RBPS 12. In these illustrative scenarios there is not an expectation high-risk chemical facilities will receive and subsequently re-transmit the information to the Department under Option 1 or Option 2. Though such an approach is not precluded, the Department will allow wide latitude to high-risk chemical facilities to enable third parties to submit information about affected individuals directly to the Department, to satisfy RBPS 12(iv).

Comment: Several commenters requested clarity about what records would be considered government records.

Response: Information about affected individuals held by the Department are government records. Thus information about affected individuals obtained from the Department (via CSAT) by high-risk chemical facilities or their designees are government records. There is often confusion about copies of information which is best clarified through illustrations.

- ILLUSTRATION #1: A high-risk chemical facility or designee holds information about affected individuals which it obtained to perform the four background

checks required under RBPS 12. This information does not qualify as government records.

- **ILLUSTRATION #2:** A high-risk chemical facility or designee holds information about affected individuals which it obtained to perform the four background checks required under RBPS 12. The high-risk chemical facility or designee submits portions of the information necessary under Option 1 and Option 2 to the Department via CSAT. The information in the possession of the high-risk chemical facility or designee does not qualify as government records.
- **ILLUSTRATION #3:** A high-risk chemical facility or designee holds information about affected individuals which it obtained to perform the four background checks required under RBPS 12. The high-risk chemical facility or designee submits portions of the information necessary under Option 1 and Option 2 to the Department via CSAT. The high-risk chemical facility or designee logs into CSAT and downloads, prints, or copies one or more records about affected individuals. Only the records downloaded, printed, or copied from CSAT are government records.
- **ILLUSTRATION #4:** A high-risk chemical facility or designee holds information about affected individuals which it obtained to perform the four background checks required under RBPS 12. The high-risk chemical facility or designee submits portions of the information necessary under Option 1 and Option 2 to the Department via CSAT. The high-risk chemical facility or designee logs into CSAT and downloads only whether or not an affected individual, under Option 2, has or has not been electronically verified as enrolled in the TWIC, HME, or

Trusted Traveler Programs. The record of an affected individual's enrollment status provided by the Department is a government record.

Comment: Commenters requested additional information about what information and records, related to the CFATS Personnel Surety Program was and was not considered Chemical-terrorism Vulnerability Information (CVI).

Response: The Department does not generally expect information and records related to the CFATS Personnel Surety Program to contain CVI.

In the May 2011 CFATS Personnel Surety Program Privacy Impact Assessment (PIA), the Department previously indicated that it would issue a "verification of receipt" and that the "verification of receipt qualifies as Chemical-terrorism Vulnerability Information.[.]"³² However, as discussed earlier in this notice, instead the Department now intends to provide high-risk chemical facilities, and their designees, the ability to create an alert within the CSAT Personnel Surety application that can notify them when the Department has received information about an affected individual(s). Such an alert would not be CVI.

Comment: One commenter was troubled by the information pertaining to RBPS-12 contained in Appendix C of the May 2009 Risk-Based Performance Standards Guidance

(http://www.dhs.gov/xlibrary/assets/chemsec_cfats_riskbased_performance_standards.pdf),

because the commenter believes that certain types of measures, procedures, policies, and

³² See section 5.3 of the Privacy Impact Assessment for the CFATS Personnel Surety Program, dated May 4, 2011, and available at <http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf>. The Department also discussed "verification of receipt" in previous public notices related to an earlier (now withdrawn) ICR for the Personnel Surety Program – see for example NPPD's June 14, 2011 PRA Response to Comments Document, 76 F.R. 34720, 34721.

plans mentioned in Appendix C are not appropriate for determining if chemical facility personnel are terrorist threats.

Response: The Department expects high-risk chemical facilities to implement appropriate security measures to conduct identity, criminal history, and legal authorization to work background checks. These security measures can vary from facility to facility commensurate with facility-specific risks, security issues, and business practices. The guidance referenced by the commenter (see pages 180 to 186 of the Risk-Based Performance Standards Guidance) and other guidance addressing identity, criminal history, and legal authorization to work background checks, however, is not guidance addressing compliance with 6 CFR 27.230(a)(12)(iv), and as such is not the subject of this notice, nor is it the subject of the underlying ICR or of the 60-day notice preceding this notice.

Comment: One commenter requested that the Department clarify what appeal or waiver options an affected individual has if his/her employer takes an adverse employment action against him/her based on RBPS-12 background checks or based on information received or obtained under the CFATS Personnel Surety Program. The commenter also requested that the Department prevent high-risk chemical facilities from using personal information collected from affected individuals as part of RBPS-12 for purposes other than conducting the background checks required by RBPS-12.

Response: High-risk chemical facilities' employment actions are not regulated by CFATS.

The ICR the Department will submit to OMB, the 60-day notice, and the 30-day notice address the CFATS Personnel Surety Program, not the identity, legal authorization

to work, and criminal history background checks required by 6 CFR 230(a)(12)(i)-(iii). Discussion of information collected as part of those other three background checks, or employment decisions based on them, is beyond the scope of this notice. However, the Department expects that the high-risk chemical facilities and their designees will safeguard information collected and maintained under RBPS-12 as outlined in their SSP and in accordance with any other applicable federal, State, or local privacy laws which apply to the collection of the information.

Comment: One commenter requested information about the controls to prevent an individual or the facility from using the personal information for purposes other than RBPS 12(iv).

Response: The Department expects that high-risk chemical facilities and their designees will safeguard information collected and maintained under RBPS-12 as outlined in their SSP. While under CFATS, no additional specific controls are required by the Department for information collected by high-risk chemical facilities, the Department does expect that high-risk chemical facilities will protect and safeguard the information as outlined in their SSP or ASP in accordance with any other federal, State, or local privacy laws which apply to the collection of the information.

The information collected by a high-risk chemical facility pursuant to RBPS 12(iv) may be submitted to DHS under Option 1 and Option 2. Information collected or retained by the facility that has not been submitted to DHS and facility-generated copies of information that have been submitted to DHS are not considered government records and therefore are not covered under the Privacy Act of 1974. However, any information about affected individuals that is obtained from the CSAT Personnel Surety application is

a government record and subject to the Privacy Act of 1974. Those government records must be protected as stated in the DHS CSAT Personnel Surety application Rules of Behavior, which every CSAT user will be required to affirm prior to receiving access to the application.

V. THE DEPARTMENT’S METHODOLOGY IN ESTIMATING THE BURDEN

SUMMARY OF CHANGES FROM 60-DAY NOTICE

When compared to the 60-day notice, the Department made only a few changes which impacted the burden estimates in this notice. Table 3 below briefly summarizes them.

Table 3: Summary of Changes

ICR Burden Variables	Description of Changes
FREQUENCY	No Changes
AFFECTED PUBLIC	No Changes
NUMBER OF RESPONDENTS	Revised the turnover rate of frequent visitors from 71% to 81.75%. As a result, the number of respondents increased from 192,000 affected individuals to 195,000 affected individuals.
ESTIMATED TIME PER RESPONDENT	Updated from 0.54 hours to 0.58 hours as a result of the revised turnover rate increase
TOTAL BURDEN HOURS	Updated from 104,100 hours to 113,600 hours as a result of the revised turnover rate increase
TOTAL BURDEN COST (Capital/Startup)	No Changes
TOTAL RECORDKEEPING	No Changes
TOTAL BURDEN COST	Updated from \$4,771,00 to \$4,844,000 as a result of the revised turnover rate increase

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 4. High-risk chemical facilities may suggest alternative schedules for Option 1 or

Option 2 based on their unique circumstances in their SSPs or ASPs. The default 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 been directed 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 4: 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 directs the facility 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 directs the facility 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 directs the facility 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 directs the facility 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)),³³ 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

³³ A blank copy of Standard Form 83(i) may be found at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf>.

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
- 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 the 60-day notice, the Department followed the methodology used in the 2007 CFATS Regulatory Assessment³⁴ which recognized that each chemical facility is unique. In the 2007 CFATS Regulatory Assessment the Department determined that it was impractical to estimate costs for each high-risk chemical facility. Therefore, 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.

³⁴ See CFATS Regulatory Assessment Section 5.1 (April 1, 2007), <http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116>.

- 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 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.

In the 60-day 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 5.

Table 5: 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

In the 60-day notice, the Department normalized the number of facilities in each model facility category of the 2012 CFATS Personnel Surety Program Analysis to 4,000 facilities by multiplying the number of high-risk chemical facilities in each category by a

factor of 1.22.³⁵ 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 6.

Table 6: 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

As in the 60-day notice, this notice the Department continues to use 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.

³⁵ The factor of 1.22 was used because $(4,000 \text{ facilities} / 3566 \text{ facilities}) = 1.22$.

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

For the purpose of estimating the potential burden this information collection could impose, the Department determined that it was appropriate to continue to use the conservative assumptions from the American Chemistry Council (ACC) about frequent and infrequent visitors and treat them all as unescorted visitors.³⁶ 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 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). In response to the 60-day notice, the Department received a comment from American Trucking Associations (ATA) that suggested the annual turnover rate for frequent visitors (e.g., delivery personnel) suggested by ACC is too low. ATA suggested that the Department use a turnover rate of 81.75% instead of 71%. As a result, the

³⁶ This cost estimate has been posted to Docket DHS-2012-0061, which may be accessed through the Federal eRulemaking Portal at <http://www.regulations.gov/#!documentDetail;D=DHS-2012-0061-0008>.

Department increased its estimate of the frequent visitor annual turnover rate to 81.75%.

The Department also continues to maintain the assumption in the 60-day notice that frequent and infrequent visitors were expected to compose equal volume of traffic at high-risk chemical facilities.

ACC's analysis 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 continues to use ACC's conservative assumptions about frequent and infrequent visitors and treat them all as unescorted visitors.

Table 7 provides the Department's estimated number of unescorted visitors that have or are seeking access to restricted areas or critical assets.

Table 7: Estimate of Unescorted Visitors that Have or are Seeking 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	Estimate
			(20%)	(81.75%)	Turnover	
Tier 1 Group A	600	600	120	491	611	1,811
Tier 1 Group B	150	150	30	123	153	453
Tier 1 Group C	150	150	30	123	153	453
Tier 1 Theft	25	25	5	20	25	75
Tier 2 Group A	600	600	120	491	611	1,811
Tier 2 Group B	150	150	30	123	153	453
Tier 2 Group C	150	150	30	123	153	453
Tier 2 Theft	25	25	5	20	25	75
Tier 3 Group A	600	600	120	491	611	1,811
Tier 3 Group B	150	150	30	123	153	453
Tier 3 Group C	150	150	30	123	153	453
Tier 3 Theft	25	25	5	20	25	75
Tier 4 Group A	600	600	120	491	611	1,811
Tier 4 Group B	150	150	30	123	153	453
Tier 4 Group C	150	150	30	123	153	453
Tier 4 Theft	25	25	5	20	25	75

* C = A x 0.20, ** D = B x 0.8175

ESTIMATED NUMBER OF AFFECTED INDIVIDUALS AT EACH TYPE OF HIGH-RISK CHEMICAL FACILITY – 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 8.³⁷

³⁷ See CFATS Regulatory Assessment Section 6.3.7, Table 15 (April 1, 2007), <http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116>.

Table 8: 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 Manufacturers³⁸ during the 30 day comment period associated with the previous CFATS Personnel Surety Program ICR.³⁹ Specifically, the Department increased the estimated number of full time employees/contractors in Group A facilities by 5, as shown in Table 9.

³⁸ 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>.

³⁹ See Response To Comments Received During 30 Day Comment Period: New Information Collection Request 1670-NEW, 76 FR 34720 (June 14, 2011).

Table 9: 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 10.

Table 10: 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-Screen⁴⁰ Question Q:1.45-400.⁴¹ 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 11.

⁴⁰ Top-Screen is defined at 6 CFR 27.105.

⁴¹ 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 11: 2012 CFATS Personnel Surety Program Analysis' Estimate of The Number of Full Time Employees and Resident Contractors

	A		B	A + B	
	Response to Top Screen Question Q:1.45-400	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	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 12 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 12: 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 995,944 respondents with an annual turnover of 313,819 respondents. *See* Table 13.

Table 13: 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 81.75% 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	1,811	4	19,071	508	611	5,020
Tier 1 Group B	50	80%	40	453	7	3,318	8	153	1,084
Tier 1 Group C	201	80%	161	453	11	6,878	33	153	2,087
Tier 1 Theft	46	15%	7	75	104	8,592	8	25	3,457
Tier 2 Group A	2,176	80%	1,741	1,811	9	31,870	363	611	8,733
Tier 2 Group B	49	80%	39	453	18	8,826	8	153	2,886
Tier 2 Group C	418	80%	335	453	17	13,248	70	153	3,741
Tier 2 Theft	46	15%	7	75	449	36,957	8	25	14,868
Tier 3 Group A	3,799	80%	3,039	1,811	25	119,671	633	611	30,689
Tier 3 Group B	68	80%	54	453	37	18,759	11	153	6,067
Tier 3 Group C	409	80%	327	453	74	57,744	68	153	16,348
Tier 3 Theft	46	15%	7	75	1,049	86,387	8	25	34,754
Tier 4 Group A	2,207	80%	1,766	1,811	81	288,842	368	611	79,018
Tier 4 Group B	200	80%	160	453	213	130,592	33	153	39,638
Tier 4 Group C	265	80%	212	453	15	9,695	44	153	2,870
Tier 4 Theft	46	15%	7	75	1,888	155,496	8	25	62,558
Total	n/a	n/a	n/a	n/a	4,000	995,944	n/a	n/a	313,819

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 919,646 respondents with an annual turnover of 416,879 respondents. *See* Table 14.

Table 14: 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 81.75% 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	1811	4	10,702	120	611	3277
Tier 1 Group B	43	80%	34	453	7	3,278	7	153	1075
Tier 1 Group C	360	80%	288	453	11	8,304	60	153	2384
Tier 1 Theft	783	15%	118	75	104	20,127	131	25	16273
Tier 2 Group A	267	80%	213	1811	9	18,161	44	611	5877
Tier 2 Group B	36	80%	29	453	18	8,645	6	153	2848
Tier 2 Group C	587	80%	469	453	17	15,514	98	153	4214
Tier 2 Theft	499	15%	75	75	449	67,405	83	25	48700
Tier 3 Group A	713	80%	571	1811	25	58,760	119	611	17999
Tier 3 Group B	39	80%	31	453	37	17,917	7	153	5892
Tier 3 Group C	225	80%	180	453	74	46,854	38	153	14079
Tier 3 Theft	279	15%	42	75	1,049	123,087	47	25	75533
Tier 4 Group A	884	80%	707	1811	81	203,357	147	611	61209
Tier 4 Group B	20	80%	16	453	213	99,897	3	153	33243
Tier 4 Group C	211	80%	168	453	15	9,057	35	153	2737
Tier 4 Theft	234	15%	35	75	1,888	208,578	39	25	121538
Total	n/a	n/a	n/a	n/a	4,000	919,646	n/a	n/a	416,879

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 1,830,356 respondents with an annual turnover of 416,879 respondents. See Table 15.

Table 15: 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 81.75% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6)	Number of Facilities (Table 5)	Number of Initial Respondents	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	1,811	4	11,347	120	611	3,277
Tier 1 Group B	43	100%	43	453	7	3,336	7	153	1,075
Tier 1 Group C	360	100%	360	453	11	9,111	60	153	2,384
Tier 1 Theft	783	100%	783	75	104	89,587	131	25	16,273
Tier 2 Group A	267	100%	267	1,811	9	18,640	44	611	5,877
Tier 2 Group B	36	100%	36	453	18	8,775	6	153	2,848
Tier 2 Group C	587	100%	587	453	17	17,489	98	153	4,214
Tier 2 Theft	499	100%	499	75	449	257,567	83	25	48,700
Tier 3 Group A	713	100%	713	1,811	25	62,281	119	611	17,999
Tier 3 Group B	39	100%	39	453	37	18,208	7	153	5,892
Tier 3 Group C	225	100%	225	453	74	50,191	38	153	14,079
Tier 3 Theft	279	100%	279	75	1,049	372,244	47	25	75,533
Tier 4 Group A	884	100%	884	1,811	81	217,641	147	611	61,209
Tier 4 Group B	20	100%	20	453	213	100,755	3	153	33,243
Tier 4 Group C	211	100%	211	453	15	9,671	35	153	2,737
Tier 4 Theft	234	100%	234	75	1,888	583,514	39	25	121,538
Total	n/a	n/a	n/a	n/a	4,000	1,830,356	n/a	n/a	416,879

These three alternatives are summarized in Table 16.

Table 16: Comparison of Number of Respondents for Alternatives 1, 2 and 3

	Initial Year	Year 2	Year 3	Number of Respondents (Annual Average)
Alternative 1	995,944	313,819	313,819	541,194
Alternative 2	919,646	416,879	416,879	584,468
Alternative 3	1,830,356	416,879	416,879	888,038

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 17 provides the estimate of the number of respondents using alternative 3 for Tier 1 and 2 high-risk chemical facilities.

Table 17: 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 81.75% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6)	Number of Facilities (Table 5)	Number of Initial Respondents	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	1,811	4	11,347	120	611	3,277
Tier 1 Group B	43	100%	43	453	7	3,336	7	153	1,075
Tier 1 Group C	360	100%	360	453	11	9,111	60	153	2,384
Tier 1 Theft	783	100%	783	75	104	89,587	131	25	16,273
Tier 2 Group A	267	100%	267	1,811	9	18,640	44	611	5,877
Tier 2 Group B	36	100%	36	453	18	8,775	6	153	2,848
Tier 2 Group C	587	100%	587	453	17	17,489	98	153	4,214
Tier 2 Theft	499	100%	499	75	449	257,567	83	25	48,700
Total	n/a	n/a	n/a	n/a	n/a	415,852	n/a	n/a	84,648

Therefore, the annual average number of respondents is equal to 195,049, as shown in Table 18. The Department’s rounded estimate is 195,000 respondents.

Table 18: Estimate of Annual Number of Respondents for Tier 1 & 2

Facilities

	A	B	C	(A + B + C) / 3
	Total Respondents	Total Respondents	Total Respondents	Number of
	Year 1	Year 2	Year 3	Respondents
				(Annual Average)
Tier 1 Group A	11,347	3,277	3,277	5,967
Tier 1 Group B	3,336	1,075	1,075	1,829
Tier 1 Group C	9,111	2,384	2,384	4,627
Tier 1 Theft	89,587	16,273	16,273	40,711
Tier 2 Group A	18,640	5,877	5,877	10,132
Tier 2 Group B	8,775	2,848	2,848	4,823
Tier 2 Group C	17,489	4,214	4,214	8,639
Tier 2 Theft	257,567	48,700	48,700	118,322
Total	415,852	84,648	84,648	195,049

TOTAL ANNUAL BURDEN HOURS

The total annual burden hours were estimated in a three step process. The first step was to derive from previous tables in this notice the estimated number of initial submissions for Tier 1 and Tier 2 facilities: (1) full time employees and contractors, (2) frequent visitors, and (3) infrequent visitors. The derived estimates are shown in Table 18.

Table 19: Step 1 of Estimating the Total Annual Burden Hours (Estimate of Initial Submissions for Tier 1 & 2 Facilities in Year 1)

	A	B	C	D	E = (A x D)	F = (B x D)	G = (C x D)
	Response to Top	Initial	Initial	2012 CFATS	Initial Submissions	Initial	Initial
	Screen Question	Submissions -	Submissions -	Personnel Surety	- Full Time	Submissions -	Submissions -
	Q:1.45-400	Frequent	Infrequent	Program Analysis	Employees and	Frequent Visitors	Infrequent
	(Table 11)	Visitors	Visitors	(Normalized)	Contractors	(Year 1)	Visitors
		(Table 7)	(Table 7)	(Table 6)	(Year 1)	(Year 1)	(Year 1)
Tier 1 Group A	599	600	600	4	2,686	2,692	2,692
Tier 1 Group B	36	150	150	7	241	1,010	1,010
Tier 1 Group C	300	150	150	11	3,362	1,683	1,683
Tier 1 Theft	653	25	25	104	68,098	2,608	2,608
Tier 2 Group A	222	600	600	9	1,994	5,384	5,384
Tier 2 Group B	30	150	150	18	543	2,692	2,692
Tier 2 Group C	489	150	150	17	8,228	2,524	2,524
Tier 2 Theft	416	25	25	449	186,433	11,217	11,217
Total	n/a	n/a	n/a	n/a	271,585	29,809	29,809

The second step of estimating the total annual burden hours was to estimate the

average annual number of submission by the type of submission. The average annual number of submissions, by the type of submission for Tier 1 and Tier 2 Facilities over three years is shown in Table 20.

Table 20: Step 2 of Estimating the Total Annual Burden Hours (Average Annual Estimate of Total Number of Submissions, by Type of Submission, For Tier 1 and Tier 2 Facilities In Each Year)

	A	B	A x B = C	(A+B)*0.05	C
	Initial Submissions	Annual Turnover Percentage	Additional Submissions Due to Industry Turnover	Update/Corrections	Removal Due to Turnover
Year 1 Full Time Employees and Contractors	271,585	20%	54,317	16,295	54,317
Year 1 Frequent Visitors	29,809	81.75%	24,369	2,709	24,369
Year 1 Infrequent Visitors	29,809	20%	5,962	1,789	5,962
Year 1 Submissions		415,853		20,793	84,648
Year 2 Full Time Employees and Contractors	0		54,317	2,716	54,317
Year 2 Frequent Visitors	0		24,369	1,218	24,369
Year 2 Infrequent Visitors	0		5,962	298	5,962
Year 2 Submissions		84,648		4,232	84,648
Year 3 Full Time Employees and Contractors	0		54,317	2,716	54,317
Year 3 Frequent Visitors	0		24,369	1,218	24,369
Year 3 Infrequent Visitors	0		5,962	298	5,962
Year 3 Submissions		84,648		4,232	84,648
Total Submissions Over 3 Years		585,149		29,257	253,944
Number of Average Annual Submissions		195,050		9,752	84,648

The third, and final step of estimating the total annual burden hours, was to sum the average annual burden hours for each type of submission.

The average annual burden hour for each type of submission was estimated by multiplying the average annual number of: (1) initial respondents multiplied by the estimated time per initial respondent (0.50 hours or 30 minutes); (2) respondents for which a high-risk chemical facility will need to update/correct information multiplied by the number of hours necessary to type and submit each update/correction (i.e., 0.17 hours or 10 minutes); and (3) respondents that are expected to no longer have access to a high-risk chemical facility's restricted area(s) multiplied by the number of hours necessary to

notify the Department (i.e., 0.17 hours or 10 minutes).

Both calculations described above are displayed below in Table 21.

Table 21: Step 3 of Estimating the Annual Burden Estimate

	A Average Annual Respondents	B Duration (Hours)	(A x B) = C Burden Hours
Initial Submissions	195,049	0.50	97,525
Updates / Corrections	9,752	0.17	1,658
Removal - Turnover	84,648	0.17	14,390
			113,573

Therefore, the average annual burden is estimated to be 113,573 hours. The Department's rounded estimate is 113,600 hours.

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 or web-service, to the Department for vetting for terrorist ties.

Accordingly, the Department's "estimated time per respondent" is estimated by dividing the average annual burden hours (113,573 hours) by the number of respondents (195,049). Therefore, for the purpose of this notice, the estimated time per respondent is 0.5822 hours. The Department's rounded estimate is 0.58 hours.

TOTAL BURDEN COST (CAPITAL/STARTUP)

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

Although there are no costs associated with high-risk chemical facilities providing information to the Department under Option 3, the Department has nonetheless estimated the potential capital costs incurred by high-risk chemical 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 high-risk chemical facilities that are likely to implement Option 3 by (2) the cost to acquire, install, and maintain TWIC readers at the high-risk chemical 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) exemption⁴² 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 6 above), as shown in Table 22.

⁴² 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 22: 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 READER COSTS

For the purpose of this notice, the Department has based the potential per high-risk chemical facility capital costs related to Option 3 on the TWIC Reader Requirements notice of proposed rulemaking (NPRM).⁴³ In the TWIC Reader Requirements NPRM, the Department estimated the initial phase-in costs annual recurring costs, and annual

⁴³ See 78 FR 17781 (March 22, 2013). The TWIC Reader Requirements NPRM Table 4 may be found at <https://www.federalregister.gov/articles/2013/03/22/2013-06182/transportation-worker-identification-credential-twic-reader-requirements#t-6>. Future cost estimates for TWIC readers may change as a result of updates to price data and public comment received on the TWIC Reader Requirements NPRM.

recurring costs that considers equipment replacement 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 23.

Table 23: 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 24. The Department's rounded estimate is \$399,800.

Table 24: 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 facility records under 6 CFR 27.255 to comply with RBPS 12(iv). If a high-risk chemical facility elects, for its own business purposes, to create, keep, or retain facility 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 facility 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 1670-0007.⁴⁴

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 \$4,770,051 as shown in Table 25. The rounded estimate is \$4,770,000.

⁴⁴ Information Collection 1670-0007 may be viewed at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201001-1670-007#.

Table 25: Estimate of Annual Burden Cost for Tier 1 & Tier 2 Facilities

	A	B	(A x B)
	Burden (Hours)	Wage Rate	Cost
Initial Submission	97,525	\$42	\$4,096,032
Updates / Corrections	1,658	\$42	\$69,633
Removal - Turnover	14,390	\$42	\$604,386
Total Burden Cost (operating/maintaining)	113,573	\$42	\$4,770,051

Therefore, the total annual burden cost is \$4,844,008, after the inclusion of the \$399,813 capital cost burden. The Department's rounded estimate is \$4,844,000.

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: 195,000 affected individuals

Estimated Time per Respondent: 0.58 hours

Total Burden Hours: 113,600 annual burden hours

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

Total Recordkeeping Burden: \$0

Total Burden Cost (operating/maintaining): \$4,844,000

Dated: January 17, 2014.

Scott Libby,

Deputy Chief Information Officer,

National Protection and Programs Directorate,

Department of Homeland Security.

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