

**SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

**FOR FURTHER INFORMATION CONTACT:**

Nancy S. Bufano, Center for Food Safety and Applied Nutrition (HFS-315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1493.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of July 9, 2009 (74 FR 33030), FDA issued a final rule requiring shell egg producers to implement measures to prevent *Salmonella* Enteritidis (SE) from contaminating eggs on the farm and from further growth during storage and transportation, and requiring these producers to maintain records concerning their compliance with the rule and to register with FDA. The final rule became effective September 8, 2009.

FDA examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601-612) and determined that the final rule will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104-121), FDA is making available this SECG stating in plain language the requirements of the regulation.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents FDA's current thinking on the prevention of SE in shell eggs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

**II. Paperwork Reduction Act of 1995**

This SECG refers to collections of information described in FDA's final rule that published in the **Federal Register** of July 9, 2009 (74 FR 33030 at 33089), and that became effective on September 8, 2009. As stated in the final rule, these collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520). In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of the final rule to OMB for review. FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve,

modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**III. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this SECG. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The SECG and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**IV. Electronic Access**

Persons with access to the Internet may obtain the document at <http://www.fda.gov/FoodGuidances> or <http://www.regulations.gov>.

Dated: April 7, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

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**DEPARTMENT OF HOMELAND SECURITY**

[Docket No. DHS-2009-0026]

**National Protection and Programs Directorate; 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 be submitting 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 of 1995 (PRA). The information collection is a new information collection. A 60-day public notice for comments was previously published in the **Federal Register** on June 10, 2009, at 74 FR 27555. Comments were received and responses

are in this notice. The purpose of this notice is to solicit additional comments during a 30-day public comment period prior to the submission of this collection to OMB. The submission describes the nature of the information collection, the categories of respondents, the estimated burden, and cost.

**DATES:** Comments are encouraged and will be accepted until May 13, 2010. This process is conducted in accordance with 5 CFR 1320.8.

**ADDRESSES:** Interested persons are invited to submit comments on the proposed information collection through the Federal Rulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments must be identified by docket number DHS-2009-0026.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) 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 DHS/NPPD/IP/ISCD CFATS Program Manager at the Department of Homeland Security, 245 Murray Lane, SW., Mail Stop 0610, Arlington, VA 20528-0610. Comments must be identified by docket number DHS-2009-0026.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained through the Federal Rulemaking Portal at <http://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:**

**Program Description**

The Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR part 27, require high-risk chemical facilities to submit information about facility personnel and, as appropriate, unescorted visitors with access to restricted areas or critical assets at those facilities. This information will be vetted by the Federal Government against the Terrorist Screening Database (TSDB), the consolidated and integrated terrorist watchlist maintained by the Federal Government, to identify known or suspected terrorists (i.e., individuals with terrorist ties).

High-risk chemical facilities must also perform other relevant background checks in compliance with CFATS Personnel Surety Risk-Based Performance Standard 12 (RBPS-12). See 6 CFR 27.230(a)(12)(i-iii): High-risk chemical facilities must “perform appropriate background checks \* \* \* including (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.” The CFATS Personnel Surety Program is not intended to halt, hinder, or replace high-risk chemical facilities’ performance of background checks which are currently required for employment or access to secure areas of those facilities.

### Background

On October 4, 2006, the President signed the Department of Homeland Security Appropriations Act of 2007 (the Act), Public Law 109-295. Section 550 of the Act provides DHS with the authority to regulate the security of high-risk chemical facilities.

Section 550 requires that DHS regulations establish CFATS RBPS. RBPS-12 (6 CFR 27.230(a)(12)(iv)) requires that regulated chemical facilities implement “measures designed to identify people with terrorist ties.” The ability to identify individuals with terrorist ties requires the use of information held in Government-maintained databases, which are unavailable to high-risk chemical facilities. Therefore, DHS is implementing the CFATS Personnel Surety Program, which will allow chemical facilities to comply with RBPS-12 by implementing “measures designed to identify people with terrorist ties.”

### Overview of CFATS Personnel Surety Process

The CFATS Personnel Surety Program will work with the DHS Transportation Security Administration (TSA) to identify individuals who have terrorist ties by comparing information submitted by each high-risk chemical facility to the information of known or suspected terrorists who are listed in the TSDB.

Information will be submitted to DHS through the Chemical Security Assessment Tool (CSAT), the online data collection portal for CFATS. The representative(s) of each high-risk chemical facility will submit the information of affected individuals to DHS through CSAT. The representative(s) of each high-risk chemical facility will also certify that

the information is (1) true, correct, and complete, and (2) collected and submitted in compliance with the facility’s Site Security Plan (SSP). The representative(s) of each high-risk chemical facility will also affirm that notice required by the Privacy Act of 1974, 5 U.S.C. 552a, has been given to affected individuals before their information is submitted to DHS.

DHS will send a verification of submission to the representative(s) of each high-risk chemical facility when a high-risk chemical facility (1) Submits information about an affected individual for the first time, (2) submits updated or corrected information about an affected individual, and/or (3) notifies DHS that an affected individual no longer has access to that facility’s restricted areas or critical assets.

Upon receipt of each affected individual’s information in CSAT, DHS will send a copy of the information to TSA. Within TSA, the Office of Transportation Threat Assessment and Credentialing (TTAC) conducts screening and vetting of information against the TSDB for many DHS programs. On behalf of DHS, TTAC will compare the information of affected individuals collected by DHS to the information of known or suspected terrorists on the TSDB. TTAC will forward the results from potential matches to the Federal Bureau of Investigation’s Terrorist Screening Center (TSC), which will make a final determination of whether an individual is a match to a known or suspected terrorist listed in the TSDB.

In the event that there is a positive match to an identity in the TSDB, the TSC will notify the appropriate Federal law enforcement agency for coordination, investigative action, and/or response, as appropriate. DHS will neither routinely provide vetting results to high-risk chemical facilities, nor will it provide results to an affected individual whose information was submitted by a high-risk chemical facility. As warranted, high-risk chemical facilities may be contacted by the Department or Federal law enforcement as a part of appropriate law enforcement investigation activity. (See the amendment to the FBI’s Terrorist Screening Records System, published in the **Federal Register** on August 22, 2007, at 72 FR 47073.)

### Information Collected

DHS may collect the following information from individuals:

- Full name
- Date of birth
- Place of birth
- Gender

- Citizenship
- Passport information
- Visa information
- Alien registration number
- DHS Redress Number (if available)
- Work phone number(s)
- Work e-mail address(es)

DHS will collect information that identifies the high-risk chemical facility or facilities, to which the affected individual has access to restricted areas or critical assets. As applicable, DHS will also collect information to verify that an affected individual is currently enrolled in a DHS program which relies on DHS-performed TSDB checks, in addition to other program-specific requirements.

DHS may request additional information on an affected individual to confirm that the individual is or is not a match to a known or suspected terrorist in the TSDB. DHS may randomly select a small percentage of affected individuals for further verification as part of data accuracy review and auditing processes. In order to assist with this confirmation and verification, DHS may request additional information on affected individuals from the high-risk chemical facilities which have submitted their information to the Department. DHS may also collect information about points of contact at each high-risk chemical facility, and which points of contact the Department or Federal law enforcement personnel may contact with follow-up questions. However, a request for additional information from DHS does not imply, and should not be construed to indicate, that an individual is known or suspected to be associated with terrorism.

DHS may collect information on affected individuals as necessary to enable it to provide redress for individuals who believe that they have been improperly impacted by the Personnel Surety Program. The information collected may include information necessary to conduct adjudications under subpart C of CFATS, 6 CFR 27.300–27.345.

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

### Affected Population

6 CFR 27.230(a)(12) requires facility personnel and, as appropriate, unescorted visitors who have access to restricted areas or critical assets to undergo background checks. This affected population will include (1)

facility personnel (e.g., employees and contractors) 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.

These background checks do not affect facility personnel who do not have access to facilities' restricted areas or critical assets, nor do they affect escorted visitors.

#### **Linking Affected Individuals to Specific CFATS Covered Facilities**

To comply with CFATS, high-risk chemical facilities are required to identify who is an affected individual, and at which high-risk chemical facility or facilities each affected individual has access to restricted areas or critical assets. DHS intends to collect this information through CSAT.

#### **Personnel Surety Submission Schedule To Check for Terrorist Ties**

DHS will establish a CFATS Personnel Surety Submission schedule for high-risk chemical facilities when submitting information to DHS to check for terrorist ties under 6 CFR 27.230(a)(12)(iv). The schedule will be published in the **Federal Register**. The schedule, when published, will require: (1) An initial submission of information either within a certain number of days after DHS issues a letter of authorization or within certain number of days after publication of the schedule, whichever is later; (2) additional submissions for individuals that become newly affected (e.g., new hires or other individuals given access to a restricted area or critical asset); (3) updates or corrections to information for affected individuals whose information has previously been submitted; and (4) notification when an affected individual no longer has access to a restricted area or critical asset. The schedule will likely vary by final tier. A proposed schedule is provided in subpart (B) of the "Response To Comments Received During The 60-Day Comment Period" section of this 30-Day notice. High-risk chemical facilities may request extensions or variances from this schedule based on unique or unusual circumstances.

#### **Request for Exception to the Requirement Under 5 CFR 1320.8(b)(3)**

DHS is requesting from OMB an exception for the CFATS Personnel Surety Program to the Paperwork Reduction Act (PRA) requirement, as contained in 5 CFR 1320.8(b)(3), which requires Federal agencies to confirm that their information collections provide certain reasonable notices, under the Paperwork Reduction Act, to

affected individuals. If this exception is granted, DHS 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, DHS will still require high-risk facilities to affirm that required Privacy Act notice has been provided to affected individuals before personal information is collected. See 5 U.S.C. 552a(e)(3).

DHS's request for an exception to the 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 facility personnel and the privacy of unescorted visitors.

#### **Responses to Comments Received During the 60-Day Comment Period**

DHS received 17 comments in response to the 60-day notice for comment. Comments were received from three private citizens, four private sector companies, seven associations, one training council, and one professional society. One additional comment was a jointly submitted comment. Many of the comments were in response to the questions posed by DHS in the 60-day notice for comments. In this section of this notice, DHS first addresses specific questions that the Department solicited, then other comments related to the Personnel Surety Program, and finally unsolicited comments received in response to the 60-day notice.

(A) On behalf of OMB, DHS solicited comments that 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.

*Comment:* Commenters challenged the practical utility of requiring high-risk chemical facilities to update previously submitted information.

*Response:* The information collected by DHS is generally static. However, DHS will require each high-risk chemical facility to update and correct information previously submitted about affected individuals. Updates and corrections do not necessarily need to be made immediately when submitted information changes; rather, DHS will require high-risk facilities to make updates and corrections in accordance with a DHS-approved schedule.

For example, when a high-risk chemical facility becomes aware that an affected individual's information has changed (e.g., when a high-risk

chemical facility becomes aware that an affected individual has changed his/her name), the high-risk chemical facility must update the submitted information. DHS will also require a high-risk chemical facility to correct previously submitted information when the high-risk chemical facility becomes aware that an affected individual's information is incorrect (e.g., an affected individual's place or date of birth). Requiring high-risk chemical facilities to update and correct information about affected individuals will increase the accuracy of the data collected, and decrease the probability of incorrect matches to the information of known or suspected terrorists listed on the TSDB.

One piece of information that may change is the list of high-risk chemical facilities within one company or organization to which an affected individual has access. When such a change occurs, updates are not required immediately but rather in accordance with a schedule to be published by DHS.

*Comment:* Commenters challenged the practical utility of requiring high-risk chemical facilities to notify the Department when an affected individual no longer has access to a high-risk chemical facility's restricted area(s) or critical asset(s). Commenters suggested that this notification by a high-risk chemical facility to DHS would provide no value in the context of terrorism screening.

*Response:* DHS will not rely on a single, one-time check to determine that an affected individual has ties to terrorism. Instead, DHS will continue to vet an affected individual's information against new and/or updated TSDB records as they become available, for as long as the affected individual has access to a high-risk chemical facility's restricted area(s) or critical asset(s). This process is referred to as "recurrent vetting" and is a standard DHS vetting practice. DHS will require high-risk chemical facilities to notify the Department when an affected individual no longer has access to a high-risk chemical facility's restricted areas or critical assets so that the Department can cease recurrent vetting of the affected individual.

*Comment:* Many commenters suggested that the proposed collection of information is needless and duplicative. Specifically, commenters suggested that the proposed information collection will place an undue burden on industry—in regard to time, money and other resources—by creating a program which duplicates an existing DHS screening or vetting program, such as the Transportation Worker

Identification Credential (TWIC) program.

*Response:* TWIC's authorizing statute, the Maritime Transportation Security Act of 2002 (MTSA), as amended, 46 U.S.C. 70101 *et seq.*, explicitly applies "transportation security card" requirements only to: "individual[s] allowed unescorted access to secure area[s] designated in \* \* \* [maritime] vessel or [maritime] facility security plan[s]" (§ 70105(b)(2)(A)); certain MTSA license and permit holders (§ 70105(b)(2)(B)); maritime vessel pilots (§ 70105(b)(2)(C)); maritime towing vessel personnel (§ 70105(b)(2)(D)); individuals with access to certain protected maritime security information (§ 70105(b)(2)(E)); and "other individuals engaged in port security activities" (§ 70105(b)(2)(F)).

Furthermore, individuals are only eligible to receive TWICs if they have not committed certain "disqualifying criminal offense[s]," or if they do not meet certain "immigration status requirements" 49 CFR 1572.5(a)(1)–(2). However, the CFATS authorizing statute applies to "chemical facilities that \* \* \* present high levels of security risk" Department of Homeland Security Appropriations Act of 2007, Public Law 109–295, section 550 (Oct. 4, 2006), as amended. CFATS Personnel Surety Program requirements apply only to high-risk chemical facilities' "personnel,

and as appropriate \* \* \* unescorted visitors with access to restricted areas or critical assets" 6 CFR 27.230(a)(12). Moreover, facilities regulated under MTSA are exempt from CFATS. Accordingly, the CFATS Personnel Surety Program is not duplicative of the TWIC program.

DHS recognizes that some affected individuals under CFATS possess TWICs or other credentials that rely on DHS-conducted TSDB vetting (e.g., an individual vetted under the TWIC program). DHS intends to reduce the burden of this collection by recognizing previous TSDB vetting results conducted by DHS. Therefore, an affected individual who possesses a current and valid TWIC will likely require less information to be submitted than an affected individual who does not have a TWIC. Some additional personal information will be required in order to verify that the affected individual has a previous TSDB vetting result upon which the TWIC was issued.

*Comment:* One comment suggested that the vetting of affected individuals against the TSDB has little practical utility in identifying terrorists due to the large number of individuals whose names appear on the TSDB, even though they are not actually threats to national security.

*Response:* As indicated in the CFATS interim final rule, the Department has

determined that a TSDB check is necessary for the purpose of protecting restricted areas and critical assets of high-risk chemical facilities from persons who may have ties to terrorism. See 72 FR 17708. The TSDB is the Federal Government's integrated and consolidated terrorist watchlist and is the appropriate database to identify individuals with terrorist ties.

(B) On behalf of OMB, DHS solicited comments which evaluate the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

*Comment:* Commenters suggested that DHS did not provide sufficient detail about the proposed information collection to adequately evaluate the estimated burden.

*Response:* In order to provide the public with more information to evaluate the estimated burden, the Department has established the information submission schedule outlined below. The Department will review comments received in response to this 30-day notice when finalizing the DHS schedule for submitting information. High-risk chemical facilities will be notified of the final DHS schedule prior to its implementation. The final DHS schedule will also be published in the **Federal Register**.

	Final tier 1	Final tier 2	Final tier 3	Final tier 4
Initial Submission of Affected Individual's Information.	60 days after DHS issues a letter of authorization.	60 days after DHS issues a letter of authorization.	90 days after DHS issues a letter of authorization.	90 days after DHS issues a letter of authorization.
Submission of a New Affected Individual's Information.	Within 30 days of being granted access.	Within 30 days of being granted access.	Within 60 days of being granted access.	Within 60 days of being granted access.
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.	Within 90 days of access being removed.	Within 90 days of access being removed.	Within 90 days of access being removed.

*Comment:* Commenters generally believed the mechanics of the information submission and update process could place a heavy burden on high-risk facilities. One commenter indicated that DHS could expect submissions to be in the tens of thousands per month. Commenters suggested that the proposed 35-minute burden for the information collection was based on an incomplete estimate, and did not account for the duplicative submission of affected individuals' information by multiple high-risk

chemical facilities in the cases of individuals who have access to restricted areas or critical assets at multiple facilities.

*Response:* The estimated burden relied on the regulatory evaluation published for CFATS on April 1, 2007. In the regulatory evaluation, the Department estimated that 1,063,200 affected individuals would be vetted against the TSDB (i.e., 29,533 per month) over a three-year period. This estimate allows for the possibility that a specific individual could have access at

multiple high-risk chemical facilities. The Department's population estimate also aligns with the commenters' expectations that DHS should expect tens of thousands of submissions during each month.

The estimated time for a responsible entity to submit the information of each affected individual through the CSAT portal is 0.59 hours per individual. This estimate is based upon the CFATS regulatory evaluation. The estimated time per affected individual was derived by assuming that (1) 30 minutes is

required to type in the required information for every affected individual once; (2) 5 percent of affected individuals will have some element of their information change annually, requiring 10 additional minutes of effort; and (3) 20 percent of affected individuals will lose access to restricted areas or critical assets annually, which will require 10 additional minutes of effort to remove each affected individual's information from CSAT.

DHS believes that the information contained in this notice, in the Personnel Surety Program's 60-day PRA notice preceding this notice (74 FR 27555 (June 10, 2009)), and in the CFATS regulatory evaluation provides sufficient detail about the proposed Personnel Surety Program's information collection process.

*Comment:* One commenter suggested that the Department's estimate of the burden may not have accounted for the burden an affected individual incurs from investigations and adverse employment decisions that may result from the individual's possibly unjustified presence on the TSDB.

*Response:* The burden outlined in this 30-day notice is limited in scope to those activities listed in 5 CFR 1320.3(b)(1). Specifically, 5 CFR 1320.3(b)(1) requires the Department to estimate the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.

The Department is also seeking to collect five core data elements about each individual to be vetted under the Personnel Surety Program: Full name, date of birth, place of birth, gender, and citizenship. When taken together, these identifiers will minimize false positive matches to the TSDB. Furthermore, each potential match will be manually reviewed by Department adjudicators who have expertise in evaluating matches prior to confirmation that an individual's information matches the information of a known or suspected terrorist.

(C) On behalf of OMB, DHS solicited comments to enhance the quality, utility, and clarity of the information to be collected.

*Comment:* Most of the commenters requested additional clarity about what information DHS will routinely collect and update. Several commenters suggested that the information collected should be limited to information which is necessary to conduct an inquiry against the TSDB. One commenter also suggested that the information should be limited to personal information that is unlikely to change.

*Response:* As outlined earlier in this 30-day notice, DHS will routinely collect an affected individual's full name, date of birth, place of birth, gender, and citizenship. DHS will also collect information that identifies the high-risk chemical facility or facilities to which the affected individual has access. DHS has limited the information routinely collected to include only that which is (1) Necessary to conduct a TSDB check and adjudicate potential matches, (2) unlikely to change, and (3) is essential for quickly understanding the risk a known or suspected terrorist poses to high-risk chemical facilities.

DHS will not require immediate reporting of updates to previously submitted information. As previously discussed in this notice, DHS will permit high-risk chemical facilities to update information on a periodic basis in compliance with a DHS-approved schedule.

*Comment:* Most commenters commended DHS for intending to recognize the previous TSDB vetting results completed by other DHS programs, such as the TWIC program. Several commenters, however, suggested that DHS should not collect information from high-risk chemical facilities for the purpose of verifying the validity of credentials issued as part of other DHS programs (which conduct TSDB vetting) because the burden of data collection necessary to verify such credentials could be burdensome.

*Response:* In lieu of conducting new TSDB vetting on all affected individuals, DHS intends to recognize the results of previous TSDB vetting conducted on individuals enrolled in certain other DHS programs. Specifically, DHS is considering recognizing the previous TSDB vetting results completed by other DHS programs, such as TWIC, and the Trusted Traveler Programs (Secure Electronic Network for Travelers Rapid Inspection (SENTRI), Free and Secure Trade (FAST), and NEXUS). Further, DHS is also considering recognizing the results of TSDB vetting (conducted by DHS) upon which each State relies when issuing a Commercial Driver's License with a Hazardous Materials Endorsement (HME).

This will likely require fewer pieces of information than are required to vet an individual who is not enrolled in another vetting program. DHS believes the burden of collecting those fewer pieces of information is accounted for in the estimated burden.

This approach will also limit the number of instances in which different DHS programs may vet the same affected individual against the TSDB. If

other programs' vetting results cannot be verified without substantial effort, DHS may initiate new vetting of an affected individual's information against the TSDB.

*Comment:* Several commenters recommended that the Department recognize and offer reciprocity to the background checks, which include vetting against the TSDB, as conducted by the Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Commenters suggested that without this accommodation, the regulatory overlap between the two agencies will impose unreasonable burdens.

*Response:* ATF does not conduct recurrent vetting against the TSDB, and thus is not appropriate as a reciprocal program to meet the requirements of CFATS.

(D) On behalf of OMB, DHS solicited comments regarding the minimization of the burden of information collection 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:* Commenters encouraged DHS to consider the procedural and logistical challenges of large-scale data collection and transmission when developing the Personnel Surety portal component of CSAT. Specifically, commenters suggested that DHS permit each high-risk chemical facility to transmit data collectively (e.g., via a spreadsheet or other readily available electronic means). In other words, a high-risk chemical facility would collect the required information in a single file (or series of files) and upload it to DHS. Anything to the contrary—such as manual entry of discrete information into data fields—would result in an undue burden to the regulated community, increase human error, and raise information security concerns.

*Response:* DHS will enable high-risk chemical facilities to upload information electronically about multiple affected individuals collectively. DHS would welcome suggestions about what technical standards, formats, or export/import capabilities are in use by high-risk chemical facilities to facilitate such data submission.

*Comment:* Many commenters suggested that third parties be authorized to support data submission to the Department. Specifically, many commenters suggested that DHS should permit third party vendors to enter information into CSAT on a facility's

behalf. One commenter suggested that (1) Background check providers understand the information security and privacy protections that apply to information; (2) a web of Federal, State, and local laws protect information (many corporations outsource personnel surety needs for this reason); and (3) experienced background check providers will help high-risk chemical facilities ensure that compliance with CFATS does not cause noncompliance with other laws which govern the collection, use, storage, or destruction of information.

*Response:* To support the submission of information by high-risk chemical facilities, DHS has historically allowed—and will continue to allow—authorized third-party access to CSAT as a Preparer. Information about the CSAT Preparer user role can be found at <http://www.dhs.gov/chemicalsecurity>.

*Comment:* A few commenters suggested that high-risk chemical facilities receive an electronic acknowledgement that the submitted information has been received. Such an acknowledgement would aid in demonstrating a high-risk chemical facility's compliance with 6 CFR 27.230(a)(12)(iv).

*Response:* DHS will send an electronic verification of submission to high-risk chemical facilities when a high-risk chemical facility (1) Submits information about an affected individual for the first time, (2) submits updated or corrected information about an affected individual, and/or (3) notifies DHS that an affected individual no longer has access to restricted areas or critical assets.

(E) DHS solicited comments that respond to the Department's interpretation of the population affected by RBPS-12's background check requirement.

*Comment:* Many commenters provided extensive responses to the Department's interpretation of the population which is affected by RBPS-12. The comments suggested that the Department's interpretation expanded the definition beyond the scope of CFATS. The comments referenced the preamble to the CFATS Interim Final Rule, in which DHS stated that each 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" 72 FR 17708 (Apr. 7, 2007). Commenters also suggested that vetting escorted facility personnel is inconsistent with other regulatory schemes (e.g., TWIC).

*Response:* The regulatory text makes no distinction between facility personnel who are escorted and facility personnel who are unescorted. The actual text of CFATS, at 6 CFR 27.230(a)(12), uses the term "unescorted" to modify only the noun "visitors." As such, if facility personnel have access, either unescorted or otherwise (e.g., escorted), to restricted areas or critical assets, then they are affected individuals who must be screened for the purposes of the Personnel Surety Program.

However, the preamble to the CFATS Interim Final Rule could be read to imply that a different population would undergo vetting rather than the population suggested in the regulatory text of CFATS. To the extent that there is a potential conflict, the regulatory text of CFATS takes precedence. As such, the populations of individuals who must be vetted under 6 CFR 27.230(a)(12) are the same as those described in the 60-day notice preceding this 30-day notice: (1) Facility personnel (e.g., employees and contractors) with access (unescorted or otherwise) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets.

DHS would like to underscore that a high-risk chemical facility has wide latitude in its unique and tailored SSP regarding the terms under which facility personnel will be granted access, either unescorted or otherwise, to restricted areas and critical assets. Each high-risk chemical facility will need to consider its unique security concerns when determining which individuals will be afforded access to restricted areas or critical assets.

Additionally, DHS will expect that each facility be able to explain why an individual is an affected individual. Specifically, an affected individual must meet one and only one of the following three criteria: (1) The individual is facility personnel with unescorted access to restricted areas or critical assets; (2) the individual is facility personnel with access, but not unescorted access, to restricted areas or critical assets; or (3) the individual is an unescorted visitor with access to restricted areas or critical assets.

(F) DHS solicited comments which respond to the statement that a Federal law enforcement agency may, if appropriate, contact the high-risk chemical facility as a part of a law enforcement investigation into terrorist ties of facility personnel.

*Comment:* One commenter expressed concern that contact from a Federal law enforcement agency about an individual

who is properly on the watchlist but is innocent nevertheless may result in adverse employment decisions.

*Response:* Contact by a Federal law enforcement organization does not necessarily indicate that any affected person is a known or suspected terrorist. Further, employment decisions made by a high-risk chemical facility in response to contact by a Federal law enforcement agency are not regulated by CFATS. A corporation or facility should ensure that it is complying with all applicable laws, including applicable state regulations, when considering employment decisions.

It should also be noted that DHS will randomly audit its vetting processes in an effort to maximize vetting accuracy and Personnel Surety Program efficiency. As part of this auditing, DHS may request information on a small percentage of affected individuals after those individuals have been initially vetted against the TSDB. A request for additional information does not imply, and should not be construed to indicate, that an individual is known or suspected to be associated with terrorism.

(G) DHS solicited comments which respond to the Department's intention to seek an exception to the notice requirement under 5 CFR 1320.8(b)(3).

*Comment:* DHS received several comments in response to the Department's intention to seek an exception to the PRA's notice requirement. Every comment expressed concern about the impact to an affected individual's right to be granted notice under the Privacy Act. See 5 U.S.C. 552a(e)(3).

*Response:* The request for an exception to 5 CFR 1320.8(b)(3) is related to the PRA and unrelated to the Privacy Act; 5 CFR 1320.8(b)(3) requires that each collection of information shall inform and provide reasonable notice to the potential persons to whom the collection of information is addressed. The request by DHS for an exception to 5 CFR 1320.8(b)(3) from OMB will ensure that DHS 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 (although high-risk chemical facilities would not be precluded from collecting signatures or other positive affirmations of notice if this exception is granted). This exception will then afford high-risk chemical facilities wide latitude in choosing how to collect, recollect, or leverage already collected data based upon their unique business operations and processes.

Because the information being collected under this information collection request is information that will be used to identify individuals with known or suspected terrorist ties, the Department believes that it is important for affected individuals to be informed of the Government's intended use of their information. However, under CFATS the Department regulates high-risk chemical facilities and not affected individuals. Although the affected individual is ultimately the source of the collected information, the burden of submitting the collected data to DHS lies on the high-risk chemical facility. (For example, high-risk chemical facilities may collect affected individuals' information by having affected individuals fill out forms, or high-risk chemical facilities may submit batch files extracted from databases which contain the necessary information previously collected from affected individuals.) An exception to 5 CFR 1320.8(b)(3) will ensure that the Department does not need to inspect, audit, or receive confirmation (*e.g.*, signatures of acknowledgement from affected individuals) from high-risk chemical facilities where every affected individual has received notice under the PRA of this information collection.

The Department's request for an exception to 5 CFR 1320.8(b)(3) of the PRA is not a request for an exception to provide notice to affected individuals under the Privacy Act. If this exception is granted, high-risk chemical facilities will be relieved of the potential obligation to collect signatures or other positive affirmations from affected individuals, but will still be obligated to affirm that required privacy notice has been provided to affected individuals before personal information is collected.

*Comment:* Several commenters suggested that affected individuals should be notified in writing that they must undergo background checks consistent with the requirements of 6 CFR 27.230 as a condition of employment at any high-risk chemical facility. Commenters also suggested that affected individuals should be advised of their rights to contest the findings of background checks, and of how to contest those findings.

*Response:* No affirmative written statements of this sort are required by CFATS. However, DHS has discussed Personnel Surety Program background check requirements in CFATS in the Advanced Notice of Rulemaking preceding CFATS (71 FR 78276 (Dec. 28, 2006)), the CFATS Risk-Based Performance Standards Guidance Document (May 2009), and the

Personnel Surety Program's 60-day PRA notice (74 FR 27555 (June 10, 2009)).

(H) DHS also received unsolicited comments in response to the 60-day notice related to the CFATS Personnel Surety Program.

*Comment:* One commenter expressed disappointment in the proposed information collection, because the commenter believed that the collection approach did not guarantee the availability of all due process protections under notice and comment rulemaking pursuant to the Administrative Procedure Act (APA).

*Response:* Through this notice and through DHS's June 10, 2009, 60-day PRA notice, 74 FR 27555 (June 10, 2009), DHS is fulfilling its obligations to solicit and respond to public comment under the PRA. DHS's PRA publications detail (1) which data points the Department will collect in order to conduct vetting against the TSDB; (2) how the Department will collect those data points; and (3) how the Department will perform vetting against the TSDB. This type of program description is the type of detail which is appropriate in a PRA notice, because it allows DHS to solicit comments on how to improve the proposed information collection and to consider ways to reduce the burden the CFATS Personnel Surety Program will place on affected individuals and high-risk chemical facilities.

*Comment:* Many commenters expressed concern that DHS would not notify high-risk chemical facilities when affected individuals are determined to be known or suspected terrorists. Commenters stated that as a result of such lack of notification, high-risk chemical facilities may unknowingly grant access to individuals who are known or suspected to have terrorist ties, thereby subjecting facility personnel and surrounding communities to unnecessary risk. Some of the commenters acknowledged that there may be circumstances when it is either appropriate or inappropriate to contact a facility in the context of a law enforcement investigation, but stated that DHS should not withhold TSDB vetting results as a general matter. Other commenters suggested that DHS should always notify facilities about known or suspected terrorists to enable appropriate facility action, such as potentially limiting or denying known or suspected terrorists' access to restricted areas or critical assets.

*Response:* DHS will not routinely notify high-risk chemical facilities of Personnel Surety Program vetting results. DHS will coordinate with Federal law enforcement entities to monitor and/or prevent situations in

which known or suspected terrorists have access to high-risk chemical facilities. The precise manner in which DHS or Federal law enforcement entities could contact high-risk chemical facilities following vetting are beyond the scope of this PRA notice.

*Comment:* Commenters also suggested that failure to notify an individual that he/she is a known or suspected terrorist would abrogate that individual's right to request an administrative adjudication of a finding under RBPS-12 that he/she is a potential security threat.

*Response:* Administrative adjudications which contest findings that affected individuals are potential security threats are provided by 6 CFR 27.310(a)(1). The Department does not intend to limit affected individuals' abilities to request administrative adjudications merely because it will not routinely notify them of TSDB vetting results. Individuals who believe they have been adversely affected by vetting may file Notices of Application for Review with the Department.

*Comment:* One commenter recommended that DHS should not collect an acknowledgement of State and local privacy law compliance from high-risk chemical facilities. The commenter suggested that requiring a compliance certification would add unnecessary procedural burden to the Personnel Surety Program because DHS is not responsible for State or local privacy law compliance.

*Response:* DHS agrees with the commenter and will not collect this acknowledgement as part of Personnel Surety Program information submissions.

#### Solicitation of Comments

The Office of Management and Budget 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).

The Department is particularly interested in comments which:

1. Respond to the Department's interpretation of the population affected by RBPS-12 background checks, as outlined in 6 CFR 27.230(a)(12);
2. Respond to fact that the Department or a Federal law enforcement agency may, if appropriate, contact the high-risk chemical facility as a part of a law enforcement investigation into terrorist ties of facility personnel;
3. Respond to the Department's intention to collect information that identifies the high-risk chemical facilities, restricted areas and critical assets to which each affected individual has access; and
4. Respond to the Department on its intention to seek an exception to the notice requirement under 5 CFR 1320.8(b)(3).

#### Analysis

*Agency:* Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

*Title:* CFATS Personnel Surety Program.

*Form:* Not Applicable.

*OMB Number:* 1670-NEW.

*Frequency:* As required by the DHS-approved schedule.

*Affected Public:* High-risk chemical facilities as defined in 6 CFR part 27, high-risk chemical facility personnel, and as appropriate, unescorted visitors with access to restricted areas or critical assets.

*Number of Respondents:* 354,400 individuals.

*Estimated Time per Respondent:* 0.59 hours (35.4 minutes).

*Total Burden Hours:* 210,351.7 annual burden hours.

*Total Burden Cost (capital/startup):* \$0.00.

*Total Burden Cost (operating/maintaining):* \$17,669,543.

Dated: March 6, 2010.

**Thomas Chase Garwood, III,**

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2010-8312 Filed 4-12-10; 8:45 am]

BILLING CODE 9110-9P-P

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

[Docket No. DHS-2009-0146]

### Privacy Act of 1974; Department of Homeland Security Citizenship and Immigration Services Ombudsman-001 Virtual Ombudsman System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of Privacy Act system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to establish a new Department of Homeland Security system of records notice titled, "Department of Homeland Security Citizenship and Immigration Services Ombudsman-001 Virtual Ombudsman System of Records." This system of records will ensure the efficient and secure processing of information to aid the Citizenship and Immigration Services Ombudsman in providing assistance to individuals, employers, and their representatives in resolving problems with U.S. Citizenship and Immigration Services; identify areas in which individuals, employers, and their representatives have problems working with U.S. Citizenship and Immigration Services; and to the extent possible, propose changes to mitigate problems pursuant to 6 U.S.C. 272. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

**DATES:** Submit comments on or before May 13, 2010. This new system will be effective May 13, 2010.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2009-0146 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 703-483-2999.

- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Raymond Mills (202-357-8100), Privacy Point of Contact, Office of the Citizenship and Immigration Services Ombudsman, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Pursuant to the Privacy Act of 1974, (5 U.S.C. 552a), the Department of Homeland Security (DHS) Citizenship and Immigration Services Ombudsman (CISOMB) is giving notice that it proposes to establish a new DHS system of records notice titled, "DHS/CISOMB-001 Virtual Ombudsman System of Records." This system of records will ensure the efficient and secure processing of information to aid the CISOMB in providing assistance to individuals, employers, and their representatives in resolving problems with U.S. Citizenship and Immigration Services (USCIS); identify areas in which individuals, employers, and their representatives have problems working with USCIS; and to the extent possible, propose changes to mitigate problems pursuant 6 U.S.C. 272.

CISOMB has developed the DHS/CISOMB-001 Virtual Ombudsman System of Records to ensure the efficient and secure processing of information and to aid the Ombudsman in assisting individuals and employers in making systemic recommendations to USCIS. The core of the DHS/CISOMB-001 Virtual Ombudsman System of Records is CISOMB's Web form 7001 which is a user interface Web-based form which will automatically convert information submitted by an individual or employer into a case within CISOMB's account within Internet Quorum/Enterprise Correspondence Tracking (IQ/ECT) system. IQ/ECT is the Department's enterprise-wide correspondence and case management tracking system. This system allows the Department's headquarters and components to manage cases and resolve issues in a coordinated and timely manner. For more information on IQ/ECT, please view the Enterprise Correspondence Tracking System PIA at <http://www.dhs.gov/privacy>. The system also enables CISOMB to segregate data into several categories to generate internal reports, provide customized feedback to individuals and employers, and supply real-time aggregated