

# Risk-Based Performance Standards Guidance

Chemical Facility Anti-Terrorism Standards

May 2009



Homeland  
Security

# RBPS 12 – Personnel Surety

**RBPS 12 – Personnel Surety** - 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.

Personnel surety is a key component of a successful chemical facility security program. Measures and aspects of a successful personnel surety program should build on the in-place corporate programs, as applicable. A successful personnel surety program can significantly improve a facility’s capability to deter, detect, and defend against insider threats or covert attacks. RBPS 12 – Personnel Surety establishes performance standards focused on this critical area and addresses the need for a high-risk chemical facility to ensure that individuals allowed on-site have suitable backgrounds for their level of access.

## Security Measures and Considerations for Personnel Surety

### Security Measures

The primary means of satisfying the personnel surety performance standards is through the implementation of an appropriate background check program.

#### Background Checks

It is important to note that the use of background checks in the context of RBPS 12 is not intended to alter, limit, or conflict with other Federal, state, or local laws and rules (see 6 CFR § 27.405(b) and 72 Fed. Reg. 17719, 17727), including those protecting workers’ or applicants’ rights. Similarly, background checks under RBPS 12 are not intended to be used by facilities to inappropriately or unlawfully discriminate or retaliate against employees or applicants.

In the context of CFATS RBPS 12, a background check is the process of acquiring information on an individual regarding the legal authority to work for a high-risk chemical facility, have access to its restricted areas, or for other activities that involve access to a restricted area or critical asset at a high-risk chemical facility. Background checks can range from simple employment screening

#### Applicable Threat Scenarios

When determining which protective measures to apply to meet the Personnel Surety performance standards, a facility might consider the following potential attack scenarios:

- Assault team
- Sabotage
- Theft/diversion
- VBIED

(i.e., using public or commercially available records and investigation to confirm or disprove the accuracy of an applicant's resume) to comprehensive investigations that consider prior criminal activity, immigration status, credit checks, potential terrorist ties, and other, more in-depth analysis.

Under 6 CFR § 27.230(a)(12), facilities are required to perform four types of background checks on both facility personnel (i.e., employees and contractors) who have access to restricted areas or critical assets and on unescorted visitors who have access to restricted areas or critical assets:

1. *Measures designed to verify and validate identity.* This typically involves a social security/name trace search, which reveals names associated with a social security number, past and present addresses, and fraudulent use of social security numbers. Results may also be used to cross-reference addresses supplied by the applicant to ensure the integrity of the information on the job application or resume.
2. *Measures designed to check criminal history.* This typically involves a search of publicly or commercially available databases, such as county, state, and/or Federal criminal record repositories for jurisdictions in which an individual has worked or resided. A typical criminal history search would uncover any criminal charges, outstanding warrants, dates, sentencing, and disposition for felonies and/or misdemeanors. In conducting or evaluating such a search, a facility may wish to consult the federally established list of disqualifying crimes applicable to hazmat drivers and transportation workers at ports (see 49 CFR § 1572.103).

A second type of search that often is used to check criminal history is a national criminal scan. A national scan serves as a supplement to Criminal History Searches by searching to identify criminal activity in jurisdictions outside of the geographical locations of current and previous residence and employment.

3. *Measures designed to verify and validate legal authorization to work.* The standard way to validate legal authorization to work is through the filing of U.S. Citizenship and Immigration Services (USCIS) Form I-9: Employment Eligibility Verification or through DHS's E-Verify program.
4. *Measures designed to identify people with terrorist ties.* Because information regarding terrorist ties is not publicly available, the Department is developing a system through which regulated facilities will be able to have relevant individuals screened by DHS through the Terrorist Screening Database (TSDB).<sup>22</sup>

In addition to the four required types of checks, facilities may want to consider additional voluntary checks for their employees. Table 16 provides a list of activities that a facility may wish to consider as part of the background check process.

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<sup>22</sup> Note that to minimize redundant background checks of workers, a person who has successfully undergone a security threat assessment conducted by DHS and is in possession of a valid DHS credential (such as a TWIC, hazardous materials endorsement (HME) license, NEXUS, or Free and Secure Trade (FAST) credential) will not need to undergo additional vetting by DHS. The facility, however, still must provide DHS with sufficient identifying information about the individual and his credential to allow DHS to verify that the credential still is valid.

**Table 16: Examples of Background Check Options**

<b>Background Check Contents</b>	<ul style="list-style-type: none"><li>• Verification of social security number consistent with any applicable law.<sup>23</sup></li><li>• Verification of the name and address of each previous employer, the period employed, and the job title.</li><li>• A search of Federal, state, and county criminal records in all jurisdictions in which the individual has worked or resided during the previous seven (7) years, including all geographical areas listed on the application, resume, and the social security number address verification report. The records search includes Federal, state, and/or county (or equivalent) felony and misdemeanor convictions; deferred adjudication; pleas of no contest; and unresolved indictments or other charges of crimes or offenses, except to the extent consideration of any such categories are prohibited by applicable law. Minor traffic offenses are not generally relevant; however, driving while intoxicated (DWI) or driving under the influence (DUI) may be relevant.</li><li>• For employees whose job responsibilities involve operating motor vehicles, information from the Department of Motor Vehicles in, but not necessarily limited to, the geographic areas listed on the application, resume, or social security number and address verification in order to reveal violations and convictions.</li><li>• E-Verify or USCIS Form I-9.</li><li>• Screening for terrorist ties through the TSDB.</li></ul>
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There are a variety of methods through which a facility or corporation can conduct background checks, such as hiring personal investigators, using one of many commercial Web sites that will perform specific searches for a fee, and/or utilizing third-party providers to implement or manage the facility's personnel surety program. Corporations or facilities also can choose to perform the searches on their own as many records, such as criminal records, are available to the public for a small fee.

DHS views the background check process as one of the many pieces of the SSP. Once the facility receives the Letter of Authorization under 6 CFR § 27.245 denoting preliminary approval of the SSP, the facility should then proceed with all necessary background checks, if it has not done so already.

### **Special Laws Applying to Background Checks**

Because of the potential sensitivity of the information uncovered, employment screening is subject to a set of laws and regulations to protect individuals in the event of misuse of data or fraud. Laws that may apply, depending on the type of background checks conducted, include the Fair Credit Reporting Act and the Driver's Privacy Protection Act. When conducting background checks, a corporation or facility should ensure that it is complying with all applicable laws, including applicable state regulations. The facility or operator may not necessarily be responsible for the compliance of contractors. The contractor may be required by contract or under law to meet background check requirements. By virtue of the contractor relationship, the corporation or facility may not know or receive results except for notice that the contractor passed.

<sup>23</sup> Facilities may wish to consider using the Social Security Number Verification System (SSNVS), which is provided by the Social Security Administration (SSA) to all employers, to verify that employee names and social security numbers match the SSA's records.

## Transportation Worker Identification Credential (TWIC)

TWICs are tamper-resistant biometric credentials issued to workers who require unescorted access to secure areas of ports, vessels, outer continental shelf facilities, and all credentialed merchant mariners. The TWIC was established by Congress through the Maritime Transportation Security Act (MTSA) and is administered by the Transportation Security Administration (TSA) and U.S. Coast Guard. Before receiving a TWIC, an individual must provide certain information to DHS and is subject to a background investigation. As numerous chemical facilities are located in port areas, many employees, contractors, or visitors to a facility may be in possession of a TWIC. Given the background investigation performed prior to receipt of a TWIC, which includes a check of the TSDB, a facility may choose to forgo additional background checks on any individual who possesses a current, authentic TWIC. However, the facility must still submit the name and credential information for any such person to DHS in order to satisfy RBPS 12. (See 72 FR 17709.)

## RBPS Metrics

*Table 17 provides a narrative summary of the security posture of a hypothetical facility at each tier in relation to this RBPS and some example measures, activities, and/or targets that a facility may seek to achieve that could be considered compliant with the RBPS.*

<b>Table 17: RBPS Metrics – RBPS 12 – Personnel Surety</b>				
<b>RBPS 12 - Personnel Surety</b> - 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,				
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(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.				
	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>	<b>Tier 4</b>
<b>Summary</b>	Appropriate background checks have been successfully completed for all individuals (e.g., employees, contractors, unescorted visitors) who have access to restricted areas or critical assets.			
<b>Metric 12.1 – New/Prospective Employees &amp; Unescorted Visitors</b>	All new/prospective employees and contractors, as well as any unescorted visitors, who have access to restricted areas or critical assets have appropriate background checks. Access to restricted areas or critical assets is allowed after appropriate background checks have been successfully completed.			
<b>Metric 12.2 – Existing Employees</b>	All existing employees and contractors who have access to restricted areas or critical assets undergo background investigations in an expedited but reasonable period from the date of the preliminary approval of the SSP. Investigations are repeated for all individuals at regular intervals thereafter.		All existing employees and contractors who have access to restricted areas or critical assets undergo background investigations in an expedited but reasonable period from the date of the preliminary approval of the SSP.	
<b>Metric 12.3 – Contents of Background Checks</b>	The background checks are conducted in accordance with documented requirements established by the corporation, facility, or FSO.			

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	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>	<b>Tier 4</b>
<b>Metric 12.4 – Terrorist Screening</b>	Processes are in place to provide DHS with the necessary information to allow DHS to screen individuals (e.g., employees, contractors, unescorted visitors) who have access to restricted areas or critical assets against the TSDB.			
<b>Metric 12.5 – Audit</b>	The background check program is audited annually.			

*Note: This document is a “guidance document” and does not establish any legally enforceable requirements. All security measures, practices, and metrics contained herein simply are possible, nonexclusive examples for facilities to consider as part of their overall strategy to address the risk-based performance standards under the Chemical Facility Anti Terrorism Standards and are not prerequisites to regulatory compliance.*