

June 4, 2013

U.S. Department of Homeland Security  
National Protection and Programs Directorate  
245 Murray Lane, S.W.  
Arlington, VA 20528-0610

Via Electronic Address: <http://www.regulations.gov>

**Re: Docket No. DHS-2012-0061; Department of Homeland Security, Information Collection Request; Chemical Facility Anti-Terrorism Standards Personnel Surety Program**

The National Association of Chemical Distributors (NACD) appreciates the opportunity to comment on the Department of Homeland Security (DHS) Information Collection Request (ICR) regarding the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program (PSP).

As the trade association representing the nation's chemical distribution industry, NACD offers a unique and important perspective on CFATS. NACD members process, formulate, blend, re-package, warehouse, transport, and market chemical products exclusively for an industrial customer base of more than 750,000. NACD members operate in every state in the continental U.S. and throughout all of North America through more than 1,500 facilities. Most NACD members are small businesses. The typical member is privately owned with \$26 million in annual sales, 3 facilities, and 28 employees. More than 40 percent of NACD members are family-owned.

NACD members demonstrate their commitment to product stewardship through compliance with Responsible Distribution, the Association's mandatory and third-party verified environmental, health, safety, and security program. NACD members have always focused on the safety and security of their workplaces and products. In response to the terrorist attacks of September 11, 2001, NACD became the first chemical trade association to mandate specific security measures for members, and we continue to assess Responsible Distribution's security measures against current threats. Specific measures addressing security include:

- Developing programs that address security of a member's facility and the transportation of chemicals, including conducting a security vulnerability assessment
- Scrutinizing for-hire motor carriers for the security of chemicals in transportation

- Qualifying customers purchasing chemicals as prescribed by government regulations
- Verifying implementation of security measures by an independent third-party firm

NACD members are more committed than ever to security. Earlier this year, the NACD Board of Directors unanimously voted to create a specific Responsible Distribution Security Code to formalize and further emphasize these security measures.

NACD appreciates that DHS withdrew its previous PSP proposal from the Office of Management and Budget last year, sought feedback from and considered the views of the CFATS-regulated community, and reissued a new proposal in March that incorporated some of that feedback. NACD particularly appreciates the fact that DHS has moved closer to the position of allowing for the expanded use of existing federal vetting programs including the Transportation Worker Identification Credential (TWIC) and the Commercial Drivers' License Hazardous Materials Endorsement (HME). However, NACD is concerned that DHS chose not to include additional suggestions from industry in the new proposal.

First, NACD is concerned that DHS will not necessarily inform a facility if an individual whose information that facility has submitted results in a match to the Terrorist Screening Data Base (TSDB). If DHS does not notify facilities of the screening results, facility owners and operators will be unable to affirm that individuals with access to sensitive areas do not present security threats. Facilities will not have the information needed to stop those with terrorist ties from accessing critical assets. This is contrary to the purpose of CFATS, which is to keep terrorists out of facilities with chemicals of interest and other critical assets. Even if DHS plans to apprehend potential terrorists upon discovering TSDB matches, failing to inform facility operators of these matches in a timely fashion could allow terrorists to gain access and begin to develop damaging attack plans. In order to ensure that those intent on harming the chemical industry and the nation are not allowed access to critical assets, NACD strongly encourages DHS to reconsider its decision not to automatically inform facilities of individuals' TSDB status.

NACD is also disappointed that DHS elected to retain the requirement that companies submit information on individuals who will have unescorted access to critical assets 48 hours in advance of that access being granted. This is burdensome and likely impossible in some cases as different individuals may show up for maintenance or emergency repairs. Perhaps the biggest class of individuals would be truck drivers. In many cases, companies do not know that far in advance which drivers will arrive at their facilities, or a driver may be switched for a number of possible reasons such as illness, hours, or a change in the supply point. This is particularly burdensome for chemical distributors who receive the majority of their shipments via truck and who are often small operations unable to afford a TWIC reader. Any potential benefit of the 48 hour notification requirement does not justify the burdens that it will place on facility operations. In fact, without an assurance that DHS will notify facilities of the TSDB status of individuals seeking access, there is no justification for the 48 hour notification requirement.

DHS states that facilities can reduce their burden by limiting their restricted areas and limiting the number of individuals who will have access to these areas or by adopting "innovative

escorting alternatives” such as video monitoring. For companies to do this, they would have had to have this proposal known to them at the time the CFATS Site Vulnerability Assessment and Site Security Plans were being developed several years ago. Many companies spent dollars based on the guidance documents. Video monitoring is not cheaper than a live escort, and it would be difficult for camera systems to determine actions that are “repair” vs. sabotage, so automation would not be possible. In addition, limiting or restricting areas and/or individuals is highly unrealistic for a small facility with a limited amount of real estate. For facilities with a small footprint, which is not uncommon for chemical distributors, there is no way to segment out areas away from visitors, contractors, etc.

Finally, NACD encourages DHS to consider alternatives that would relieve unnecessary burdens and make the PSP more efficient. While NACD appreciates that DHS gives greater recognition to programs such as TWIC in the latest proposal, we are concerned that the only way to leverage this recognition is for the facility to purchase a TWIC card reader. For a small facility such as a chemical distributor, this is a cost-prohibitive option. A much more effective and efficient solution would be for the government to develop a central repository of information gathered through all of the federal credentialing programs such as TWIC, HME, Global Entry, etc... that designated chemical facility operators could directly access through a secure, strict password-protected portal. This would allow facility operators to fulfill their personnel surety obligations in a fast and efficient manner.

In closing, the goal of the PSP should be first and foremost to stop potential terrorists before they enter facilities. A workable solution in vetting personnel that also considers business size and operational needs with the performance based principles that are core to CFATS must be considered.

Thank you for seeking the input of the regulated community and the opportunity for NACD to comment on this issue. If you have any questions or need additional information, please feel free to contact me.

Sincerely,



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