

**COMMITTEE OF EXPERTS ON THE TRANSPORT OF
DANGEROUS GOODS AND ON THE GLOBALLY
HARMONIZED SYSTEM OF CLASSIFICATION
AND LABELLING OF CHEMICALS**

Sub-Committee of Experts on the
Transport of Dangerous Goods

Thirty-second session
Geneva, 3-7 December 2007
Item 11 of the provisional agenda

Sub-Committee of Experts on the Globally
Harmonized System of Classification
and Labelling of Chemicals

Fourteenth session
Geneva, 12(p.m.)-14 December 2007
Item 7 of the provisional agenda

OTHER BUSINESS

Application for consultative status by the Institute of Makers of Explosives (IME)

Note by the secretariat

1. The secretariat reproduces below information received from the Institute of Makers of Explosives (IME) requesting consultative status as a non-governmental organization for participation on the work of the Sub-Committee of Experts on the Transport of Dangerous Goods (TDG Sub-Committee) and the Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (GHS Sub-Committee).
2. The TDG and GHS Sub-Committees are invited to decide whether IME may participate in their work with a consultative status.

September 4, 2007

Olivier Kervella
Secretariat, Dangerous Goods and Special Cargoes Division
UNECE Transport Division
Palais des Nations
CH-1211 Geneva 10
Switzerland

Ref: Application for NGO Status to
(1) TDG Sub-committee
(2) GHS Sub-committee

Dear Mr. Kervella:

I am writing to request that the United Nations Sub-committee of Experts on the Transport of Dangerous Goods (TDG) and the United Nations Sub-committee of Experts on the Globally Harmonized System (GHS) of Classification and Labelling of Chemicals approve the Institute of Makers of Explosives (IME) for consultative status. This letter, accompanying materials, and the information available on our websites www.ime.org and www.unreports.com provide information on the IME for consideration by these Sub-committees at their earliest convenience, which we trust will be their 32nd and 14th Sessions respectively.

IME is the safety and security institute of the commercial explosives industry. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.

IME members are U.S. and Canadian manufacturers and distributors of commercial explosive materials and oxidizers as well as other companies that provide related services. IME's member companies have operations in many countries on all continents (except Antarctica). Over 3.2 million metric tons of high explosives, blasting agents, and oxidizers are consumed annually in the United States. Of this, IME member companies produce over 98 percent of the high explosives and a great majority of the blasting agents and oxidizers. These products are used in every state of the Union and are distributed worldwide.

Commercial explosives are the backbone of our industrial society. Metals, minerals, oil, natural gas, power, construction activities and supplies, and consumer products are available today because of commercial explosives. The ability to transport and distribute commercial explosives safely and securely is critical to all industries.

IME is particularly interested in participating in the work of the TDG and GHS Sub-committees and associated working groups in regards to issues involving explosives and related dangerous goods such as oxidizers and flammable solids. IME can contribute significant practical advice regarding the transportation, storage, and use of explosives and the feasibility of implementing new or revised recommendations pertaining thereto. IME is organized into six standing committees: Technical, Transportation and Distribution, Safety and Health, Environmental Affairs, Security, and Legal, each of which can contribute significant knowledge in their disciplines to the TDG and GHS Sub-committees.

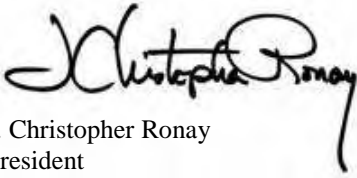
We have enclosed the following items for your review and consideration:

1. [Application for Consultative Status](#)
2. [List of Current IME Members](#) and [IME Board of Governors](#)
3. [A copy of the IME's By-laws and Articles of Incorporation](#)
4. [A copy of the IME's certificate of registration](#)
5. [A copy of IME's most recent financial statement and annual report](#)
6. [Copies of examples of recent IME publications and statements](#)¹
7. [The IME organization chart](#)

If IME's application for consultative status is approved, our primary representative will be Mr. David Boston. Mr. Boston has represented IME's interests at the TDG and GHS Sub-committees through participation as a member of the Dangerous Goods Advisory Council's delegation for the past twelve years. In addition to Mr. Boston, as the need arises, IME anticipates providing technical specialists to assist Mr. Boston on specific issues.

Thank you for considering IME's application for consultative status. If you have questions regarding our application you may contact Mr. Boston at +1 (817) 551-6494 x 1005 or dboston@unreports.com or me at +1 (202) 429-9280 or jcronay@ime.org.

Sincerely,



J. Christopher Ronay
President

¹ In addition to the electronic copies of documents included in this item, under separate cover, we are sending the following to you: 1 complete set of IME's Safety Library Publications, IME's Complete Explosives Video Library (DVD), and 1 complete set of IME's informational posters.

Application Form for Consultative Status

Only duly completed applications can be taken into consideration. Please do not leave any question unanswered, rather write “not applicable“ if it is the case. Please be as brief as possible and do not exceed one page per question.

PART I

Application Form

1. Name and, if any, acronyms of organization.
Institute of Makers of Explosives (IME)

2. Contact Information.
 - a) Permanent headquarters address. 1120 19th Street, NW / Suite 310
Washington, DC 20036-3605
USA
(P.O. boxes are not accepted as headquarters address, but are acceptable as postal address)
 - b) Postal address, if different from headquarters address. Contact address:
P.O. Box 765
Godley, TX 76044
USA
 - c) Contact phone and fax number. +1 (817) 551-6494 x 1005 (tel)
+1 (817) 396-4584 (fax)
 - d) Name and position of contact person.
David W. Boston, UN Consultant
 - e) E-mail address.
dboston@unreports.com
 - f) Website, if any.
www.ime.org and www.unreports.com

3. Summarize the aims and purposes of your organization.
Safety and security of explosives manufacturing, storage, distribution, use, and disposal

4.
 - a) Explain how you carry out these aims. Develop & distribute safety publications, participate in UN TDG & GHS (part of DGAC delegation presently), assist in development of national & international standards & regulations, participate in national & international conferences, provide training materials.
 - b) Please give examples of recent projects and activities.
Developed IMESAFR (explosives risk analysis software)
Published SLP-22 (detonator transport) SLP-23 (ANE transport), SLP-25 (Training), SLP-27 (Security), & others
Participate in Explosive Working Group (UN) and UN sub-committees for past 12 years

5.
 - a) How do you intend to contribute to the work of ECOSOC and/or its subsidiary bodies?
 - Actively participate in the UN Sub-committee on Transport of Dangerous Goods (AC.10/C.3)
 - Actively participate in the UN Sub-committee on Globally Harmonized System of Classification and Labelling of Chemicals (AC.10/C.4)
 - Actively participate in the UN TDG Sub-committee's Explosives Working Group
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b) Please give details on planned activities and projects.

- Participate in discussions on proposed Test Series 6(d). Provide samples for testing to evaluate the impact of adopting this test.
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- Participate in discussions and development of GHS labeling and safety data sheets, particularly as they pertain explosives. Specific interest in proposals regarding pictograms for 1.4S GHS label.
-
- Provide technical comment on additional development of tests for use in Test Series 8 for evaluating candidates for UN3375 classification and for transporting same in tanks.
-
- Monitor current proposal (accepted in July 07) to make training requirements mandatory before being allowed to perform job functions. Plan to ensure that it is clear in the Model Regulations that untrained workers may perform job functions under supervision of trained individual(s) while training is pending/underway.
-
- Monitor development of fireworks standards for potential impact on other commercial explosives.
-

6. a) Has your organization participated in any UN-conference(s)?
If yes, explain in detail.

-
- Mr. Boston has participated in the UN Sub-committee on Transport of Dangerous Goods for the past 12 years, representing IME as part of the DGAC delegation. Mr. Boston served as secretary of the working group that re-evaluated Test Series 6(c), and has occasionally served as secretary for the current explosives working group. With the retirement of Mr. Johansen as chair of that working group, and the accession of Mr. De Jong to that position, Mr. Boston has volunteered to serve as permanent secretary of that Group.
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b) Has your organization contributed to any areas with substantive UN concern and participated in any activities of the United Nations? If yes, explain in detail.

-
- IME developed the proposal in UN/SCETDG/21/INF.10 that resulted in adoption of provisions to allow transport of UN0331 and UN0332 explosives in portable tanks (see ST/SG/AC.10/C.3/42, para. 26).
-
- IME participated in the development of the entry UN3375.
-
- IME participated in the review and revision of Test Series 6(c)
-
-

7. Would you broadly categorize your organization as a research organization, an advocacy/lobbying organization, a grass-roots project implementation organization or any other?

-
- IME is a non-profit organization that provides technical and educational services, and government representation for the commercial explosives industry.
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14. How many members does your organization have and in which countries are they located?
Please list the number of members by country and continent.

(All documents must adhere to the United Nations terminology with respect to territories and countries.)

-

North America *:

USA: 31

Canada: 2

-

Europe:

France: 1

-

* As noted in #11 above, these North American members have operations on all continents throughout the world

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15. Do the membership rules of your organization allow both individuals and organizations to be members? If so, please provide a list of the member organization(s).

-

The organization grants membership only to companies.

A list of current members is attached and also available at: http://www.ime.org/dynamic.php?page_id=69

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16. Does the organization charge membership fees? Is the fee the same for all members and charged to all members? If not, please explain

-

There are 4 levels of membership: Regular, Associate, Affiliate and International. Membership level is determined as described in the associations by-laws. Each membership level has its own unique membership fee structure associated with it.

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17. a) Does your membership include organizations that have ECOSOC consultative status?
If so, please list them.

-

No

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- b) Is your organization a member of one or several organization(s) that are applying for or already have ECOSOC consultative status? If so, please provide name(s).

-
- No
-
-
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-
-

18. Are other organizations affiliated with your organization? If yes, please provide a list of these organizations.

-
- Yes, the Federation of European Explosives Manufacturers (FEEM)
-
-
-
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-

19. a) Does your organization have any relationship to a government? If yes, please describe the nature of this relationship.

-
- No
-
-
-
-
-

b) In the past five years, did your organization receive money or other contributions from a government? If yes, please specify and provide the dates and amounts received, as well as an explanation of how the funds were used.

-
- No
-
-
-
-
-

20. Has your organization previously applied for ECOSOC consultative status. If so, please indicate year of previous application.

-
- No
-
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21. a) Does your organization already hold accreditation with any organs, funds, programmes or specialized agencies of the United Nations? If so, please specify.

- No

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b) Was your organization's accreditation with any organs, funds, programmes or specialized agencies of the United Nations ever withdrawn or suspended? If so, please specify.

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- Not applicable

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PART III

Application Form

Please summarize the income and the expenditure from the last calendar or fiscal year of your organization using the following table:

Source of Income	Income in home currency	Income in US dollars
Membership dues - Annual Dues constitute the organization budget -	\$ 1,515,630	\$ 1,515,630
Contributions from Members - -		
Funding from Governments <i>(Please specify below)</i> - - -		
Funding from International Organizations <i>(Please specify below)</i> - - -		
Funding from Private Sector <i>(Please specify below)</i> - - - -		
Funding from other NGOs <i>(Please specify below)</i> - - -		
Income generated through contracts <i>(Please specify below)</i> - - -		
Other sources <i>(e.g. philanthropic contributions, sales of publications)</i> - Sales of safety publications - -	\$22,464	\$22,464
Total income	\$1,538,094	\$1,538,094

Expenditure	Expenditure in home currency	Expenditure in US dollars
Administration <i>(If the expenditures for administration exceed 30% of the total expenditure, please explain these costs in detail)</i> - Approved 2007 annual budget detail attached - - - -	\$1,029,294	\$1,029,294
Projects - - - - -		
Other expenditure - Operating, Meeting, Governmental Affairs, Committee and - Safety Education expenses - - -	\$486,336	\$486,336
Total expenditure	\$1,515,630	\$1,515,630

PART IV	Application Form
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I/we declare that I/we have answered the questions contained in this form to the best of my/our knowledge.

I/we declare, that if granted consultative status, my/our organization will act in accordance with the Charter of the United Nations and ECOSOC resolution 1996/31.

The undersigned signature/es is/are duly authorized to sign this declaration.



J. Christopher Ronay
President
4 September 2007

IME NGO Application
List of Current IME Members

Member Name/Location	Member Synopsis	Membership Type
ACCURATE ENERGETICS McEwen, TN	Accurate Energetic Systems (AES) is a manufacturer of various high explosive compositions and specialty products for the U.S. Department of Defense and U.S. industrial markets. These markets include aerospace, military, oil exploration, commercial blasting and precision demolition applications.	Regular
AUSTIN POWDER COMPANY Cleveland, OH	Austin Powder is the second oldest manufacturing company in Ohio. Today, they manufacture a full-line of industrial explosives and accessories, and provide blasting services to customers throughout North America and around the world.	Regular
BAKER ATLAS Houston, TX	Baker Atlas provides a wide-range of services and information, which allow oil and gas companies to define, reduce and manage their risk. To this end, Baker Atlas offers a complete range of downhole well logging services for every employment including advanced formation evaluation, production and reservoir engineering, petrophysical and geographical data acquisition services.	Associate
D.C. GUELICH EXPLOSIVE CO. Clearfield, PA	A full-line explosives distributor. Drilling and Blasting Contractor.	Associate
DAVEYFIRE, INC. Walnut Creek, CA	For over 150 years, Daveyfire has manufactured pyrotechnic products. Our development has been closely associated with the use of explosives and firing systems in mines and quarries and in aeronautical and ordnance applications. Daveyfire represents more than 1,200 products.	Associate
DELTA CAPS CANADA Montreal, Quebec, Canada	Leading edge initiation technology providing accuracy, safety, programmability, reliability and ease of use. Integrated with advanced blast optimization software. Digital transfer of the designed delay timing to the detonators down the hole. This eliminates human error out in the field.	Associate

Member Name/Location	Member Synopsis	Membership Type
DETOTEC NORTH AMERICA, INC. Sterling, CT	Detotec manufactures Perfacord, a high-quality detonating cord designed for precise timing, reliability under adverse conditions and ease of handling. Detotec is constantly exploring the use of new materials and new manufacturing methods to improve efficiency and meet the changing requirements of our customers.	Associate
DOUGLAS EXPLOSIVES, INC. Philipsburg, PA	Douglas Explosives is a distributor of commercial explosives, manufacturer of blasting agents and provider of shot (blasting) service for some customers. There are two facilities located in Philipsburg and Somerset, PA.	Associate
DYNO NOBEL INC. Salt Lake City, UT	Dyno Nobel has become the world's leading explosives company and a global supplier of commercial explosives solutions. Dyno Nobel can now boast the most complete range of initiation systems available on the market today---including the industry's most advanced electronic initiation system.	Regular
EBV-EXPLOSIVES ENVIRONMENTAL COMPANY Joplin, MO	Provides a service of responsible destruction of surplus explosives and explosive wastes.	Affiliate
EXPLOTRACK Eagleville, PA	Provides technical solutions to detect, track, monitor and identify detonators and explosives materials.	Affiliate
FEDERATION OF EUROPEAN EXPLOSIVES MANUFACTURERS (FEEM) Le Vesinet, France	A non-governmental organization whose main objective is to encourage best practice in the industry, particularly in the areas of safety, quality and security, and to make the public aware of the importance of different uses of industrial explosives in creating its infrastructure and environment. Additionally, FEEM works to ensure proper and adequate representation of the European Explosives Industry with both International and National regulating bodies and at conferences where matters concerning the regulation of this trade are discussed.	International Associate
GOEX, INC. Doyline, LA	GOEX is the sole black powder manufacturing facility in North America. GOEX products are all American made.	Regular
JET RESEARCH CENTER/HALLIBURTON Alvarado, TX	Founded in 1919, Halliburton is one of the world's largest providers of products and services to the oil and gas industries.	Associate

Member Name/Location	Member Synopsis	Membership Type
MAGASEC, INC. Kingston, Ontario, Canada	Magasec produces secure inventory monitoring, management and tracking systems. Our products enable strict control and tracking of assets in all aspects of inventory handling, shipping and storage. Our focus is Hazmat and dangerous goods management. We offer a range of responsive component products that monitor, track and secure inventories at any time---in any place. We specialize in remote inventory storage monitoring, shipment tracking and security.	Affiliate
MAXAM North America/MSI Salt Lake City, UT	MAXAM North America/Mining Services International Corporation is a Utah Corporation organized in 1979. The company's primary products and services include the manufacture, licensing, and supply of commercial explosives used in mining throughout the world.	Regular
MP ASSOCIATES, INC. Ione, CA	MP Associates is a manufacturer of specialty explosives used by the U.S. Department of Defense as well as by commercial markets around the world.	Associate
NOBEL INSURANCE SERVICES Dallas, TX	Nobel Insurance Services provide a broad-range of specialty insurance products and services to industries that manufacture, distribute, transport or use commercial explosives. Our products and services are marketed through a network of independent insurance agents throughout the country.	Affiliate
ORICA USA INC. Watkins, CO	Orica is the world's leading supplier of commercial explosives, detonating systems and blast management services to the mining, quarrying and construction industries. Orica products and services impact on every part of modern life and our brands are market leaders that you trust and can depend on.	Regular
OWEN OIL TOOLS LP Godley, TX	Owen Oil Tools, a Core Lab Production Enhancement division, is a global leader delivering Best Customer Solutions for well completions, workover, remedial and abandonment operations. Owen offers a complete line of oil well perforators and other explosives specialty products including detonators for both exposed applications and fluid desensitive applications. All Owen detonators exceed the API RP-67 Safety Requirement.	Associate
R&R TRUCKING Duenweg, MO	The R and R Trucking Group represents North America's premiere specialized carriers of ultra-sensitive cargo for government and commercial entities.	Affiliate

Member Name/Location	Member Synopsis	Membership Type
SAFETY CONSULTING ENGINEERS, INC. Schaumburg, IL	Conducts engineering hazards analysis and testing. Conducts safety and performance testing on explosives for commercial, government and military. US Department of Transportation authorized explosives testing laboratory.	Affiliate
SCHLUMBERGER OIL FIELD SERVICES Sugar Land, TX	Schlumberger Oilfield Services is the world's premier oilfield services company, supplying a wide-range of technology services and solutions to the international oil and gas industry.	Associate
SENEX EXPLOSIVES, INC. Cuddy, PA	Senex Explosives is a western Pennsylvania-based manufacturer of emulsion-based explosives and other accessories. Additionally, Senex also conducts drilling and blasting operations for the mining and construction industries.	Regular
SPECIAL DEVICES INC. Mesa, AZ	A global leader in precision engineered energetic devices for the Automotive, Defense & Aerospace, and Mining & Blasting industries.	Associate
SUMMA INSURANCE MANAGERS Houston, TX	Summa Insurance Managers, Inc. specializes in complex commercial accounts. Our agency is known for providing a high degree of technical expertise and service to our customers.	Affiliate
TELEDYNE RISI Tracy, CA	Specializes in the manufacture of precision secondary explosive components including initiators and detonators utilizing the Exploding Bridgewire (EBW) and Exploding Foil (EFI) concepts.	Associate
TITAN SPECIALTIES, LTD. Milford TX	Titan Specialties, Ltd., designs, manufactures and distributes energetics, perforating gun systems and well logging instruments, providing state-of-the-art well completion solutions globally to the oil and gas industry.	Associate
TRADESTAR CORPORATION West Jordan, UT	Tradestar designs and manufactures a variety of custom explosives blending and delivery systems.	Affiliate
TREAD CORPORATION Roanoke, VA	Tread Corporation is a world leader in the manufacturing of bulk handling and processing equipment for the explosives industry. Founded in 1957, Tread offers over 40 years of service and solutions to our customers by providing complete explosives storage, handling and delivery systems.	Affiliate

Member Name/Location	Member Synopsis	Membership Type
TRI-STATE MOTOR TRANSIT CO. Joplin, MO	Founded in 1929, TSMT began transporting explosives to three powder mills located in Joplin/Carthage, MO area to support local zinc and lead mining. The company changed its name to Tri-State Motor Transport Company in 1931. TSMT has long been a leader in the transportation industry.	Affiliate
VET'S EXPLOSIVES, INC. Torrington, CT	Vet's Explosives is an explosives supplier and blasting contractor in southern New England and New York State. We specialize in blasting in the heavily populated urban corridor between New York City and Boston.	Associate
VIKING EXPLOSIVES & SUPPLY, INC. Rosemount, MN	Viking Explosives & Supply, Inc. (VES) is the oldest company in the DHB group. Formed in 1969, the company has been the leading innovator of explosives products and services to the iron mining industry concentrated in northern Minnesota and Michigan. VES' core business has always been the manufacture and loading of bulk blasting agents for its customers in the iron mining industry.	Regular
W.A. MURPHY, INC. El Monte, CA	Distributor of the Finest Reloading Powders---Murphy Powder has been a major distributor to the reloading market for over 40 years. We stock all major brands of smokeless powders and treat each jobber's needs and situations on an individual basis.	Associate

IME Board of Governors

31-Aug-07

Company	Governor	Nationality
Accurate Energetic Systems	Sunday, John	USA
Austin Powder Company	Gleason, Michael A.	USA
Baker Atlas	Cannon, Edwin	USA
D.C. Guelich Explosive Co	Guelich, Duwayne C.	USA
Daveyfire, Inc.	Broca, Alan	USA
Delta Caps Canada	Bernard, Thierry	FRANCE
Detotec North America, Inc.	O'Brien, Timothy	USA
Douglas Explosives, Inc.	Burnsworth, Douglas K.	USA
Dyno Nobel Inc.	Bingham, Robert A.	USA
EBV Explosives Environmental	Zoghby, David R.	USA
ExploTrack	Morhard, Bob	USA
GOEX, Inc.	MacDonald, Don	USA
Jet Research Center/Halliburton	Arsenault, Richard	USA
Magasec, Inc.	Mikelait, Jim	CANADA
Maxam North America, Inc.	Huelamo, Vicente	SPAIN
MP Associates, Inc.	Pier, David J.	USA
Nobel Insurance Services	Payne, Trudy	USA
Orica USA Inc.	Brinker, Donald O.	USA
Owen Oil Tools LP	Boston, David	USA
R & R Trucking	DeRuy, Kurt	USA
Safety Consulting Engineers	Dahn, C. James	USA
Schlumberger Oil Field Services	Dickes, Raymond N.	USA
Senex Explosives Inc.	Singhal, Rajeev	USA
Special Devices Inc.	Shipp, Jerry	USA
Summa Insurance Managers	Gremmel, Alan L.	USA
Teledyne RISI	Varosh, Jim	USA
Titan Specialties Ltd.	Golian, Timothy	USA
Tread Corporation	Frye, John	USA
Tri-State Motor Transit Company	Bennett, David	USA
Vet's Explosives, Inc.	Gelormino, Thomas A.	USA
Viking Explosives & Supply Inc.	Bednar, David H.	USA
W.A. Murphy, Inc.	McCardle, William M.	USA



BYLAWS

And

ARTICLES OF INCORPORATION

IME Bylaws

Table of Contents

	<u>Article</u>	<u>Page</u>
1.	ARTICLE I Association Name	6
2.	ARTICLE II IME Office Location	6
3.	ARTICLE III Preamble	6
4.	ARTICLE IV Purpose of the IME	6
5.	ARTICLE V Membership Provisions	6
	<ul style="list-style-type: none">• Section 1 - General Eligibility• Section 2 - Definitions• Section 3 - Classes• Section 4 - Class Eligibility• Section 5 - Special Conditions of Eligibility• Section 6 – International Members• Section 7 - Application for Membership and Election• Section 8 - Termination of Membership• Section 9 - Rights and Obligations of Members	
6.	ARTICLE VI The IME Board of Governors	7
	<ul style="list-style-type: none">• Section I - Powers of the Board of Governors• Section II - Composition of the Board of Governors• Section III - Election of Associate Representatives	
7.	ARTICLE VII IME Officers	8
	<ul style="list-style-type: none">• Section 1 - Officers• Section 2 - Membership Requirements: Chairman and Vice Chairman• Section 3 - Duties of the Chairman• Section 4 - Duties of the Vice Chairman• Section 5 - Duties and Powers of the President• Section 6 - Duties of the Secretary• Section 7 - Duties of the Treasurer• Section 8 - Positions Held Simultaneously• Section 9 - Election, Powers and Duties of the General Counsel	
8.	ARTICLE VIII IME Steering Committee	9
	<ul style="list-style-type: none">• Section 1 - Description• Section 2 - Powers of the Steering Committee• Section 3 - Composition of the Steering Committee• Section 4 - Chairman/Vice Chairman: Roles at Meetings• Section 5 - Meetings: Frequency and Mode of Meetings• Section 6 - Committee Reports: Reports of Steering Committee Actions• Section 7 - Quorum: Quorum Required for Transaction of Business• Section 8 - Voting: Majority Approval	

9.	ARTICLE IX Meetings	10
	<ul style="list-style-type: none"> • Section 1 - Board of Governors' Meetings • Section 2 - Institute Meetings • Section 3 - Special Meetings • Section 4 - Quorum for Board of Governor's Meetings • Section 5 - Voting: Board of Governor's Meetings 	
10.	ARTICLE X Indemnification of IME Officers, Directors, Staff	11
11.	ARTICLE XI Committees	11
	<ul style="list-style-type: none"> • Section 1 - Eligibility for Committee Membership, Chairmanship, Vice Chairmanship • Section 2 - Standing Committees: Responsibilities 	
12.	ARTICLE XII Nominations and Elections of Officers of the Board of Governors: Appointment of the Nominating Committee	12
13.	ARTICLE XIII Budget, Dues and Assessments	12
	<ul style="list-style-type: none"> • Section 1 - Budget • Section 2 - Dues and Assessments • Section 3 - Obligation of Members: Annual Dues and Assessments • Section 4 - Confidentiality 	
14.	ARTICLE XIV Fiscal Year	12
15.	ARTICLE XV Article Seal	12
16.	ARTICLE XVI Order of Business; Meetings of Board of Governors	13
17.	ARTICLE XVII Amendments to the IME Bylaws	13

*INSTITUTE OF
MAKERS OF
EXPLOSIVES*

1120 Nineteenth Street, N.W., Suite 310 # Washington, D.C. 20036-3605 # (202) 429-9280

ARTICLES OF INCORPORATION

FIRST: The name of the Corporation is: INSTITUTE OF MAKERS OF EXPLOSIVES.

i) To exercise all the powers conferred upon corporations formed under the "District of Columbia Non-profit Corporation Act."

SECOND: The period of its duration is perpetual.

THIRD: The purposes for which the Corporation is organized are as follows:

FOURTH: The Corporation shall have members, regular or otherwise, as provided in the Bylaws.

a) To promote and advance the mutual interest of its members and the general welfare of the commercial explosives industry.

FIFTH: The Corporation shall issue no capital stock.

b) To promote the safe manufacture, handling, storage, transportation and use of commercial explosive materials by instructing and systematically disseminating information to the public, users, interested organizations, individuals and members.

SIXTH: Except for the initial Board of Governors at the time of Incorporation, the Board of Governors shall be elected as provided in the Bylaws.

c) To promote and encourage the adoption of uniform rules and regulations regarding the safe manufacture, handling, storage, transportation and use of commercial explosive materials.

SEVENTH: Provisions for the regulation of the internal affairs of the Corporation, except as provided in these Articles, shall be determined and fixed by the Bylaws as adopted by the Board of Governors.

d) To promote and encourage the adoption of uniform, cost-effective rules and regulations regarding the manufacture, use, and disposal of commercial explosive materials in a manner consistent with sound environmental practice.

EIGHTH: At all times, and notwithstanding any change in name, merger, consolidation, reorganization, termination, dissolution, or winding up of this Corporation, voluntary or involuntary, or by operation of law, or any other provisions hereof:

e) To cooperate, as might be appropriate, with officials of federal, state or local governments in programs beneficial to the national welfare and the public generally, including the prevention of terrorist use of commercial explosive materials.

a) The Corporation shall not possess or exercise any power or authority either expressly, by interpretations, or by operation of law that will prevent it at any time from qualifying and continuing to qualify as a Corporation described in Section 501(c)(6) of the Internal Revenue Code of 1954 as amended, hereinafter referred to as the Code; nor shall it engage directly or indirectly in any activity which would cause the loss of such qualification.

f) To communicate suggestions regarding federal, state or local government legislation, rules or regulations (existing or proposed) that affect the commercial explosives industry.

g) To effect the cooperation of organizations with aims and objectives compatible with those of this INSTITUTE.

b) No part of the assets or net earnings of the Corporation shall ever be used, nor shall the Corporation ever be organized or

h) To engage in any other lawful activity in furtherance of the above general purposes.

operated for purposes that do not exclusively promote the business welfare of its members within the meaning of Section 501(c)(6) of the Code.

- c) The Corporation shall never be operated for the primary purpose of carrying on a trade or business for profit.
- d) At no time shall the Corporation engage in any activities which are unlawful under the laws of the United States of America, the District of Columbia, or any other jurisdiction where activities are carried on.
- e) No compensation, loan, or other payment shall be paid to any officer, board member, creator, or organizer of the Corporation, or substantial contributor to it, except as reasonable compensation for services rendered and/or as a reasonable allowance for authorized expenditures incurred on behalf of the Corporation: and no part of the assets or net earnings shall ever be distributed to or divided among such persons, or inure, be used for, accrue to or benefit any person or private individual.

NINTH: Upon termination, dissolution, or winding up of the Corporation in any manner or for any reason, its assets, if any, remaining after payment (or provision for payment) of all liabilities of the Corporation, shall be distributed to, and only to, one or more domestic or foreign corporation, societies, or organizations engaged in activities substantially similar to those of this association.

BYLAWS

ARTICLE I

Name

The name of the association shall be: INSTITUTE OF MAKERS OF EXPLOSIVES.

ARTICLE II

Office

The principal office of the INSTITUTE shall be located in Washington, D.C.

ARTICLE III

Preamble

The Institute of Makers of Explosives (IME) is the safety association of the commercial explosives industry in the United States and Canada. IME is a non-profit, incorporated association which was founded in 1913 to provide technically accurate information and recommendations concerning explosive materials and to serve as a source of reliable data about their use.

The primary concern of IME is the safety and protection of employees, users, the public and the environment in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.

ARTICLE IV

Purposes

The purposes of the Institute shall be:

- a) To promote and advance the mutual interests of its members and the general welfare of the commercial explosives industry.
- b) To promote the safe manufacture, handling, storage, transportation and use of commercial explosive materials by instructing and systematically disseminating information to the public, users, interested organizations, individuals and members.
- c) To promote and encourage the adoption of uniform rules and regulations regarding the safe manufacture, handling, storage, transportation and use of commercial explosive materials.
- d) To promote and encourage the adoption of uniform, cost-effective rules and regulations regarding the manufacture, use, and disposal of commercial explosive materials in a manner consistent with sound environmental practice.
- e) To cooperate, as might be appropriate, with officials of federal, state or local governments in programs beneficial to the national welfare and the public generally, including

the prevention of terrorist use of commercial explosive materials.

- f) To communicate suggestions regarding federal, state or local government legislation, rules or regulations (existing or proposed) that affect the commercial explosives industry.
- g) To effect the cooperation of organizations with aims and objectives compatible with those of this INSTITUTE.
- h) To engage in any other lawful activity in furtherance of the above general purposes.
- i) To exercise all the powers conferred upon corporations formed under the "District of Columbia Non-profit Corporation Act."

ARTICLE V

Membership

SECTION 1. Any corporation, partnership or firm ("firm") incorporated in the United States or Canada significantly engaged in the manufacture of explosive materials for commercial use (exclusive of fireworks and pyrotechnics) or industrial grade ammonium nitrate, or any firm engaged in the business of storing/distributing/selling commercial explosives, or any firm engaged in the transportation of explosives, the manufacture or supply of equipment used in the manufacture, storage, distribution, use, or transportation of explosives, or the manufacture or supply of ordnance for military use, or any firm which provides insurance or other risk management services to the explosives industry, is eligible for membership in this INSTITUTE.

SECTION 2. *Definitions*

- (A) The term explosives means only those explosives that are manufactured in the United States or Canada.
- (B) The term ammonium nitrate means only ammonium nitrate manufactured in the United States or Canada.
- (C) The term ordnance means only ordnance manufactured in the United States or Canada.

SECTION 3. *Classes*

Membership in the Institute is divided into four classes: (i) regular member; (ii) associate member; (iii) affiliate member and; (iv) international member.

SECTION 4. (A) **Regular Members** - Firms that (i) manufacture and sell basic commercial explosives for use in general blasting operations such as quarrying, mining and heavy construction, and (ii) manufacture and sell industrial grade

ammonium nitrate, shall be regular members. A "basic commercial explosive" is any product in commercial use except (i) blasting agents made by mixing ammonium nitrate and fuel oil; or (ii) by mixing ammonium nitrate and/or fuel oil with a water gel, slurry or emulsion matrix purchased from another firm; and (iii) specialty explosive products such as those used in the oil and gas industries.

(B) **Associate Members** - Firms that (i) store/distribute/sell commercial explosives; (ii) produce blasting agents made by mixing ammonium nitrate and fuel oil with a water gel, slurry or emulsion matrix purchased from another firm; (iii) make specialty explosive products, such as those used in the oil and gas industries; or (iv) engage in related activities as approved by the Board shall be associate members.

(C) **Affiliate Members** - Firms that (i) transport explosives for commercial or military use, (ii) manufacture or supply equipment that is used in the manufacture, storage, distribution, use or transportation of commercial or military explosives, (iii) manufacture or supply explosives for military use, or (iv) provide insurance or other risk management services to the commercial or military explosives industry, shall be affiliate members.

SECTION 5. *Special Conditions:*

(A) Firms that are otherwise eligible to be regular members but which are wholly-owned subsidiaries of regular member companies or otherwise controlled by regular member companies or which are owned or otherwise controlled by firms that also own or otherwise control regular member companies shall be admitted as associate members only and may apply for and maintain this membership status for as long as the related regular member company retains membership.

(B) A firm other than a wholly-owned subsidiary, in which a regular member owns 30 percent or more of the shares outstanding, or directly or indirectly elects or controls a majority of the Board of Directors, is eligible only for associate membership.

(C) A regular member, or a firm qualified for regular membership may not be an associate member, except as provided in (A) or (B) above.

SECTION 6. *International Members*

Any firm incorporated outside the United States or Canada (excluding any firm incorporated or domiciled in a nation that is listed by the United States Government as a state that supports terrorism) that is engaged in the manufacture of explosive materials for commercial use (exclusive of fireworks and pyrotechnics) or industrial grade ammonium nitrate, or in the business of storing/distributing/selling commercial explosives, or in the transportation of explosives, the manufacture or supply of equipment used in the manufacture, storage, distribution, use, or transportation of explosives, or the manufacture or supply of ordnance for military use, or that provides insurance or other risk management services to the explosives industry, is eligible for

membership in this INSTITUTE as an International Member upon the payment of the annual assessment established for this class of members from time to time by the Board of Governors. For purposes of determining the eligibility of any firm for membership under this class, the definitions in Section 2 shall not apply. International Members shall be entitled to participate in the IME committees established under Article IX, but they may not vote on any matter that comes before such committees. International Members may attend meetings of the Board of Governors by invitation of the President.

SECTION 7. *Application and Election*

Application for membership shall be in writing and must be transmitted to the President. The application shall contain an agreement that the applicant shall abide by the INSTITUTE's Articles of Incorporation and Bylaws and shall pay all dues and assessments in a timely manner. Applications for membership shall also contain a description of the applicant's business. Applications for membership shall be referred by the President to the Board of Governors whereupon the Board shall act on the applicant's membership request. Election to membership shall require an affirmative vote of a majority of the Board of Governors. If elected, the applicant will be admitted to membership upon payment of an initiation fee. The initiation fee is \$2,500.00 for regular members, \$1,000.00 for associate members, and \$1,000.00 for affiliate members.

SECTION 8. *Termination*

(A) Membership in this INSTITUTE shall terminate because of voluntary withdrawal or by action of the Board of Governors as herein provided.

(B) Any member may be terminated by a two-thirds (2/3) vote of the entire membership of the Board of Governors for failure to pay its dues or assessments, or for failure to conform to eligibility requirements, cessation of business or for failure to abide by the Articles of Incorporation or Bylaws of the INSTITUTE: provided, that a written statement setting forth the reasons for such action shall have been sent, certified mail, return receipt requested, to the last recorded address of subject member at least thirty days prior to the proposed action. This statement shall set forth the time and place of the meeting of the Board of Governors at which the charges shall be considered and advise the member of the opportunity to appear in person or by counsel to offer an explanation and give reasons why such action should not be taken.

(C) Cessation of business shall result in termination of membership but shall not relieve the withdrawing member of financial or other obligations existing at the time of business cessation.

SECTION 9. *Rights and Obligations*

All rights, privileges and interest of the member in the INSTITUTE shall cease upon termination of membership; however, all obligations, financial or otherwise, incurred during the membership period shall survive termination and the Institute shall have the right to enforce any such obligations as may be provided at law or in equity.

ARTICLE VI

Board of Governors

SECTION 1. The Board of Governors shall have responsibility for the establishment of policy of the INSTITUTE, for the control, direction, and supervision of its affairs, shall actively prosecute its purposes and shall have discretion in the disbursement of its funds, all subject to the provisions of the Articles of Incorporation and these Bylaws. It shall establish policy to guide the action and functioning of all standing and ad hoc committees. It shall fix the dates and amounts of membership assessments. It shall have the power to employ and fix the compensation and terms of employment of a President, Secretary, Treasurer, and General Counsel.

SECTION 2. *Composition*

(A) The Board of Governors shall consist of one representative designated by each regular member; and one representative for each five (5) or such number of associate members as will ensure that the number of associate representatives elected to the Board shall not exceed one-third (1/3) of the number of regular representatives on the Board.

(B) Each regular member may designate one alternate representative to the Board of Governors. Each regular member shall notify the President in writing of the name of its principal representative and alternate. Such representative and alternate shall serve until further written notice.

(C) Associate members may elect one alternate representative for each associate principal representative on the Board.

(D) The representative and alternate, if any, shall be an executive officer of the member, or other official who is authorized to take action on any matter which may come before the Board of Governors pursuant to the Articles of Incorporation or these Bylaws.

SECTION 3. *Election of Associate Representatives*

(A) Associate members shall elect their representatives by majority vote. Elections shall be held annually.

(B) Firms that are associate members pursuant to Article V, Section 4(A) may not be elected or appointed to serve as associate or alternate representatives.

(C) The Chairman shall appoint an Election Committee to nominate candidates and to establish rules for the conduct of elections. The election shall be conducted annually by mail ballot, which ballot shall be completed at least 45 days prior to the Annual Meeting of the Board of Governors.

(D) If a vacancy occurs on the Board of Governors because of the resignation or termination of both the associate representative and associate alternate representative, the Chairman shall appoint an associate member to serve the unexpired term.

ARTICLE VII

Officers

SECTION 1. The officers of the INSTITUTE shall be Chairman, Vice Chairman, President, Secretary, and Treasurer.

SECTION 2. The Chairman and Vice Chairman shall be regular members of the INSTITUTE.

SECTION 3. *Chairman*

(A) The Chairman shall be the principal officer of the organization, and shall preside at all meetings of the INSTITUTE and of the Board of Governors.

(B) The Chairman shall appoint all committees not otherwise provided for in ARTICLE VII. The Chairman shall be elected at the Annual Meeting and shall hold office for one year or until a successor has been duly elected and qualified. No person shall be elected to the office of Chairman for more than two consecutive terms.

SECTION 4. *Vice Chairman*

It shall be the duty of the Vice Chairman to perform the duties of the Chairman in the absence or incapacity of the Chairman. The Vice Chairman shall be elected at the Annual Meeting and shall hold office for one year or until a successor has been duly elected and qualified. No person shall be elected to the office of Vice Chairman for more than two consecutive terms.

SECTION 5. *President*

(A) The management of the INSTITUTE shall be performed by the President, who shall be its chief administrative officer, employed by and directly responsible to the Board of Governors, in general charge of its headquarters, its operating staff, and all activities of the INSTITUTE. The President shall employ, set the compensation and may terminate the employment of members of the staff and consultants as necessary to carry on the work of the INSTITUTE.

(B) It shall be the duty of the President to keep a careful record of the transactions of the INSTITUTE and the Board of Governors, to cause all members to be notified at least 30 days in advance of the times and places of such regular meetings of the INSTITUTE, the Board of Governors and the committees, to conduct the correspondence of the INSTITUTE, and to perform such duties as may be incident to or assigned to the office of President.

(C) The President shall secure, compile, and disseminate to the members of the INSTITUTE, the general public, and governmental agencies, pertinent factual information concerning the manufacture, transportation, storage, handling and uses of explosive materials and explosive supplies, provided that the same shall always be done in conformity with existing law and regulations and the purposes of the INSTITUTE. Such factual information so collected by the President shall be held confidential as to each member and shall be disseminated only in composite form.

(D) The President may engage the services of a CPA or CPA firm, with the approval of the Board of Governors, to assist in securing, compiling, and disseminating the above referenced factual information. The President may also engage the services of a CPA, or CPA firm, with the approval of the Board of Governors, to assist the Treasurer in the performance of designated duties and to prepare the annual examination of the Treasurer's account.

(E) The President shall monitor the activities of all standing committees and other committees, as directed by the Chairman, and shall supervise the preparation of all reports and recommendations of each standing committee.

(F) The President shall prepare and cause to be distributed to all representatives on the Board of Governors a notice and an agenda of each meeting of the Board at least 30 days in advance of the meeting.

SECTION 6. *Secretary*

The Secretary shall be responsible for the maintenance of the files and records of the INSTITUTE and shall perform such duties as may be assigned by the President.

SECTION 7. *Treasurer*

(A) The Treasurer shall collect and receive all monies of the INSTITUTE, pay all orders for money, and keep an accurate record of all receipts and disbursements and shall make a report at the Annual Meeting or when called upon by the Chairman. The Treasurer's account shall be examined annually by a designated CPA following the close of the calendar year, or at such times as may be directed by the Board of Governors. The Treasurer may appoint, subject to approval by the President, such Assistant Treasurers as deemed necessary to perform such duties as the Treasurer may delegate.

(B) The funds, books, and vouchers in the Treasurer's possession shall, with the exception of confidential reports submitted by members, at all times be subject to verification and inspection by the Board of Governors and by any member upon reasonable written notice provided to all members of the Board of Governors and the President.

(C) The Treasurer shall give surety bond for the faithful performance of the duties of Treasurer in such amount as may be determined by the Board of Governors. The cost of such bond shall be paid by the INSTITUTE.

SECTION 8. The positions of President, Secretary and Treasurer may be held by one person.

SECTION 9. *General Counsel*

The Board of Governors shall elect a General Counsel to be employed for such time and at such compensation as it may determine, who shall have the responsibility of supervising the legal matters of the INSTITUTE and ensuring strict compliance by the INSTITUTE with all laws. The General Counsel shall be notified in advance of any meeting of the INSTITUTE, the Board of Governors or the committees and shall attend all meetings of the Board of Governors. The General Counsel shall approve the agenda for each INSTITUTE and Board of Governors meeting in advance and shall advise the President and members of their counsel with respect to the application of existing law to the programs and activities of the INSTITUTE.

ARTICLE VIII

Steering Committee

SECTION 1. The Steering Committee shall be a subcommittee of the Board of Governors.

SECTION 2. *Powers*

The Steering Committee shall have such powers and functions as may be determined by the Board of Governors from time to time, *except* that the Steering Committee may not (i) amend the bylaws; (ii) make any decision altering the dues structure or payment schedule; or (iii) admit new members or expel existing members.

SECTION 3. *Composition*

The Steering Committee shall be composed of: (i) the Chairman of the Board of Governors; (ii) the Vice Chairman of the Board of Governors; (iii) the Governor or Alternate Representative of

such regular members as are nominated by the Chairman of the Board, and approved each year by the Board of Governors at its Annual Meeting; and (iv) one associate member nominated by the associate members, and approved each year by the Board of Governors at its Annual Meeting. No member shall have more than one representative on the Steering Committee.

SECTION 4. *Chairman*

The Vice Chairman of the board of governors, or in his absence, the Chairman of the board of Governors, shall preside over the meetings and work of the Steering Committee.

SECTION 5. *Meetings*

The Steering Committee shall meet at such times and places as may be determined by the Vice Chairman of the Board of Governors or, in his absence, by the Chairman of the Board of Governors. The Committee may meet in person or by telephone conference.

SECTION 6. *Committee Reports*

The Vice Chairman of the Board of Governors or, in his absence, by the Chairman of the Board of Governors, shall cause a written report on the decisions and activities of the Steering Committee to be submitted to all members within two weeks of any meeting of the Committee.

SECTION 7. *Quorum*

A quorum for the transaction of business at any meeting is a majority of the Steering Committee.

SECTION 8. *Voting*

A favorable vote of the majority of the Steering Committee members present at any meeting shall be required to approve any action or recommendation of the Committee.

ARTICLE IX

Meetings

SECTION 1. *Board of Governors Meetings*

The Annual Meeting of the Board of Governors shall be held at such time as the board may direct. A regular meeting of the Board shall be held in the Spring and at such other times as the Board may direct. At its Annual Meeting the Board of Governors shall receive final committee reports for the current year, elect officers, approve the budget for the forthcoming year, and announce its selection of committee Chairmen and Vice

Chairmen for the upcoming year.

SECTION 2. *Institute Meetings*

(A) Meetings of the INSTITUTE will be held on such dates and at such places as the Board of Governors shall direct.

(B) A meeting of the INSTITUTE may be attended by all members, by other authorized employees and guests of members and by officers, staff and agents of the INSTITUTE. The Board of Governors and the committee chairmen may deliver such reports to the INSTITUTE as the Board of Governors deems appropriate, consistent with the purposes of the INSTITUTE.

SECTION 3. *Special Meetings*

Special meetings of the INSTITUTE or the Board of Governors may be called by the Chairman or Board of Governors, or shall be called by the Chairman upon the written request of five regular members of the INSTITUTE. Notice of any special meeting of the INSTITUTE shall be mailed by the President to each member at its last recorded address at least 10 days in advance of said meeting, with a statement of the date, time and place of the meeting and the subject or subjects to be considered. Only the business specified in the agenda shall be considered at a special meeting.

SECTION 4. *Quorum*

(A) A quorum for the transaction of business at any meeting of the Board of Governors is a majority of the Board of Governors. For purposes of determining the quorum, representatives, or their designated alternates, must be present in person or have submitted a signed proxy form to the President in advance of the meeting.

(B) No quorum requirements are herein established for the meetings of the INSTITUTE.

SECTION 5. *Voting*

(A) A representative, or alternate, shall cast only one vote on any issue before the Board of Governors.

(B) Alternates may attend and participate in meetings of the Board of Governors. An alternate may vote or be counted for quorum purposes only when the principal representative is absent.

(C) A favorable vote of three-quarters (3/4) of the Governors present at any meeting of the Board shall be required to take action or establish policy with respect to the business of the INSTITUTE.

(D) A favorable vote of three-quarters (3/4) of the members of

the Board of Governors shall be required at any meeting of the Board of Governors to consider and take action or establish policy with respect to any new business which is not presented on the agenda.

(E) A representative or alternate may vote by written proxy submitted to the President in advance of any meeting at which a vote is to be taken. The proxy must include the name of the representative or alternate, designate the President as the person to exercise the proxy, and be signed by the representative or alternate. The proxy may direct that a specific vote be cast in a specific manner. The proxy shall expire by the date specified in writing on the proxy form, or no later than eleven (11) months from the date of the meeting for which the proxy was delivered.

SECTION 6. *Mail Ballots*

(A) Whenever, in the judgment of the Chairman, any question shall arise which he believes should be put to a vote of the Board of Governors, and it is deemed inexpedient to call a special meeting for such purpose, the Chairman may instruct the President to submit such matter to the Board of Governors in writing, by mail for vote and decision. The question presented by mail ballot shall require a favorable vote of at least three-quarters (3/4) of the Board of Governors for approval. The executed mail ballot, whether affirmative, negative or a request, as provided, herein, for Board of Governors consideration at the next meetingX-must be received by the IME principal office within 20 days after submission to the Board of Governors. Mail ballots not received within the 20 day period will not be considered in determining the outcome of the question presented. If any mail ballot is not approved, the matter shall automatically be placed on the agenda of the next meeting of the Board of Governors for consideration at that time. Any and all action taken in pursuance of a three-quarter (3/4) mail ballot vote shall be binding upon the INSTITUTE in the same manner as would the action taken at a duly called meeting.

(B) Notwithstanding the above, any Governor whose written request is received at the IME's principal office within the 20 day response period may terminate the mail ballot, in which event the matter shall automatically be placed on the agenda for the next meeting of the Board of Governors for consideration.

ARTICLE X

Indemnification

The INSTITUTE shall indemnify each officer, director and member of the staff against liability and expenses, including attorneys' fees, incurred in connection with any legal action in which the officer, director or member of staff is made a defendant by reason of his good faith efforts on behalf of the INSTITUTE. The indemnification is limited to the assets of the INSTITUTE. This indemnification does not extend to conduct deemed by the INSTITUTE to have been undertaken in bad faith or contrary to any rule or policy of the INSTITUTE. As a condition of receiving indemnification, the officer, director or

member of staff shall allow the INSTITUTE to appoint counsel for him and shall agree to a coordinated defense to the extent deemed appropriate by the INSTITUTE. Counsel appointed for the officer, director or member of staff may, at the discretion of the INSTITUTE, be the same as counsel appointed to represent the INSTITUTE and/or other officers, directors or members of staff.

ARTICLE XI

Committees

SECTION 1. Employees of all member companies shall be eligible to participate in committee activities and to serve as Committee Chairman or Vice Chairman.

SECTION 2. *Standing Committees*

The standing committees shall consist of a Technical Committee, Transportation and Distribution Committee, Environmental Affairs Committee, Safety and Health Committee and Legal Affairs Committee. Each of these committees shall be chaired by an employee of a member company who should have a working knowledge of the explosives industry and the subject matter of the committee. Standing committees can be created or terminated only by an amendment to these Bylaws. The committee members and each Chairman shall be appointed by the Board of Governors, which shall make every reasonable effort to ensure that the work of the standing committees is distributed equitably among the members. The standing committee shall be organized in such subcommittees as may be necessary and desirable. When appropriate, each standing committee shall consult with or cooperate with any of the other standing committees in the discharge of their functions as herein provided.

(A) **Technical Committee.** The Technical Committee shall have the responsibility to evaluate and make recommendations on all technical matters pertaining to safety in the manufacture, transportation, handling, storage and use of explosive materials. It shall also be responsible for reviewing the INSTITUTE's safety library publications relating to technical matters and for making recommendations for changes, as appropriate.

(B) **Transportation and Distribution Committee.** The Transportation and Distribution Committee shall have the responsibility to evaluate and make recommendations to the Board of Governors on all matters pertaining to safety and proper practices in the transportation, storage, handling and distribution of explosives. It shall also be responsible for reviewing the INSTITUTE's safety library publications relating to transportation and distribution matters and for making recommendations for changes, as appropriate.

(C) **Environmental Affairs Committee.** The Environmental Affairs Committee shall have the responsibility to evaluate and make recommendations to the Board of Governors on all matters relating to the protection of the environment in the manufacture,

transportation, storage, handling, use and disposal of explosive materials. It shall also be responsible for reviewing the INSTITUTE's safety library publications relating to environmental matters and for making recommendations for changes, as appropriate.

(D) **Safety and Health Committee.** The Safety and Health Committee shall have the responsibility to evaluate and make recommendations to the Board of Governors on all matters relating to workplace safety and health in the manufacture, transportation, storage, handling, use and disposal of explosive materials. It shall also be responsible for reviewing the INSTITUTE's safety library publications relating to workplace safety and health, for making recommendations for changes to these publications, as appropriate, and for developing and implementing programs to promote understanding by the public of the value and necessity of explosives and their safe use.

(E) **Legal Affairs Committee.** The Legal Affairs Committee shall consist of representatives designated by the Board of Governors who shall be attorneys representing member companies. Such representatives should have a working knowledge of the explosives industry. General Counsel to the INSTITUTE shall attend meetings of the Legal Affairs Committee. When necessary General Counsel or another member of the committee shall attend the meetings of the standing committees. It shall be the duty of the Legal Affairs Committee to assist General Counsel in advising the INSTITUTE of action appropriate by the INSTITUTE or its members to ensure adherence to relevant statutes, regulations and decisions by the courts or administrative agencies, and otherwise to assist General Counsel in giving legal advice to the INSTITUTE.

ARTICLE XII

Nominations and Elections of Officers

(A) The Chairman, at least 60 days before each Annual Meeting of the Board of Governors shall appoint a Nominating Committee comprised of regular members and advise the members of the INSTITUTE of their names. It shall be the duty of the Nominating Committee to nominate candidates for the office of Chairman and Vice Chairman from the designated principal representatives or alternates of regular members serving on the Board of Governors. The committee shall notify the President, in writing, at least 45 days before the date of the Annual Meeting of the names of the candidates it proposes, and the President shall mail a copy thereof to the last recorded addresses of each member at least 30 days before the Annual Meeting.

(B) The election of the Chairman and Vice Chairman shall take place at the Annual Meeting of the Board of Governors. Candidates having a majority of the votes of those members of the Board of Governors present shall be elected.

ARTICLE XIII

Budget, Dues and Assessments

SECTION 1. ***Budget***

The budget of expenditures shall be prepared by the President and the Treasurer and submitted to the Board of Governors for its consideration and approval at the Annual Meeting. The budget assessment of members shall be set at the amount required to meet budget expenditures.

SECTION 2. ***Dues and Assessments***

(A) The assessments for regular members shall be calculated on a unit rate based on average annual domestic sales in the United States and Canada reported by regular members as set forth in the IME Membership Assessment Calculation Method and Procedures as amended from time to time. A minimum assessment for regular members shall be set annually by the Board of Governors at the time of budget considerations.

(B) Associate members shall pay an annual assessment as set by the Board of Governors at the time of annual budget consideration or 20 percent of a rate calculated as if they were regular members, whichever is greater and associate members admitted under Article V Section 5(A) & (B) above shall pay an annual assessment calculated as if they were regular members.

(C) Affiliate members shall pay an annual assessment as set by the Board of Governors at the time of annual budget consideration.

(D) International members shall pay an annual assessment equal to the minimum assessment for regular members as set by the Board of Governors at the time of annual budget consideration.

(E) Special assessments may be levied on regular members to meet INSTITUTE expenses. Special assessments may be levied at any meeting of the Board of Governors only on the consenting vote of three-quarters (3/4) of the representatives present.

SECTION 3. ***Obligation of Members***

As of the first day of January of each year, each member shall be obligated to pay and shall pay such annual dues and assessments as may be fixed by the Board of Governors.

Solely for the convenience of the members, the assessment shall be billed quarterly and members shall remit promptly, but in any event not later than 30 days after receipt of invoice.

Members that withdraw during the year remain obligated for the entire amount of annual dues and assessments for the year in which they withdraw.

SECTION 4. ***Confidentiality***

The dues and other assessments of individual members shall be kept private and confidential by the President, the Treasurer, and

by such accounting professionals which the President has found necessary to engage. Reports of sales shall be revealed to them only in aggregate sums.

ARTICLE XIV

Fiscal Year

The fiscal year of the INSTITUTE shall be from January 1 to December 31.

ARTICLE XV

Article Seal

The association shall have a seal of such design as the Board of Governors may adopt.

ARTICLE XVI

Order of Business

The order of business at Board of Governors meetings shall be as follows:

1. Call to Order.
2. Approval of the Minutes of the Previous Meeting.
3. Antitrust Guidelines.
4. Reports of Officers.
5. Reports of Committees.
6. Unfinished Business.
7. New Business.
8. Adjournment.

ARTICLE XVII

Amendments To the Bylaws

Amendments to the Bylaws may be acted upon at any meeting of the Board of Governors. Written notice of such amendments shall be mailed to each Governor at least 30 days in advance of the meeting at which such amendments are to be voted upon, and any amendments, to be adopted, must receive at least three-quarters (3/4) votes of the Governors present.

*

Last amended by vote of the Board of Governors on October 28, 1999.

FORM 99-4
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

NOTICE OF EMPLOYER'S IDENTIFICATION NUMBER
UNITED STATES SOCIAL SECURITY ACT

JUL 5 1937

Your identification number as shown below has been assigned under the authority of Title VIII of the Social Security Act. Title VIII imposes the taxes on employers and employees which became effective January 1, 1937. Your identification number should be entered by you on all returns, forms, and correspondence relating to such taxes, which are sent to the Collector of Internal Revenue for your district. It is also to be used by you in correspondence with the Social Security Board, and entered on forms filled out by you which are issued by that Board. Preserve this notice (and a separate record thereof, in case the notice itself should later be lost) in order that the identification number will be available to you for such uses.

Inquiries concerning TAXES under the United States Social Security Act should be addressed to the Collector of Internal Revenue for your district. Inquiries concerning BENEFITS under that Act should be addressed to the Social Security Board.

See the back of this form for information concerning returns and tax payments.

EMPLOYER'S NAME	IDENTIFICATION
INSTITUTE OF MAKERS OF EXPLOSIVES 103 PARK AVE., NEW YORK, NEW YORK	13 08709

Institute of Makers of Explosives
Budget Status
April 30, 2007

	<u>Approved 2007 Budget</u>	<u>Expended as of April 30, 2007</u>
A. <u>OPERATING</u>		
1. Rent	193,656	47,208
2. Office Supplies	10,500	2,404
3. Communications	38,845	6,319
4. Postage	5,700	1,368
5. Furniture & Equipment	11,500	1,322
6. Financial Review	5,000	0
7. Reproduction Services	19,100	5,488
8. Operating Expenses	51,110	25,502
B. <u>ADMINISTRATIVE</u>		
1. Salaries	675,000	203,018
2. Employment Taxes	45,876	16,496
3. Employee Benefits	136,893	69,298
4. Travel & Expenses	83,425	22,819
5a. General Counsel - Fee	42,000	14,000
5b. General Counsel - Expenses	3,500	0
6. Administrative Services	4,600	2,100
7. Consultants	18,000	4,500
8. Executive Account	20,000	3,940
C. <u>MEETINGS</u>	67,000	2,500
D. <u>GOVERNMENTAL AFFAIRS</u>	38,425	8,063
E. <u>COMMITTEES</u>	5,500	298
F. <u>SAFETY EDUCATION</u>	40,000	11,495
TOTAL	1,515,630	448,138

IME NGO Application
Recent IME Statements and Publications

Safety Library Publications

The following is a listing of the titles available in IME's Safety Library Publications. All are available at no cost on the IME website at http://www.ime.org/ecommerce/products.php?category_id=13.

<u>Publication No.</u>	<u>Title</u>	<u>Version Date</u>	<u>Copy Included with Application</u>
SLP 1	Construction Guide for Storage Magazines	September 2006	
SLP 2	The American Table of Distances	June 1991	
SLP 3	Suggested Code of Regulations	March 2003	
SLP 4	Warnings and Instructions	March 2000	
SLP 12	Glossary of Commercial Explosives Industry Terms	November 2002	
SLP 14	Handbook for the Transportation and Distribution of Explosive Materials	April 2007	Click here
SLP 17	Safety in the Transportation, Storage, Handling & Use of Commercial Explosive Materials	March 2007	
SLP 20	Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps)	July 2001	
SLP 22	Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials	February 2007	
SLP 23	Recommendations for the Transportation of Explosives, Division 1.5, Ammonium Nitrate Emulsions, Division 5.1, Combustible Liquids, Class 3, and Corrosives, Class 8 in Bulk Packaging	February 2007	Click here
SLP 25	Explosives Manufacturing & Processing Guideline to Safety Training	June 2006	Click here
SLP 27	Security in Manufacturing, Transportation, Storage and Use of Commercial Explosives	January 2005	Click here

In addition to the publications listed above, IME also has a library of videos and posters available. Under separate cover, IME is forwarding a full bound copy of its Safety Library Publications, video collection, and all posters.

Statements/Publications

The following are public statements and/or publications recently offered by IME:

<u>Title/Subject</u>	<u>Copy Included with Application</u>
Explosives Make it Possible	Click here
IME's Comments to OSHA regarding Proposed Implementation of the GHS	Click here
IME Statement to Pipeline and Hazardous Materials Administration, U.S. Department of Transportation regarding Proposed Revision for Security Plans in which IME endorses the UN indicative list	Click here
IME's Comments to the Bureau of Alcohol, Tobacco, Firearms, and Explosives regarding Review of Commerce in Explosives Regulations	Click here



IME

institute of makers of explosives



[EXPLOSIVES MAKE IT POSSIBLE]

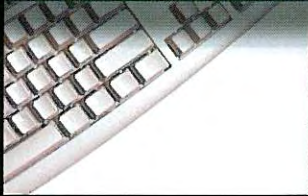
[EXPLOSIVES - WE BUILD



>> **EVERY CAR AND TRUCK TRAVELING ON OUR HIGHWAYS** is made from steel, copper, aluminum, and zinc - all metals that come from ore that must be dug out of the ground. Every train and the rails it runs on, every plane and the runways it taxis on, and every ship carrying the commerce of the nation is composed of materials that were mined from the earth using commercial explosives.

In today's highly industrialized and super-charged world, explosives are the only conceivable tool capable of producing metal ores, minerals, and energy sources in the quantities and at the speed demanded by a robust economy.

LET THE PAST | WE ENSURE THE FUTURE]



> Consider **ENERGY**: explosives are used by geologists to help pinpoint oil and natural gas reserves, to perforate downhole well casings to allow oil and/or gas to flow, to carve trenches for oil and natural gas pipelines, and to provide the metal ores for production rigs, pipes, and storage tanks. Coal mined from the earth using explosives supplies electrical power to millions of homes and businesses. Natural energy production depends on explosives as well. The massive dams that generate hydroelectric power are sited and constructed using explosives, windmill frames are constructed of iron ore that had to be mined from the earth and solar panels contain quartz sand that is mined using explosives.

>>> Consider **CONSTRUCTION**: underground parking garages, high-rise foundations and subway tunnels are constructed using explosives. Highway and train tunnels, bridge supports, and ship canals would not exist without explosives. Explosives are used to demolish older structures and to raise the new. Imagine constructing a modern building without steel girders, reinforced concrete, glass windows, metal piping and wiring, conduits, wallboards, floor tiles, insulation, elevator cables, roofing materials, or porcelain fixtures. Imagine building a highway without aggregates for roadbed, asphalt, concrete, and cement for surfacing, and reflective paints for marking lanes and shoulders. The production of all these materials begins with explosives.

>>> Consider **CONSUMER GOODS**: you might not readily associate explosives with the computer in your home or office, yet out of mines come gold, silver, and copper for the electronics, silica for the glass of the video monitor, rare earth to make the phosphors on the video display, and zinc to power laptop batteries.

Explosives are unlikely to spring to mind while brushing your teeth, yet the potassium nitrate contained in toothpaste originates in mines that extract the mineral using explosives. There are 42 different minerals used to make a telephone, 35 in a television. And corn-on-the-cob, pretzels, chips, and popcorn wouldn't be quite the same without a little salt – salt that is mined using explosives. Indeed, there are a whole host of consumer goods that have an essential connection to explosives – filtered water, eye glasses, cosmetics, home electronics, laundry detergent, kitty litter, crystal, fine china, charcoal, deicers, sand paper, baby powder, power tools, and canned and bottled foods and drinks, to name just a few.

>>>> Consider **AGRICULTURE**: explosives are used by farmers to help clear productive land and to mine products that become fertilizers and soil conditioners for agricultural production – delivering to our tables the fresh fruits, vegetables and grains essential to a healthful diet.

>>>>> And consider the myriad **MISCELLANEOUS** and less obvious uses of explosives: explosive charges are used to change satellite orientation, to power automotive airbags, to produce pharmaceuticals, to harden metals, and to provide explosive reactive armor for the U.S. military's Bradley M2A2/M3A2 Fighting Vehicle. Explosives are used by foresters to fight forest fires, and are used by transportation and recreation authorities to control avalanches, clear landslides, and to free streams and rivers of obstructions. Explosives are used in law enforcement both in training and in actual operations. And filmmakers rely on the controlled power of explosives to create the fantastic special effects that are standard in today's films and television programming.

>> WE DON'T OFTEN THINK ABOUT THE ORIGINS OF THE MODERN CONVENIENCES

we enjoy or the role of technology in delivering the products we use. Most of us drive, use a computer, or sit down to enjoy a meal every day, yet how many of us consider what goes into making the vehicles that take us from place to place, the keyboards we type on, or the plates, glassware, and utensils we use at the table. We probably don't think about the raw materials that are necessary to produce these products, or consider where the raw materials come from. And it probably never occurs to us that most of these things start with commercial explosives. In fact, explosives - one of the least expensive forms of energy known - are essential to economic growth and maintaining our standard of living.



In short, **[E x p l o s i v e s Make It Possible]**

>> In fact, it is difficult to think of any product or application important to today's economy that isn't obtained through or improved by the use of commercial explosives.

Metal, non-metal, and coal mining

Quarried stone for buildings and monuments

Gravel and aggregates for roadbeds, rail lines, runways and other uses

Concrete and cement

Asphalt

Table salt

Road salt

Glass (lead, silica, etc.)

Baby powder (kaolin clay)

Talcum powder

Toothpaste (potassium nitrate, sodium)

Canned foods and drinks (aluminum)

Counter tops (dimension stone)

Jewelry (gemstones, precious metals)

Dentistry (gold)

Fencing (zinc)

Rain Gutters (zinc)

Photographic film (silver)

Wire and Piping (copper)

Tunneling for transportation applications

Trenching (laying pipeline, cable, plumbing, electric transmission lines)

Aerospace applications (e.g., satellite alignment, propellants)

Armor-plated military vehicles (e.g., Bradley Fighting Vehicle)

Automotive airbags

Automotive brake linings (asbestos)

Ammunition

Propellant-actuated power tools

Forest fire suppression

Avalanche control

Road and waterway clearing

Metal hardening

Rail line switches

Construction (e.g., residential and commercial basements, underground parking garages)

Demolition

Corrosion protection (zinc)

Land clearing

Pharmaceuticals (nitroglycerin)

Medicine (kidney stone treatment)

Porcelain/China (feldspar)

Fertilizer (gypsum, nitrates, molybdenum)

Soil conditioning (gypsum)

Wall board (gypsum - fire suppression)

Plaster of Paris for surgical splints, casting molds, and modeling (gypsum)

Plumbing fixtures, floor and wall tile (feldspar and kaolin)

Lead-Based Products/uses

>>> batteries

>>> cable covering, plumbing, ammunition

>>> sound absorbers

>>> radiation shields around X-ray equipment and nuclear reactors

>>> industrial paints

>>> lead oxide used in producing fine "crystal glass" and "flint glass" with a high refractive index for achromatic lenses

>>> containers for corrosive liquids

>>> alloying

>>> cable covering

>>> insecticides

Crystal (lead, quartz)

Entertainment (Special Effects)

Law Enforcement (e.g., "flash-bangs," training exercises)

Water purification (zinc and copper)

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www.ime.org



The safety association of the commercial explosives industry • Founded 1913

November 13, 2006

BY ELECTRONIC MAIL

Edwin G. Foulke, Jr.
Assistant Secretary for Occupational Safety and Health
U.S. Department of Labor
OSHA Docket Office, Room N2625
200 Constitution Avenue, NW
Washington, DC 20210

Electronic Address: <http://ecomments.osha.gov> (OSHA Docket No. H-022K)

[Re: Advanced Notice of Proposed Rulemaking on Hazard Communication \(Globally Harmonized System of Classification and Labeling of Chemicals \(GHS\)\)](#)

Dear Administrator Foulke:

The Institute of Makers of Explosives (“IME”) is pleased to submit the following comments on the Occupational Safety and Health Administration’s (“OSHA”) *Advanced Notice of Proposed Rulemaking (ANPRM) on Hazard Communication (Globally Harmonized System of Classification and Labeling of Chemicals (GHS))*. The ANPRM requests public comments on a number of issues related to the adoption of GHS and the modification of OSHA’s Hazard Communication Standard (HCS). OSHA is requesting this information in order to prepare cost analyses and other documents required to support the rulemaking.

IME is the safety institute of the commercial explosives industry. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.

IME represents U.S. manufacturers and distributors of commercial explosive materials and oxidizers as well as other companies that provide related services. Over 2.5 million metric tons of high explosives, blasting agents, and oxidizers are consumed annually in the United States. Of this, IME member companies produce over 98 percent of the high explosives and a great majority of the blasting agents and oxidizers. These products are used in every state of the Union and are distributed worldwide.

Commercial explosives are the backbone of our industrial society. Metals, minerals, oil, power, construction activities and supplies, and consumer products are available today because of commercial explosives. The ability to use, transport and distribute commercial explosives safely and securely is critical to all industries.

Background

GHS is the product of a long-term international effort through the United Nations and other organizations to develop a globally harmonized system for the classification of chemicals for their health, physical, and environmental effects, as well as for developing uniform labels on containers and safety data sheets (SDS). OSHA and other federal agencies have been intimately involved in the development of GHS for a number of years. Adoption of GHS by OSHA would require a modification of OSHA's current HCS.

OSHA's HCS requires chemical manufacturers and importers to evaluate the hazards of chemicals they produce or import, and to provide information on those hazards to downstream employers and employees through labels and SDSs. All employers with hazardous chemicals in their workplace are required to have a hazard communication program, including container labels, SDSs, and employee training. OSHA's current HCS is a performance-based system that established requirements for container labels and SDSs, but does not mandate any specific language or a format to convey the information. GHS would change this by providing internationally standardized provisions for the classification of chemicals for their health, physical, and environmental effects, as well as for the content of container labels and SDSs.

OSHA believes that there would be significant benefits in adopting GHS. Specifically, OSHA says it would enhance the protection of workers and others potentially exposed to chemicals, facilitate international trade in chemicals, allow countries without adequate information systems to build chemical safety and health programs, and provide for an internationally consistent regulatory regime. OSHA would be required to convert the GHS recommendations and text into regulatory language that would modify the existing HCS.

Comments

1. How many hazardous chemicals as defined by the HCS do you produce, import or distribute?

There are approximately 500 commercial explosives products manufactured, imported, and/or used in the U.S. market today. IME does not have data regarding the number of these products that are exported.

Each product will have at least one MSDS, plus necessary DOT trucking placards.

2. Who is responsible for reviewing the data on chemicals and preparing appropriate labels and safety data sheets?

In general, company safety and health managers oversee the preparation of SDSs.

The majority of persons responsible for the preparation of SDSs have an engineering, and/or technical background.

Manufacturers make independent determinations regarding the applicability of the HCS and the preparation of SDSs and labels. Distributors that are not also manufacturers largely rely on SDSs and labels supplied by the manufacturer of the product.

3. How long does it take on average for each hazardous chemical to complete the review and prepare new labels and safety data sheets?

Approximately one week is required for the preparation of labels and SDSs for each product. IME does not have data regarding associated costs.

4. Would the time required to prepare a GHS SDS be more, less, or about the same as currently required for preparing an SDS?

The time required to prepare a GHS SDS will be longer than that currently required to prepare an HCS SDS. As OSHA notes in the ANPRM, under the GHS “definitions of hazards are much more specific and detailed than what is in the HCS.” The evaluation that will be required to comply with the GHS hazard categorization will necessarily be more complex and, hence, time-consuming.

This will be particularly true if the GHS system of “weight of evidence” is adopted by OSHA. As described in the ANPRM, the “weight of evidence” method of categorization will require manufacturers to evaluate all scientific studies available for a substance or product and determine not only the hazard presented but also the “degree of severity of the hazard” indicated by the studies. This additional level of evaluation will be significantly more time consuming than the “one study” approach currently used in the HCS.

IME does not have information on the particular time and costs that would be incurred in converting existing SDSs to the GHS format. The costs would, however, depend on the amount of time allowed for the conversion process. A phase-in period would allow companies to use existing stocks of SDSs before converting wholly to the GHS system.

5. Please describe any electronic tools you have to assist with this process, such as systems that classify chemicals or prepare labels or safety data sheets.

IME does not have specific information regarding electronic tools used by its member companies.

6. How many of your employees receive hazard communication training?

All employees receive hazard communication training. The training is 6 hours annually, at a minimum. Member companies estimate that it would require 6 hours of annual training plus any necessary refresher training to teach employees to recognize the GHS pictograms. Refresher training would be conducted until sufficient familiarity is achieved.

Standardization of labels and SDSs would be helpful in making it easier to use the available hazard communication information.

7. What savings will you incur when you only have to classify a chemical once instead of multiple times depending on how many agencies and countries are involved?

For companies that export a large number of products, the savings will be considerable – approximately 1 week per SDS in cases where current requirements between countries are very different.

8. What is a reasonable time period for phasing in the modifications?

Member companies responding to this questionnaire did not offer a specific time frame. However, larger companies with an extensive, varied product line will, naturally, require more time to implement the new requirements.

9. What is the normal cycle for updating labels and safety data sheets?

The majority of companies update SDSs when a change in formulation is made, or when additional information is obtained or developed regarding the product.

10. Do you have stockpiles of product that are already labeled? How long will those stockpiles last? We do not manufacture packaged products.

This varies by individual company. Some companies do maintain limited stockpiles; others have none.

11. Are there any health or physical hazards that are currently covered by the HCS that you think are not adequately addressed in the GHS criteria?

No.

13. In addition to references to hazardous chemicals with OSHA PELs, should OSHA propose to include any other listing of hazardous chemicals when aligning the hazard determination provisions of the HCS to the GHS?

The ANPRM states;

The GHS provides much more specific criteria for defining health hazards than the HCS does. If OSHA adopts the GHS, these more specific criteria will be part of the HCS. This will eliminate the need for a specific listing of hazardous chemicals as part of the hazard determination procedures. Chemical manufacturers and importers are much more likely to make consistent hazard determination evaluations following the specific criteria in the GHS, thus addressing the concerns that led to the inclusion of lists in the original Hazard Communication Standard. References to the chemicals for which there are ACGIH TLVs, and those chemicals addressed in IARC Monographs and the NTP lists, would no longer be specifically addressed in the HCS.

While these lists would no longer be addressed in the HCS, it is possible that manufacturers and importers would continue to make reference to the lists to minimize liability concerns.

13a. Should OSHA propose that the mixture provisions only reference exceeding the OSHA PEL when revised to adopt the GHS?

See above response. In addition, many PELs are currently out of date and may not reflect current scientific information.

13b. Should OSHA propose deleting the requirement that the ACGIH TLV be included on the SDS when the requirements are changed to be consistent with the GHS?

Despite the fact that the ACGIH TLVs are non-consensus standards, as noted above, it is possible that manufacturers will choose to include the information on GHS SDSs in an effort to minimize potential liability.

14. Within the health hazard criteria, are there any categories of hazard that should not be adopted in the HCS? For example, should OSHA adopt all of the categories addressed in the acute toxicity criteria?

The GHS categories appear to be appropriate to address potential workplace exposures.

15. If OSHA changes the HCS to adopt the physical hazard criteria, how will that impact other OSHA standards that use the same criteria as the HCS?

OSHA is currently updating 29 CFR 1910.109 – the standard for commercial explosives. We anticipate that the proposed rule will take into account OSHA’s GHS implementation.

16. Are there any other technical issues that need to be considered in adopting the GHS? Please explain.

Consistency of requirements among agencies that require hazard communication training (MSHA, DOT, OSHA, EPA).

17. What products would be most useful to employers? Employees? Do you prefer paper publications? Electronic tools?

A variety of products (e.g. paper, electronic, video) is preferred. Having a variety of products available assists employers in ensuring that information is delivered to employees in a format that is most suitable to the particular employees.

18. What subjects would be of most interest? Classification criteria and procedures for substances and mixtures? Labels? Safety data sheets?

All.

19. What is the best way to distribute the materials to reach affected employers and employees?

Electronically.

20. In particular, would training on symbols or pictograms be of use?

Training on symbols and pictograms would be essential.

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We appreciate the opportunity to submit these comments. Please feel free to contact me if you have any questions regarding our comments.

Sincerely,
Susan JP Flanagan
Counsel, Environment, Safety & Health
Institute of Makers of Explosives

Statement of

Cynthia Hilton
Executive Vice President
Institute of Makers of Explosives

before the

Pipeline and Hazardous Materials Safety Administration
US Department of Transportation

concerning

HM-232F – Revision of Requirements for Security Plans
Docket No. PHMSA-06-25885
71 FR 55156

November 30, 2006

I am Cynthia Hilton, Executive Vice President of the Institute of Makers of Explosives (IME). The IME is the safety and security association of the commercial explosives industry. Our mission is to promote safety, security and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.

The United States relies on commercial explosives to build roads and other critical infrastructure, to mine coal and ore, obtain oil, and to provide demolition and other specialty services requisite to our industrial society. Commercial explosives are transported and used in every state. Additionally, our products are distributed worldwide, while some explosives, like TNT, must be imported because they are not manufactured in the United States. The ability to transport and distribute these products safely and securely is critical to this industry and the economy.

We have a long history of proactive attention to the safe and secure transportation of our products. Our industry is among the most highly regulated sector of the economy. Yet, IME standards, in many areas, go beyond regulatory compliance and, in many cases, are the regulatory standard itself. Our search for solutions to the concerns which prompt today's hearing and this rulemaking leads us to recommendations that balance safety and security with the need to provide for the free flow of goods and to bolster our international competitiveness.

The issue of which hazardous materials are "security sensitive" (SSHM) is the most important discussion for our community. The stakes are high – what is on the list will drive the regulatory agenda writ big, and ultimately will or will not frustrate terrorists. We complement the Pipeline and Hazardous Materials Safety Administration (PHMSA), and its regulatory partners, for engaging in this debate.

In general, IME joins those who assert that not all placarded shipments of hazardous materials are attractive to terrorists. Therefore, some narrowing of the current scope of security planning and training requirements is appropriate. However, at the end of the day, the success of this venture should not be measured in terms of regulatory relief, but whether our actions have made it more difficult for terrorists to wreck havoc in America.

In addition, we believe that not all of the materials that are attractive to terrorists are equally valued. Therefore, we strongly support PHMSA's current performance-oriented approach to measuring compliance with these security requirements. Finally, we believe that the issue of what set of hazardous materials and in what quantities may be appropriate for inclusion on a list of security sensitive materials should not be determined in a vacuum.

In the time allotted, I would like to address four major issues:

- What is the scope of the threat we aim to protect against?
- How should materials presenting security risk be designated?
- At what threshold is it appropriate to regulate these materials?
- What is the reality on the street?

Threats to Transportation from Hazardous Materials

There are two types of threat from the misuse of hazardous materials that warrant attention. First, there are commercial shipments of materials that, based on the hazard and the quantity in the package, would, if attacked in transportation and catastrophically released, enhance the damage or destruction of the attack – in some circles so-called “weaponizable materials”. Second, there are other materials whose value to a terrorist is in the theft or diversion of the material for manipulation into weapons of mass destruction (WMD). Direct attack on commercial shipments has never occurred in the United States and interdiction worldwide a rare event. Conversely, theft or legitimate diversion of materials of concern is by far the terrorist’s common mode of operation. If PHMSA chooses to focus only on “weaponizable” shipments, as some have suggested, it will do nothing to stem terrorist activity in the United States.

Designating Hazardous Materials of Concern

Efforts to identify materials of interest to terrorists – domestic and foreign – predate the 2001 9/11 attacks. In 1970, Congress enacted the Organized Crime Control Act.¹ Title XI of the OCCA established rules to protect commerce from the misuse of explosives, including limitations on transportation. The threat that nuclear materials would be used by terrorists prompted the enactment in 1982 of legislation to implement the Convention on the Physical Protection of Nuclear Material.² The downing of airlines in the 1980s led to international treaties on the unlawful use of plastic explosives. Following the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996.³ This Act contains provisions restricting materials usable as biological or chemical weapons, as well as authority to study the feasibility and practicality of imposing controls on precursor chemicals used in the manufacture of explosives. The National Research Council (NRC) released this precursor report in 1998.⁴ All of these initiatives have produced lists identifying materials of concern, usually in the form of material-by-material lists.

The horrific events of 9/11 intensified a focus on the transportation infrastructure and access to materials used to perpetrate terrorist acts. PHMSA was a leader in this area, issuing rules requiring transportation-related security plans and training for hazmat employees.⁵ As opposed to creating a material-by-material list to trigger these security requirements, the agency designated materials based on hazard class. Subsequently, the UN Subcommittee of Experts on the Transport of Dangerous Goods (UN Subcommittee) amended its recommendations to include transportation-related security plans and training to be triggered by a hazard class-based list commonly known as the “UN indicative list”. (Appendix A)

PHMSA’s advance notice of proposed rulemaking describes two petitions for rulemaking that seek to modify the agency’s current list of SSHM used to trigger transportation security plans

¹ PL 91-452.

² PL 97-351.

³ PL 104-132.

⁴ Committee on Marking, Rendering Inert, and Licensing of Explosive Materials, Containing the Threat from Illegal Bombings, NRC, National Academy Press, 1998.

⁵ 68 FR 14510 (March 25, 2003).

and hazmat employee training. One petition urges PHMSA to adopt the so-called UN indicative list, and the other advocates for a determination that the materials triggering the Federal Motor Carrier Safety Administration's hazardous materials safety permit be the basis for a new list of SSHM with the addition of other hazard classes similar to the UN list. To these proposals, we could add several material-by-material based lists: two, developed by the FBI, key off materials used in the production of WMD and other improvised explosives; and internationally, different lists, prepared by Canada and Australia, include materials that have been used in improvised explosive devices (IED) from the chemical precursor research conducted by the NRC after the Oklahoma City bombing. Since the September publication of this docket, two SSHM lists have been released by the Transportation Security Administration (TSA). TSA claims that one of these lists, based on DOT's hazard classes, was developed with input from PHMSA. (Appendix B) The other is a material-by-material listing of what are supposed to be the 25 most damaging SSHMs from the perspective of a catastrophic release. Complicating these matters, TSA has suggested that its lists would be mode and activity specific. There clearly is no lack of opinion about what materials should be designated SSHM.

The defining difference between the various SSHM lists we have examined is that some are performance-based, programmed to capture all materials that exhibit the same properties, and others are based on specified material-by-material designations. We urge PHMSA to reject SSHM lists that are material-by-material based and to continue to embrace one based on a hazard class approach.⁶ A major finding of the NRC concerning protection of the nation's chemical infrastructure is the need to "focus[] on general classes of vulnerabilities (i.e., chemical properties) within chemical categories, instead of on specific chemicals." In the absence of specific intelligence, "little benefit is gained by differentiating one specific chemical from another."⁷ Among other advantages, a hazard class approach can be internationally harmonized and it addresses issues created by mixtures and solutions that have plagued material-by-material lists in other regulatory venues.

While recognizing that PHMSA's general approach of using hazard class designations to identify SSHM is sound, the UN Subcommittee has improved on the current scheme by using hazard class divisions and packaging group designations to effectively narrow the scope of materials included on the indicative list to those arguably more attractive to terrorists as compared to PHMSA's more comprehensive "placarded-load" list. As noted above, we agree that proposals linking security requirements to all hazardous materials or even all placarded quantities of these materials are unjustified. While all materials meeting PHMSA's definition of hazardous materials pose some level of risk, only a subset of these materials have the potential of being used to bring about a serious terrorist attack.

⁶ If there is compelling evidence that a particular material presents a terrorist threat but is not currently regulated under the HMR, PHMSA may wish to explore with the UN options to designate these materials in Class 9, as was the case for a number of environmentally-sensitive materials, thus preserving a hazard class regulatory scheme.

⁷ Committee on Assessing Vulnerabilities Related to the Nation's Chemical Infrastructure, Terrorism and the Chemical Infrastructure: Protecting People and Reducing Vulnerabilities, Transportation Research Board, National Academy Press, 2006, page 99.

Of the various “hazard class” lists, two would appear to be front-runners – the UN indicative list and the TSA hazard class list. However, these two differ substantively on the treatment of some hazard classes. The TSA list includes all Division 1.3 materials, when the UN list makes an effort not to include military munitions. The TSA list includes combustible liquids, which designation is not recognized internationally. The TSA list does not include Division 4.2 or Class 8 materials both of which are on the UN list. We are particularly struck that the TSA list failed to identify Class 8 materials as materials of concern. A cursory review of the work done by the FBI will reveal that Class 8 materials are a precursor staple of IEDs. The TSA list is inconsistent with the UN list as we expect it to be amended next month in the treatment of Division 1.4 and 5.1 materials, in the first category overreaching and the second underreaching what are legitimate materials of concern. The UN list more completely captures materials we believe should be of concern based on terrorist threat. Virtually all hazardous materials shipments entering or leaving the US by sea or air are shipped today in compliance with these international regulations.

It is also no small thing that the UN indicative list is recognized worldwide. It has been adopted by international organizations such as the International Maritime Organization in its International Maritime Dangerous Goods Code (IMDG) and the International Civil Aviation Organization (ICAO) in its Technical Instructions on the Safe Transport of Dangerous Goods by Air. Both the IMDG Code and the ICAO Technical instructions are mandatory for countries (including the US) that are signatory to the Safety of Life at Sea Convention and the Chicago Convention. In addition the list is used as a basis for regulation throughout Europe and northern Africa through the international regulations for road and rail transportation known as the ADR and RID.

The UN list is not static and is amended from time to time by the UN Subcommittee as materials, including materials with similar properties, used in significant terrorist attacks are identified.⁸ This flexibility is essential to ensure that the UN list provides a practical yet conservative means of encompassing materials that could pose a serious security threat.

By adopting a list of SSHM identical to the indicative list adopted by the United Nations, PHMSA would be in step with worldwide experts on what materials constitute a security risk in transportation, security of hazardous materials would be more easily enforced, and regulatory confusion diminished.

We believe PHMSA should embrace the UN indicative list as the reference point to be used in the same fashion as the agency’s harmonized hazardous materials list when security issues and requirements are discussed and formulated. Without anchoring security requirements to this list, international harmonization, which has effectively sustained hazardous materials safety for decades, is thwarted. A list larger than the UN list will bring unnecessary regulation; a smaller list will prove to be the easily exploitable weak link in transportation security. As with the well-regarded and universally accepted UN harmonized list for hazardous materials safety, if some

⁸ It is expected that the Indicative List will be amended to include Class 1, Division 1.4 UN Nos. 0104, 0237, 0255, 0267, 0289, 0361, 0365, 0366, 0440, 0441, 0456, and 0500, and to expand the Division 5.1 listing to include ammonium nitrate emulsions or suspensions or gels, in bulk, during the 30th session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods, December 4-12, 2006 in Geneva, Switzerland.

believe materials on the indicative list should be removed, they should carry their concern and evidence to the United Nations.

Finally, we offer two cautions. We caution against efforts advocating a narrow application of security requirements to only a few materials of concern. Such a narrow material-by-material designation accompanied by a regulatory scheme that differs from that required to transport the vast majority of non-designated materials is likely to drive common carriers from the field, crippling means of distribution and, ultimately, those sectors of the economy dependent on these materials. Loss of common carriers or even entire modes, as happened when the Bureau of Alcohol, Tobacco, Firearms and Explosives attempted to regulate explosives transportation in early 2003, demonstrates that private transportation lacks the capacity to deliver these indispensable materials. Impairing the safe and efficient transportation of the materials we ship is not the way to guarantee security. Indeed, terrorists have proved capable of using commonly available materials to harm us, our economy and our way of life. Likewise, we caution against efforts to establish multi-lists that will vary by activity and mode. Such outcome would be a compliance nightmare. How multi-security lists would work in an intermodal environment is hard to envision.

Thresholds of Concern

The ANPRM describes what appears to be wide held agreement that the current list of SSHM is too broad. As potential alternatives, the ANPRM describes several SSHM lists, including the current security-plan list, the two rulemaking petitions, and the UN indicative list. Among these alternatives, there is more agreement than not. They are all based on hazard class designations and, with one exception, they include the same hazard classes. However, they are substantively different in where they set threshold triggers – the UN indicative list having the lowest thresholds and the list proposed by the American Trucking Association the highest. PHMSA’s current approach to use, with some exceptions, placarded quantities as the regulatory trigger is a middle ground. The TSA hazard class list is an improvement over the PHMSA listing because it is more consistent that placards trigger the regulatory threshold.⁹ We support the TSA’s approach. In the past, DHS/TSA has contended that the most secure shipments are those without placards.¹⁰ Thus, non-placarded shipments of SSHM are not in need of additional regulatory attention. Given that the intent of a placard is to provide public notice, commercial shipments of SSHM in quantities that require placards should continue to trigger security regulation.

Reliance on placards as a trigger has several benefits. It makes it easier for the regulated community to comply. It makes it easier for officials to identify and enforce against violations. Finally, since perfect security is not possible, it empowers emergency responders to mitigate the consequences of an attack more effectively.

Some have argued that a placarded threshold is too low. They contend that only quantities of materials capable of mass destruction should be subject to security regulations. However, these

⁹ The TSA list does not use placards as the trigger in every instance. Those exceptions are acceptable.

¹⁰ This should not be read as an endorsement of efforts to ban placards. We cannot sacrifice safety on the alter of security. Lives are saved every day because of placards. The safety benefit far outweighs the security concern.

entities ignore two essential facts. One is that terrorists are not deterred by small quantities of materials of interest. Terrorists employ means, legal or otherwise, to acquire SSHM and stockpile them pending later use. The other fact is that “mass destruction” is a relative term. At a Senate hearing last year, this point was illustrated in the comment of a Senator during debate about whether security adherents should focus threat interventions on situations predicting 50,000 or a million casualties. The Senator interjected, “where do you draw the line ... if 500 people were to die from a chemical attack or an accident, we would be up in arms about it.”¹¹ In point of fact, only 168 perished in the Oklahoma City bombing, and a mere 52 in the recent attack on the London transit system. The death of fewer than 10 people would satisfy terrorists’ goals if the result was panic and loss of the public’s confidence in the ability of the government to protect it.

Elephants in the Room

As PHMSA and its agency partners consider the issue of what materials should be identified and regulated, remember that there are limits to what actions can reasonably be taken to thwart terrorism in this venue. PHMSA’s authority only extends to commercial shipments. What we do to harden commercial transportation will not address inherent weaknesses that we tolerate as a free and open society. Commercial transportation is just a part of the life cycle of materials of concern. Terrorists have time and again exploited gaps outside the stream of commerce captured by regulated hazmat shipments. Materials of concern in the form of consumer commodities, which are legally available at sporting goods, garden, farm, hardware, beauty supply, and drug stores across America, are the primary source of the materials used in terrorist events. These source materials together with the availability of rental trucks (and backpacks) are the weak link in the security chain.

Terrorists have the luxury of time, they can stockpile goods, and they can manufacture IEDs with little to no technology. Until effective means are instituted to address these realities, there is no reason for terrorists to look elsewhere for SSHM.¹² The other weak link in the fight to protect our transportation infrastructure is the profile of the terrorists themselves. The phenomenon of the suicide bomber has proved to be the truly “smart bomb.” It is hard for our culture to understand this mindset. We institute programs to check backgrounds based on criminal activity, forgetting that the suicide bomber is often young, motivated by religious fanaticism, and lacking criminal intent or background.

Finally, it has been said that even “unlimited resources will not ensure ‘perfect security.’” We all operate in an environment of limited resources. We owe it to ourselves and the public to lower expectations about how failsafe we can make our society because there are only so many risks that can be controlled.

¹¹ Committee on Homeland Security and Governmental Affairs, United States Senate, “Is the Federal Government Doing Enough to Secure Chemical Facilities and is More Authority Needed?”, June 15, 2005, page 20.

¹² We have been told that DHS/TSA intend to develop an integrated approach to chemical facility and transportation security initiatives. Such a holistic approach is welcome.

Recommendations

Absent compelling information, IME would recommend that PHMSA use the UN indicative list with the thresholds recommended by the TSA. We urge PHMSA to continue to authorize performance-based approaches to security and safety issues. We believe this is the only way to counter pressures to establish different lists for every activity and mode. We absolutely believe that PHMSA should retain flexibility to adjust its designations of SSHM as circumstances warrant. Our responses to specific questions presented in the rulemaking are attached to this statement. (Appendix C)

Conclusion

IME is absolutely committed to ensuring that commercial explosives products are transported safely and securely. We welcome the opportunity to work with PHMSA and others to find appropriate, cost-effective solutions to overly-burdensome regulations that lull our society into a belief that we are more secure than we are. We take seriously our responsibility to be a part of that solution.

Thank you for the opportunity to provide comment on the issues raised by today's hearing. This concludes my statement. I would be pleased to answer any questions.

APPENDIX A

United Nations Committee of Experts on the Transport of Dangerous Goods High Consequence Dangerous Goods Chapter 1.4 Security Provisions¹³

High consequence dangerous goods are those which have the potential for misuse in a terrorist incident and which may, as a result, produce serious consequences such as mass casualties or mass destruction. The following is an indicative list of high consequence dangerous goods:

Class 1, Division 1.1 explosives
 Class 1, Division 1.2 explosives
 Class 1, Division 1.3 compatibility group C explosives
 Class 1, Division 1.5 explosives
 Division 2.1 flammable gases in bulk*
 Division 2.3 toxic gases (excluding aerosols)
 Class 3 flammable liquids in bulk* of packing groups I and II
 Class 3 and Division 4.1 desensitized explosives
 Division 4.2 goods of packing group I in bulk**
 Division 4.3 goods of packing group I in bulk**
 Division 5.1 oxidizing liquids in bulk** of packing group I
 Division 5.1 perchlorates, ammonium nitrate and ammonium nitrate fertilizers, in bulk**
 Division 6.1 toxic substances of packing group I
 Division 6.2 infectious substances of Category A (UN2814 and UN2900)
 Class 7 radioactive material*** in quantities greater than 3000 A1 (special form) or 3000 A2, as applicable, in Type B(U) or Type B(M) or Type C
 Class 8 corrosive substances of packing group I in bulk**

* “In bulk” means greater than 3000 liters (792 gals.) in a cargo tank, a tank car or a portable tank.

** “In bulk” means greater than 3000 liters (792 gals) or 3000 kg (6614 lbs.) in a cargo tank, a tank car or a portable tank.

*** For radioactive material, the provisions of this chapter are deemed to be complied with when the provisions of the Convention on Physical Protection of Nuclear Material and of IAEA INFCIRC/225 (Rev.4) are applied.

¹³ “Limited quantity” consignments are not subject to Chapter 1.4 Security Provisions.

APPENDIX B***DRAFT PRELIMINARY LIST*****Security Sensitive Hazardous Materials**

If authorized the Transportation Security Administration will propose that individuals transporting materials in the below listed hazard classes be subject to the security threat assessment described in 49 CFR 1572.

The draft preliminary list of Security Sensitive Hazardous Materials was prepared by the TSA Highway and Motor Carrier Program in consultation with the DOT Pipeline and Hazardous Materials Safety Administration Office of Hazardous Materials and Federal Motor Carriers Safety Administration. This draft preliminary list has received only limited review by other Federal Agencies. This draft preliminary list is not considered a complete list of all materials which when transported by motor vehicle in commerce may pose a significant risk to homeland security due to the potential use of the material in an act of terrorism. Certain specific materials in hazard classes not listed below may, when combined with other materials, be capable of presenting a potential risk to homeland security. TSA may provide a specific list of these materials that may also pose a significant risk to homeland security due to their potential use in an act of terrorism.

<u>Hazard Class</u>	<u>Threshold Quantity</u>
Division 1.1 Explosives	Placarded Amounts (any quantity)
Division 1.2 Explosives	Placarded Amounts (any quantity)
Division 1.3 Explosives	Placarded Amounts (any quantity)
Division 1.4 Explosives	Placarded Amounts (1001 pounds)
Division 1.5 Explosives	Placarded Amounts (1001 pounds)
Division 2.1 Flammable Gases	1000 gallons (in single bulk package)
Toxic-by-Inhalation Hazard Zone A (gases and liquids)	Placarded Amounts (any quantity)
Toxic-by-Inhalation Hazard Zone B (gases and liquids)	Placarded Amounts (any quantity)
Toxic-by-Inhalation Hazard Zone C or D (gases)	Placarded Amounts (any quantity) Consider agricultural exception for anhydrous ammonia
Flammable Liquids (Class 3) and Combustible Liquids	3500 gallons (in single bulk package)
Desensitized explosives (Class 3 & Division 4.1, e.g., nitroglycerin mixtures)	Placarded Amounts (1001 pounds)
Division 4.3 Flammable Solids Dangerous When Wet	Placarded Amounts (1001 pounds)
Division 5.1 Oxidizing liquids -- packing group I	Placarded Amounts (1001 pounds)

Division 5.1 Perchlorates, ammonium nitrate, and ammonium nitrate fertilizers (specific Division 5.1 materials other than packing group I)	Placarded Amounts (1001 pounds)
Division 5.2 Organic Peroxides	Placarded Amounts (any quantity Type B, liquid or solid, temperature controlled or 1001 pounds of other organic peroxides)
Division 6.1 Poisonous materials, other than TIH Zone A and Zone B liquids	Placarded Amounts (1001 pounds)
Division 6.2 Infectious Substances -- Select Agents (does not include diagnostic samples)	Any quantity
Class 7 Radioactive Materials - 10CFR, Part 110, Appendix P, Category 1 materials meeting NRC limits as high-risk import/export radioactive materials or materials meeting NRC definitions of Special Nuclear Material (SNM)	Activity levels as specified by radioactive material or designation as SNM

APPENDIX C

(1) What is the best basic approach to security plans? Is the current approach correct or should security plans be required only for hazardous materials in threshold quantities that are known to pose significant security risks?

Security plans should be required for hazardous materials that could pose a security risk. Since not all SSHM will be equally attractive to terrorists, we support PHMSA's basic approach that plans should be performance-based. Additionally, we strongly support the "hazard class" approach to identifying SSHM. Among other advantages, a "hazard class" approach can be internationally harmonized and it addresses issues created by mixtures and solutions that have plagued chemical-by-chemical lists in other regulatory venues.

(2) Are there ways to lessen the burdens of security plan requirements on companies with minimal security risks?

Given PHMSA's "performance-based" approach to plan requirements, complexity is driven by a company's operations not the agency. PHMSA should also be given credit for reducing burden by allowing security plans required by other agencies, organizations, or agencies to satisfy PHMSA's requirement. An area that might be simplified is clarification of the "threat" that "en route security" measures are intended to address, keeping in mind that some threats, such as those that would require hardening packages, are beyond industry control to address. Another area calling for simplification deals with security sensitive information (SSI) document marking requirements. Currently, every page of a document that contains SSI must be marked with "SENSITIVE SECURITY INFORMATION" and a lengthy warning statement.¹⁴ We think this requirement should be modified to require the SSI mark only on those pages of a document containing SSI and that the warning statement only be provided once per record, with reference as needed. Finally, we agree that burdens could be reduced by narrowing the list of materials deemed SSHM. While we strongly support the "hazard class" approach, we would support a further fine-tuning of this approach by using division and packing groups as appropriate to narrow identified SSHM. This is the approach used by the United Nations. Designations should consider the type of hazard generated, that quantity necessary to be a threat in transportation, the availability of the material to the public, and the difficulty to respond. Whatever is designated SSHM by the agency, PHMSA should retain flexibility to adjust designations as circumstances warrant.

(3) Should baseline security requirements or guidelines be established when security plans are not required?

No. If a material is of interest to a terrorist, it should be encompassed in the security plan rule.

(4) What factors should be considered in determining whether security risks of a specific hazardous material or class of hazardous materials are significant enough to require preparation of a security plan?

¹⁴ 49 CFR 1520.13.

Designations should consider the type of hazard generated by commercial shipments of hazardous material, the quantity necessary to be a threat in transportation either from catastrophic release or from theft, the availability of the material to the public, and the difficulty to respond. PHMSA should continue to rely on the time-tested hazard class approach to identifying risks in transportation, whether for reasons of safety or security, and resist efforts to list SSHM's on a chemical-by-chemical basis.

(5) What role should Packing Groups play in determining the need for security plans? Packing groups are a way to narrow hazard class designations. If a packing group would help to better isolate materials of concern they should be used.

(6) How should the quantities of hazardous materials transported be considered when determining whether a security plan is required?

In terms of thresholds, PHMSA must look carefully at placarded loads. In the past, DHS/TSA has contended that the most secure shipments are those without placards. Given that the intent of a placard was to provide a public warning, shipments of SSHM in quantities that require placards should be considered.

(7) Does easy availability of a hazardous material in specific quantities outside of transportation play a role in determining whether a security plan should be required?

Substances like sugar and an array of other commonly available materials exempt from the HMR can be manipulated into weapons. However, PHMSA's mandate is to regulate commercial shipments of materials that present safety, including security, concerns. PHMSA cannot be responsible for the regulation of any possible substance that may be misused in a way to create a security risk. It is unlikely that terrorists would attempt to steal such unregulated precursors while in transportation when these materials can be legally obtained in a wide array of consumer products. Neither would there be any value to a terrorist from a catastrophic release of such materials in transportation. However, where a material is both a safety and a security risk in transportation, we believe that PHMSA has a responsibility to address that risk irrespective of the ease with which the material may be obtained from non-transportation settings.

(8) Should uniform security plan requirements apply across all modes of transportation or should the triggering criteria (hazardous class and quantity) be mode-specific?

PHMSA should not abandon its performance-based approach to security plans. A performance-based approach already allows flexibility for security plans to be mode- or shipper-specific. Please remember that from a shipper's point of view transport is an intermodal operation. For a shipper, it will greatly complicate and likely result in confusion rather than compliance if the security status of hazardous materials differs by mode and quantity. The performance-based requirements for security plans should be the same for all SSHM understanding that security measures taken to address vulnerabilities will differ based on operations.

(9) What factors should be considered when determining whether specific hazardous materials, classes or quantities thereof, should be excepted from security plan requirements?

See response to question 4 for factors to consider in naming SSHM hazard classes and 6 for our views on what commercial shipments should be considered for exception from security plan requirements.

(10) How should the determination of transportation security risk account for specific hazardous materials or classes of materials that by themselves do not pose a security risk, but that could present a security risk in combination with other materials?

See response to question 7. PHMSA should limit the scope of its rules to materials that are both a safety and a security risk for purposes of the HMR. If a commercial hazardous material could pose a security risk through theft to be used in combination with other materials, it should be captured by security plan rules. Exemptions for unplacarded quantities of these precursor materials should still apply.

(11) What compliance or enforcement issues should be considered as we re-assess current security plan requirements?

Since the plans are performance-based, we are unaware of any compliance problems. Obviously, shippers and carriers should only put security measures in their plans that they intend to implement. Moreover, PHMSA has produced helpful risk assessment tools and made them available via the Internet.

There are other requirements imposed for reasons of safety or security that are more problematic than security plans requirements *per se*. The premise of this rulemaking that some group of materials more narrowly defined than the current scope of placarded loads is potentially a significant enforcement issue. If PHMSA chooses a chemical-by-chemical approach to designating SSHM, it will greatly complicate enforcement compared to a of a placarded-load approach. Other more problematic requirements affecting security include multiple, redundant, non-reciprocal background checks; enroute cargo inspection securement requirements; and on-going efforts to impose technologies that are easily defeated when simpler approaches may work to address security concerns.

(12) Should company size or geographic location (e.g., specific region of the country or urban or rural) play a role in determining whether a security plan is required?

The answer is “no” if PHMSA believes that theft is a valid security consideration. Theft, hijacking, or diversion of SSHM are far more likely terrorist scenarios than catastrophic release of commercial shipments.

(13) Does the Government need to provide more information on the specific security concerns that cause the need for preparation of a security plan for certain hazardous materials to assist in security plan preparation?

Information on threats would be a valuable asset. However, this information should not be shared outside of a secured environment. DHS has taken the lead in vetting individuals to share

in relevant threat information through the Homeland Security Information Network (HSIN). HSIN provides a nationwide platform to share essential homeland security information with intended stakeholders. This information sharing is accomplished both horizontally across the government and vertically among federal, state and local governments, private sector and citizens as outlined in the President's National Strategy for Homeland Security. Private sector participation is offered through DHS' critical infrastructure sector coordinating counsels. Another DHS initiative, Protected Critical Infrastructure Information (PCII) Program, seeks to facilitate greater sharing of critical infrastructure information among the owners and operators of the critical infrastructures and government entities with infrastructure protection responsibilities, thereby reducing the nation's vulnerability to terrorism. All shipper/carriers of designated SSHM should avail themselves of these opportunities to share in threat-based information and analysis.

(14) Should the Government maintain an evolving list of hazardous materials for which security plans are required based on changing threats and scenarios?

Absolutely. PHMSA must have the flexibility to make adjustments as threats and scenarios change. The notice-and-comment precedent established by this rulemaking should be the model followed for future adjustments of SSHM designations.



The safety and security association of the commercial explosives industry • Founded 1913

VIA HAND DELIVERY

June 13, 2003

Mr. James P. Ficaretta
Program Manager
Bureau of Alcohol, Tobacco, Firearms & Explosives
650 Massachusetts Avenue, N.W.
Washington, DC 20226

Re: Notice No. 968 - Notice of Proposed Rulemaking, Commerce in Explosives (2000R-9P)

Dear Mr. Ficaretta:

On behalf of the Institute of Makers of Explosives (IME), I submit these comments regarding the Notice of Proposed Rulemaking (NPRM) (Commerce in Explosives (2000R-9P)), published by the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) in the *Federal Register* on January 29, 2003 (68 *Fed. Reg.* 4406).

The IME has been the safety and security association of the commercial explosives industry since 1913. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations. The Institute does not sponsor trade shows or other marketing events.

The IME represents United States manufacturers of explosives and other companies that distribute explosives or provide related services. Over 2.5 million metric tons of explosives are consumed annually in the United States, of which IME member companies produce over 95 percent. These products are used in every state in the Union and are distributed worldwide. The value of our shipments is estimated in excess of \$1 billion annually, but the value of explosives to our society far exceeds this figure. Minerals, oil, coal-fired electricity, building materials, and consumer products would not be available as they are today without commercial explosives. It is no underestimation that the ability to transport and distribute explosives safely and securely is critical to all industries.

The IME has comments in three broad areas addressed in the NPRM, (1) ATF's treatment of IME suggestions, (2) the proposed changes to the regulations, and (3) ATF's compliance with Federal Administrative Requirements for Rulemaking. We will address only issues in the NPRM that relate

to commercial explosives. Silence on the part of IME on a particular issue in the NPRM should not be interpreted by ATF as support of ATF's position on that issue.

ATF's Treatment of IME Suggestions

In general, IME was very disappointed by ATF's dismissal of three-fourths of IME's suggested improvements to ATF's regulations.¹ It is equally disappointing that ATF chose to publish its decisions regarding IME's suggestions without first discussing the suggestions with IME. Based on ATF's responses in the NPRM, it appears that the written correspondence from IME did not clearly convey the intent of some of the recommendations. This miscommunication could have been avoided had ATF discussed the recommendations with IME before simply rejecting them in the formal rulemaking process. This out-of-hand treatment is wholly inconsistent with the essential, close, collaborative relationship that has existed between IME and ATF for many years.

Section 842(j) of the Federal Explosives Law (FEL) states that when promulgating regulations on the storage of explosive materials, ATF "shall take into consideration the class, type, and quantity of explosive materials to be stored, *as well as the standards of safety and security recognized in the explosives industry.*" (Emphasis added.) The degree of consideration and treatment given IME's suggestions by ATF does not reflect IME's status as the industry's standard setting body for storage of commercial explosives. Further, ATF did not mention IME's September 2000 Petition for Rulemaking on the definition of "highway" in the NPRM and apparently did not consider the standards of safety and security recognized in the explosives industry while developing its new definition of "highway."

A discussion of each of IME's suggested improvements and ATF's responses follow.

Computerized Record Keeping

IME suggested that the regulations be changed so that a variance from ATF record keeping requirements is not needed to keep records, such as inventory, electronically. IME agrees with ATF that computer record keeping has become a common industry practice and many variances allow this practice. In fact, the Electronic Signatures in Global and National Commerce Act (E-SIGN) states that electronic records conditionally satisfy hard copy record keeping requirements and requires agencies to allow electronic records wherever possible.² IME has additional comments on the conditions ATF has placed on computerized record keeping. These comments are described in the section of this document entitled "Proposed Changes to the Regulations."

Nonsparking Materials

ATF rejects IME's suggestion to require nonsparking materials only where frictional-spark-sensitive explosive materials are stored. IME believes that this requirement that has no relevance to the safe storage of practically all of the commercial explosives products used for industrial purposes in the United States. ATF maintains that IME's recommendation would create a public safety hazard. In addition, ATF claims that the recommendation would be burdensome because those involved would be required to determine an explosive's frictional sensitivity. Rather than accepting IME's

¹ The suggestions addressed in the NPRM were submitted at ATF's request in October 2000. In August 1998, IME had submitted essentially the same list of suggestions to ATF.

² P.L. 106-229, Section 101(d).

suggestion for making appropriate and reasonable changes to the nonsparking regulatory requirements, ATF, instead, has proposed *additional* burdens of this kind for the storage of such materials.

Attached is a copy of the white-paper entitled, “Is This a Regulation Whose Time Has Expired?”. The paper provides detailed information supporting IME’s suggestion regarding nonsparking materials. We suggest that ATF review this document. As the paper points out, IME is unaware of any accidents caused by frictional sparks during storage or use of dynamite, waternite, and emulsion explosives. Similar conclusions about the mythical nature of non-sparking tools and their questionable impact on the safety of commercial explosives storage can be drawn by reading information on the subject published by the Canadian Centre for Occupational Health and Safety.³ If ATF has data supporting a different experience concerning explosive accidents caused by frictional sparks, it should be disclosed.

IME strongly disagrees with ATF that it would be an unreasonable burden to expect an explosives user to determine if an explosive material it intends to store is frictional-spark-sensitive. Rather than viewing the acquisition of this information as a “burden”, IME’s position is that every ATF licensee or permittee has an affirmative *obligation* to be knowledgeable regarding the sensitivity of explosive materials it stores and handles. Far from being a burden, obtaining such information and knowledge is a safety *responsibility*. Moreover, a licensee or permittee operating in ignorance of an explosive’s sensitivity would certainly be in violation of Mine Safety and Health Administration (MSHA) or Occupational Safety and Health Administration (OSHA) regulations concerning hazard communication.^{4,5}

If ATF believes that its licensees and permittees are handling frictional-spark-sensitive explosives without knowledge of that hazard, such determination should be cause for major concern and the Bureau should immediately undertake a comprehensive education initiative to correct the situation.

ATF does not explain in sufficient detail the public safety hazard that it believes would be created by IME’s suggestion. ATF quantity-distance standards protect the public from an accidental initiation of a magazine. Therefore, it is not clear from the language in the NPRM who in the public domain ATF is concerned about protecting. If ATF’s concern relates to the safety of the licensee or permittee, we suggest that the Bureau find a more effective means of ensuring safety. Subjecting the entire commercial explosives industry to the existing and proposed regulatory requirement - an artifact from the days of prolific black powder use - is inappropriate, burdensome, and arbitrary and capricious.

Department of Defense Magazines

ATF rejects IME’s suggestion to accept Department of Defense (DoD) specification magazines for storage of commercial explosives. Hence, a variance from ATF will continue to be needed if explosives are stored in a DoD magazine that is under ATF jurisdiction. This is a common occurrence as many licensees fall under both ATF and DoD jurisdiction and there is considerable effort to commercialized closed DoD sites. As justification, ATF cites “significant” differences

³ Q&A’s on non-sparking tools, downloaded from http://www.ccohs.ca/oshanswers/safety_haz/hand_tools/nonsparking.html on May 23, 2003.

⁴ 30 CFR 47.

⁵ 29 CFR.

between DoD and commercial explosives and reduced threat of bullet penetration and thefts at DoD magazines because of “physical security.”

The main difference between DoD and commercial explosives is that DoD explosives are primarily designed to maximize human lethality and commercial explosives are primarily designed to maximize safety. DoD storage facilities provide an adequate level of safety for bombs, missiles, and other ordnance; and ATF should better explain the differences that would result in unsafe or insecure conditions if commercial explosives were stored in the same facility. IME does not believe that differences between commercial explosives and DoD explosives warrant absolute rejection of DoD storage standards. Perhaps ATF feels that not all, but certain DoD standards are inappropriate for commercial operations. If so, IME would be happy to discuss mutually acceptable standards.

ATF should explain why there is a greater threat of bullet penetration at commercial magazines than at DoD magazines. To IME, it would seem that a DoD facility where most of the occupants carry firearms, and which could conceivably come under attack from small arms fire, would present a greater bullet penetration threat than a commercial explosives facility. If ATF has data showing that magazines have been fired upon in the last ten years, such data should be disclosed for evaluation.

IME is aware of a number of thefts of military explosives reported in the media. A recent media report chronicles 242 incidents of lost or stolen explosives from the U.S. military since 1991 and questions the military’s commitment to explosive security.⁶ However, we have not had adequate time to thoroughly compare DoD theft data to ATF theft data to evaluate ATF’s assertion in the NPRM that DoD munitions are protected by superior physical security. If ATF’s determination is based on such an analysis we request that the Bureau provide IME with a copy of the study. Alternatively, ATF should identify the source of the data upon which the conclusions in the NPRM rely.

DOT/UN Hazard Classes

ATF rejects IME’s suggestion to recognize certain DOT hazardous material classifications. IME did not intend to suggest that ATF should abandon its current classification system.⁷ Rather, IME maintains that both ATF and the regulated community would benefit from the recognition of certain DOT hazard classifications for ATF compliance purposes. Otherwise, confusion over the proper storage of materials transported under DOT’s classification system, but stored under ATF’s system will continue.

Specifically, the point of our suggestion was to encourage ATF to recognize DOT Division 1.5 materials as “blasting agents”, Division 5.1 materials as oxidizers and not regulated by ATF,⁸ and Division 1.4 materials as nonmass-detonating explosives.

ATF is practically the only regulatory or military body in the world that does not exclusively use the United Nation’s explosive classification system for storage of explosives. Although we appreciate the difficulty ATF would face in making the conversion to the UN system, there is no logical reason that certain DOT classifications cannot be used for ATF compliance purposes. As ATF points out in

⁶ Wandering Weapons: America’s lax arsenal, St. Petersburg Times, May 11, 2003.

⁷ ATF claims that IME’s suggestion could lead to storage of high explosives in low explosive storage magazines. Although this issue is actually immaterial to IME’s suggestion, ATF should provide specific examples of high explosives that can be shipped as DOT Division 1.3 materials.

⁸ Except for materials subject to 27 CFR 555.220.

the NPRM, the DOT packaging must be maintained on Division 1.4 materials, but packaging is not a factor that relates to storage with Division 1.5 or 5.1 materials.

Regulatory gaps would be plugged by recognition of these DOT classifications. For example, ATF's regulations provide that a blasting agent is a substance that cannot be initiated by a test detonator. This defines an upper limit of sensitivity, anything more sensitive is a high explosive. But ATF does not define a lower limit of sensitivity. IME members have reported that conflicts have arisen during ATF inspections over this issue. DOT, on the other hand, has specific criteria that define when a substance is so insensitive that it should no longer be considered a Division 1.5 material. Such substances are usually classified as Division 5.1 materials.

Enforcement of regulations relating to nonmass-detonating detonators would be made easier if ATF recognized that a DOT Division 1.4 material in its original shipping package must be nonmass-detonating. Additionally, a Division 1.4 material is subjected to testing and a much more defined standard than that found in ATF regulations.

IME Bullet Resistance Standard

IME supports ATF's suggestion to adopt IME's bullet resistance standard. However, ATF should explain the need for different enactment schedules of this provision for Type 1 and Type 2 magazines.

Bullet Resistant Roofs on Type 2 Magazines

ATF rejects IME's suggestion to allow roofs of Type 2 magazines to be non-bullet resistant when the magazine cannot be fired upon from above. ATF states that since a Type 2 magazine is portable, such a magazine could be moved to a location where it could be fired upon from above. Although this is true, other ATF regulations such as quantity-distance standards or those prohibiting combustible materials within 25 feet of a magazine could be violated simply by moving a magazine, but ATF allows the movement so long as compliance is maintained. Further, ATF's proposal to be informed prior to such moves could prevent noncompliance.

Notifying ATF of Changes to Portable Magazines

IME supports ATF's proposal to essentially adopt IME's suggestion to clarify the regulations on exceptions to reporting magazine changes to ATF.

Use of the Term "Detonator" instead of "Blasting Cap"

IME suggested that ATF change its few references to the term "blasting cap" or "cap," to the term "detonator." ATF rejects this suggested terminology because "many makers and users of explosives are not members of IME" and may be "confused" by the change. ATF should provide examples of interviews, polls, or other data showing that many explosive users will be confused by the suggested change. We note in this regard that the ATF's Orange Book contains 22 references to "blasting caps" and 46 references to "detonators."⁹

⁹ ATF publication 5400.7, Federal Explosives Law and Regulations, 2000.

IME feels that continuing to use the term “blasting cap” is more likely to confuse. The following organizations’ regulations and standards primarily recognize the term “detonator”:

- American National Standards Institute,
- Canada’s regulating agencies,
- DoD,
- DOT,
- Federation of European Explosives Manufacturers,
- IME safety standards,
- International Air Transporters Association,
- International Civil Aviation Organization,
- International Code Council (ICC),
- International Society of Explosives Engineers,
- MSHA,
- National Fire Protection Association (NFPA),
- Office of Surface Mining and Reclamation, and
- United Nations.

This list includes the vast majority of explosives standard setting bodies, and indicates that ATF is practically alone in its stated preference for the term “blasting cap.” A word search of the Internet provides further evidence that “detonator” is the standard term used to describe these devices. An Internet search using the Google™ search engine on March 4, 2003 showed that the terms “detonator” and “explosive” appeared on 16,300 websites while the terms “blasting cap” and “explosive” appeared on only 3,500 websites.

ATF’s insistence on using an outdated term may limit ATF’s ability to regulate at 555.109, 555.202(a), and 555.218 notes 2 and 3.¹⁰ According to ATF’s own regulations, the term “detonator” is broader than “blasting cap” or “cap.”¹¹ One could argue that devices that would be considered detonators, such as detonating cord delay connectors, are not covered by ATF regulations that speak of “blasting caps” or “caps.”

IME members manufacture and distribute virtually all the detonators in the United States and ATF should respect the manufacturers’ suggestions on regulatory terminology. In IME’s view, continuing to use the term “blasting cap” is like calling a “refrigerator” an “ice box”; and the term “electronic blasting cap” sounds as odd as the term “laptop calculator.”

“Do Not Fight Explosive Fires” Warning Sign

ATF rejects IME’s suggestion to require posting of the classic “Danger - Never Fight Explosive Fires-Explosives are Stored on this Site” warning sign at the entrance of a magazine area. IME is concerned that firefighters may not always be aware of explosive storage or the advice to not fight explosive fires. ATF believes that the requirement to inform local fire departments of the presence of magazines sufficiently informs firefighters. ATF believes it would be “inappropriate to require” such a sign in a “non-industrial setting” and would present a “security risk by drawing attention.” ATF does not refer to interviews, polls, or other data showing that: (1) firefighters are informed of

¹⁰ On January 24, 2003, ATF changed the section number of explosives regulations from “55” to “555.”

¹¹ Definition of “detonator” in 27 CFR 555.18.

explosive storage in all the jurisdictions they may be called to respond in, and (2) they know not to fight explosive fires. To the contrary, IME believes that this information does not reach a sufficient portion of the firefighter population. For example, although the authority having jurisdiction must be informed of explosives storage, that authority may not be the first on the scene of an emergency at the explosive storage site.

The explosive safety and security standards of NFPA and the ICC are adopted by many local jurisdictions and require posting of the aforementioned sign.^{12,13} Notably, all voting members of the ICC are governmental public safety professionals.

Moreover, on March 13, 1996 IME entered into a settlement agreement with the United States Environmental Protection Agency in American Petroleum Institute v. United States Environmental Protection Agency and Carol M. Browner (DC Cir., No. 94-1276). Section 3(a) of that settlement agreement requires IME member companies, at facilities they own or control, to post at all normal access routes a sign which states “Danger. Never Fight Explosive Fires. Explosives are stored on this site. Call (Emergency Phone Number).”

Accordingly, IME’s long-standing recommendation that such signage be posted at appropriate facilities is, under the terms of the settlement agreement, a requirement of law. IME, therefore, requests that ATF acknowledge in the final rule that this practice is both a standard industry safety practice and a legally mandated environmental security precaution.

IME does not agree with ATF that it would be inappropriate to require the sign in any setting. Conversely, we maintain that it would be wholly inappropriate to fail to inform firefighters and other responders that an explosive hazard is present. Although the security risk may be slightly increased by the presence of the signage, the safety hazard posed by not informing emergency responders of the hazard is much greater. Given the standards referenced above, the NFPA and ICC apparently agree with IME’s assessment. MSHA and OSHA both require that magazine areas be posted with a sign warning of the presence of explosives.^{14, 15}

Most magazine sites currently are posted with the suggested sign, and IME is unaware of any thefts occurring because the sign informed the thief of the presence of explosives. On the other hand, IME *is* aware of firefighters being injured and killed because they were unaware of or underestimated the danger of the explosives.^{16, 17}

If ATF has any continuing doubt regarding this issue, it should provide an appropriate analysis or other evidence that the security risk posed by the signage outweighs the safety risk to firefighters or other responders.

¹² NFPA standard 495, Explosives Materials Code (2001), Section 4.1.9.

¹³ ICC International Fire Code (2000), Section 3304.6.5.1

¹⁴ 30 CFR 56.6132(a)(6), 56.6133(a)(3), and 77.1301(c)(9).

¹⁵ 29 CFR 109.109(c)(2)(iii).

¹⁶ Isner, M. S., Blasting Agent Explosion-Six Firefighters Killed, Kansas City, MO. NFPA Fire Investigation Report, November 29, 1988.

¹⁷ Fire and Explosion-Fireworks Manufacturer and Distributor, Jaffery, NH. NFPA Fire Investigation Report, August 14, 1988.

Storing Explosives Against a Magazine Wall

ATF rejects IME's suggestion to revise the prohibition on storing explosives against the walls of a magazine. Unless this requirement is modified, nuisance citations on this issue, which has negligible bearing on safety, will continue.

ATF claims this requirement "benefits certain explosive materials (e.g., dynamite, boosters, fireworks)" and "helps maintain the integrity of the packaging of the explosives, regardless of the configuration or type of explosive." ATF does not cite to or discuss the factual basis for these assertions. IME members manufacture hundreds of millions of pounds of packaged explosives products annually and are not aware of any instances where the explosive material contained in boosters or the integrity of the packaging of other explosives products is benefited by the current prohibition on storage against magazine walls.

In our opinion, stacking packages against a wall actually helps maintain the integrity of packaging by providing support for the stack of packages, thus allowing some of the weight of the packages to be distributed to the wall of the magazine. Stacking against the wall helps reduce package crush that can result from the leaning and/or collapsing of stacks of packages.

ATF should not promulgate regulations that simply help maintain the integrity of the packaging when packaging is not even required by ATF regulations. If packaging were so integral to safety, IME thinks that ATF would have made it mandatory long ago. This regulation imposes undue or unnecessary restrictions or burdens on law-abiding citizens such as licensees and permittees.

Carriers' Need for a License or Permit

ATF rejects IME's suggestion to clarify when the requirement to obtain an ATF license or permit for persons who transport explosives applies. While ATF rules track the language of Federal Explosives Law (FEL), ATF's regulation of carriers is not clear.

On the one hand, ATF has stated that common carriers do not need an ATF license or permit to transport explosives even though FEL 842(a) requires anyone who transports explosives to obtain an ATF license or permit. On the other hand, ATF has stated that all explosive truck drivers must comply with the statutory prohibitions disabling persons from possessing explosives at 18 USC 842(i). With regard to this provision of law, ATF has been adamant that transporters must comply. ATF's selective imposition of certain statutory requirements leaves a fog over commercial transportation of regulated materials. ATF should explain its selective application of the law.

IME sees two possible explanations for ATF's selective application of the law. The first is that ATF acknowledges that the DOT regulates the ability of carriers to operate and that the transportation exception at 18 USC 845(a)(1) is effected. The second is that ATF has simply chosen not to exercise its authority. This latter explanation is the reason ATF rendered for the fact that it has not insisted or suggested that transporters are subject to the section 842(i) disqualifications for the last 30 years. ATF should clarify when, and under what circumstances, a carrier needs a license or permit, or what authority carriers may rely on to support ATF's statements that no license or permit is needed.

Original Signatures on Copies of Licenses or Permits

ATF rejects IME's suggestion to remove the burdensome requirement for original signatures on copies of licenses and permits distributed pursuant to 27 CFR 555.103. The rule requiring original signatures will become an even greater commercial impediment after May 24, 2003, when provisions of the Safe Explosives Act require an additional 20,000 persons¹⁸ to exchange these original copies.

In deciding to retain the current requirement, ATF states that it is "concerned about the possibility of persons unlawfully acquiring explosives on a stolen copy of a license with a photocopied signature." ATF should state how often it would expect such an attempt to be made. In other words, ATF should explain how credible it believes such a threat to be. In addition, ATF should explain why it apparently is not equally concerned about persons acquiring explosives using forged signatures.

E-SIGN establishes a legal equivalent between pen-and-ink signatures and electronic signatures and IME believes that a photocopy of a signature is a form of an electronic signature. In fact, guidance from the White House Office of Management and Budget (OMB) regarding federal agencies' implementation of E-SIGN states that an agency "generally should not restrict whether and how private parties use electronic records and signatures in their dealings."¹⁹ Therefore, IME believes that E-SIGN requires ATF to adopt this suggestion. ATF should address how the Bureau's decision on this matter is compliant with E-SIGN.

IME Petition for Rulemaking on Definition of Highway

On September 22, 2000, IME submitted a petition for rulemaking to ATF under section 4(d) of the Administrative Procedure Act (APA). Specifically, IME petitioned ATF to adopt the definition of highway used by DOT and IME, which places emphasis on the physical characteristics of a road rather than on the (largely irrelevant) issue of whether a road is privately or publicly owned.

This issue was not unfamiliar to ATF, having previously been raised by IME in a 1998 letter to the Bureau expressing the industry's concerns over changes that had recently been made to ATF's regulatory definition of "highway." The importance of the issue to the industry was underscored when, in February, 1999, the Director of ATF, in his opening remarks at the International Society of Explosives Engineers (ISEE) Annual Conference in Nashville, TN, assured the attendees that the explosives industry's concerns over the 1998 definition change would be satisfactorily addressed.

In 2001, IME members were apprised that the issues raised in the Institute's Petition for Rulemaking would be formally addressed by ATF in a rulemaking proceeding. Specifically, in a letter dated November 15, 2001 from T. Crone (ATF) to J. Ronay (IME) ATF provided IME with express written assurance that the concerns raised our Petition for Rulemaking would be addressed in this NPRM.

Inexplicably, ATF does not address IME's Petition for Rulemaking in this NPRM. Even more incomprehensible is ATF's proposal to modify the definition of highway in a manner that is directly contrary to that recommended by IME in the Petition.

¹⁸ 68 FR page 13777.

¹⁹ Guidance on Implementing (sic) the Electronic Signatures in Global and National Commerce Act (E-Sign), downloaded from <http://www.whitehouse.gov/omb/memoranda/esign-guidance.pdf> on April 10, 2003.

IME is deeply dissatisfied that ATF chose to ignore IME's request, the Bureau's written assurances, and the former Director's promises to address industry's concerns.

The APA provides an interested person the right to petition a federal agency or bureau for the issuance, amendment, or repeal of a rule.²⁰ Further, Section 555(e) of the APA states that “[p]rompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.”

IME has never received any formal or informal notice from ATF that its September, 2000 Petition for Rulemaking has been denied by the Bureau. Similarly, nowhere in the NPRM does ATF state that IME's Petition for Rulemaking has been denied. The fact that ATF has proposed in the NPRM a modification to the definition of “highway” that is inapposite to that urged by IME in its Petition does not constitute the notice of denial required under the APA. Nor does ATF's discussion of its proposal constitute a “brief statement of the grounds” for any denial of IME's Petition. Moreover, given the fact that the NPRM is wholly silent regarding IME's Petition, ATF cannot characterize its contrary proposal as a “self-explanatory” denial.

IME urges ATF to adopt the definition of highway used by DOT and IME as requested in the September, 2000 Petition for Rulemaking, and respectfully requests that ATF respond to IME's Petition in accordance with the requirements of the APA.

Proposed Changes to the Regulations

ATF proposes at least 23 major changes to the regulations in the NPRM that would affect commercial explosive operations.

Section 842(j) of the Federal Explosives Law (FEL) states that when promulgating regulations on the storage of explosive materials, ATF “shall take into consideration the class, type, and quantity of explosive materials to be stored, *as well as the standards of safety and security recognized in the explosives industry*”. (Emphasis added.) With a few exceptions, the NPRM preamble is devoid of any consideration of the standards of safety and security recognized in the explosives industry. In fact, many of the proposals are radical departures from the standards of safety and security recognized in the explosives industry. As far as IME is aware, ATF did not consult with industry regarding these changes before publishing the NPRM.

If, contrary to all appearances, ATF has considered the standards of safety and security recognized in the explosives industry in proposing the regulatory changes in the NPRM, such consideration is not mentioned in the NRPM, nor is it reflected in the proposals themselves. Other than those proposals that specifically address IME's submitted recommendations, the only example where ATF appears to have considered an industry standard is its proposal to increase the maximum amount of explosives allowed in an indoor magazine from 50 to 60 pounds. ATF justifies this proposal, in part, stating it is “consistent with the standards for indoor storage set forth by IME.” Although IME thinks the proposal is reasonable, we are unaware of any IME standard addressing the quantity of

²⁰ 5 U.S.C. Subchapter II, Section 553(e).

explosives stored in an indoor magazine. IME requests that ATF clarify this reference to an IME standard.

Following is a point-by-point discussion of the significant regulatory changes proposed. The proposed changes are listed generally, in order of appearance in the regulations, and not by priority. IME urges ATF to view the table of significant estimated costs at the end of this comment to help prioritize the issues.

Definition of “Highway”

ATF proposes that “highways” include “any street, alley, or road, including a privately financed, constructed, or maintained road, that is regularly and openly traveled by ... individuals ... associated with one explosives facility ... with respect to any other explosives facility.” This proposed change would impose quantity-distance standards (Q/D) where such standards are currently waived because the two or more “persons” inside the Q/D arc use explosives. Currently, these persons may be completely different companies and ATF has long recognized the mutual assumption of risk reached by the companies at these locations. Now, ATF will make these consensual agreements illegal.

ATF gives practically no justification for this proposed change in the NPRM, mentioning only “confusion” over the current definition. ATF should justify the need to radically change a standard of safety and security recognized in the explosives industry for decades before the creation of the FEL.

If ATF insists on the definition proposed, it should clarify to which individuals and under what circumstances 555.218 and 555.220 (Q/D) apply. For example, if a private road is used by two different “persons” (A and B) that are both owned by another third “person” (C), would Q/D apply between that road and explosives stored by A or B? If a private road is used by two different “persons” (A and B), and A provides explosive-related services to B, would Q/D apply between that road and explosives stored by A? If a private road on person A’s property is used by individuals other than employees of person A (such as service employees), would Q/D apply between that road and explosives stored by A? Would an ATF inspector be considered to be in direct connection with activities being undertaken at a particular facility at which explosives are manufactured, assembled, or stored?

ATF’s proposed definition for the term “highway” differs substantively from the definition currently used in the IME American Table of Distances (ATD). We do not support these proposed changes to IME copyrighted material. IME considers ATF’s 1998 change to the definition of highway an unlawful infringement of its copyright in the ATD. We had hoped to settle this issue through the filing of our Petition. Promulgation of the proposed changes by ATF would be considered by IME to be further unlawful infringement of its copyright of the ATD. It is IME’s established practice to authorize the inclusion of the ATD in governmental regulations or other publications only where the ATD is produced in its entirety and without modification to the Table’s form or content. We would welcome the opportunity to discuss this issue with ATF directly.

Depending on ATF’s interpretation of the questions above, this proposal could result in the relocation of hundreds, perhaps thousands, of magazines. In some cases, whole facilities would have to be relocated because the ancillary operations would have to follow the explosive storage site. The proposed definition could allow the actions of trespassers to force law-abiding citizens off their own

property because the trespassers used a road within the Q/D arc of the law-abiding citizen's explosive storage. If the trespass occurred on neighboring property, the law-abiding citizen may have no other recourse than to move.

This proposal would have a negative effect on public safety by breaking-up facilities that share the security benefits of being collocated and moving those facilities to less-secure, stand-alone sites. IME urges ATF to consider the negative effect of this proposal to public safety and security.

ATF should adopt the definition of "highway" proposed by IME.

Definition of "Inhabited Building"

ATF proposes that "only ... explosives operations conducted by the same person" meet the exception for "building(s) occupied in connection with the manufacture, transportation, storage, or use of explosive materials." Like the proposed definition of "highway", this proposed change would impose Q/D where it is currently waived because the two or more "persons" involved use explosives. As justification, ATF states that "[t]his clarification ensures that personnel employed by or otherwise associated with one explosives facility will not assume the risk associated with another explosives facility's operations." ATF should provide more justification for the need to radically change a standard of safety and security recognized in the explosives industry in existence for decades before creation of the FEL. For example, does ATF have any evidence that personnel employed by or otherwise associated with one explosives facility are adverse to the risk associated with another explosives facility's operations? On the contrary, IME maintains that personnel are aware of the cumulative risk from explosives operations at their location and voluntarily accept the risks of working at those facilities when accepting employment.

In the early to mid 1990's, ATF took the same enforcement position. IME disagreed with ATF at that time and initiated legal action over the issue. When it became apparent that the court would rule in IME's favor, ATF issued a letter to IME in which ATF promised to "not enforce our May 1993 position until we meet with IME regarding this issue."²¹ IME is deeply dissatisfied that ATF chose to ignore the Bureau's written assurances. ATF should explain how this action demonstrates compliance with Section 842(j) of the FEL which requires ATF to take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

If ATF insists on the definition proposed, it should clarify to which individuals and under what circumstances 555.218 and 555.220 (Q/D) apply. For example, if buildings are used by two different "persons" (A and B) that are owned by another third "person" (C), would Q/D apply between A and B's buildings? If buildings are used by two different "persons" (A and B), and A provides explosive-related services to B, would Q/D apply between B's buildings and explosives stored by A?

ATF further broadens the definition of inhabited building to include any "structure where people are accustomed to assemble or to be present for any purpose."²² This is a significant expansion of the current standard, which does not include the phrase "or to be present for any purpose" in the

²¹ Letter dated June 7, 1994 from T. Cates, ATF to F. Smith, IME.

²² 68 FR 4417, January 29, 2003.

definition.²³ Conceivably, a remote pump-house, valve shelter, or switching station could be considered an “inhabited building” because someone was occasionally present momentarily to read a meter or perform service. The ATD is intended to apply to structures which are “regularly occupied”. ATF’s use of both “regularly occupied” and “be present for any purpose” in the definition to describe the criteria for occupancy of an inhabited building will lead to confusion.

ATF should not include the phrase “or to be present for any purpose” in the definition of inhabited building. To do so would result in regulating situations with vast differences in risk as if they were the same. Risk is the product of the probability of an event times the consequences. Consequences are the product of exposure and damage, thus making exposure directly proportional to risk. There are 525,600 minutes in a year, but just a few minutes of occupancy a year would meet ATF’s “be present for any purpose” criteria. Everything else being equal, this would result in five orders of magnitude difference in risk between buildings occupied all year long and a valve shack visited every couple of months to read meter. In risk assessment, just one order of magnitude is generally considered significant.

ATF’s proposed definition for the term “inhabited building” differs substantively from the definition currently used in the IME ATD. We do not support this proposed change to IME copyrighted material. Accordingly, promulgation of the proposed changes by ATF would be considered by IME to be an unlawful infringement of its copyright in the ATD. It is IME’s established practice to authorize the inclusion of the ATD in governmental regulations or other publications only where the ATD is produced in its entirety and without modification to the Table’s form or content. We would welcome the opportunity to discuss this issue with ATF directly.

This proposal would result in the relocation of hundreds, perhaps thousands, of magazines. This proposal would have a negative effect on public safety by breaking-up facilities that share the security benefits of being collocated and moving those facilities to less-secure, stand-alone sites. IME urges ATF to consider the negative effect this proposal would present to public safety and security.

ATF should not change the definition of “inhabited building.”

Definition of “Manufacturer”

ATF proposes that “any person engaged in the business of assembling explosive materials from explosive and/or non-explosive materials for purposes of sale or distribution or for his own use” is a “manufacturer.” IME does not understand ATF’s reasoning in saying that by adding assemblers to the definition, marking requirements will apply to assembling explosive materials. What problem is ATF trying to address? IME is unable to suggest an alternative without understanding ATF’s concerns. In addition, ATF should clarify the meaning of “assembling.” This is a broad term that could be interpreted to include priming a booster, assembling a perforating charge into a perforating gun, or hooking-up surface delays.

Without further discussion, ATF should not change the definition of “manufacturer.”

²³ 27 CFR 555.11.

Retention of Variances [555.22(c)]

ATF proposes to impose a new regulatory burden on explosives licensees and permittees. Specifically, ATF states in the NPRM that “upon request by the Director, previously approved variance requests must be resubmitted for a new determination.” Currently, licensees and permittees are required to retain ATF variances and make them “available for examination by ATF officers.” ATF should justify the need for this additional burden, especially since the existing requirement provides for compliance oversight during an inspection. This proposed regulation imposes an undue or unnecessary restriction or burden on law-abiding citizens. If ATF sees a need to review a licensee or permittee’s variances, it can simply file the variances when issued and review them as needed. The burden of requiring licensees or permittees to submit variances on demand from ATF is precisely the kind of paperwork Congress intended to reduce under the Paperwork Reduction Act (PRA).

Renewal of Licenses or Permits [555.46(a)]

ATF proposes to impose an additional regulatory burden on the regulated community by providing that the Bureau “may require the applicant for license or permit renewal to also file completed form ATF F 5400.13/5400.16 or ATF F 5400.21.” Because ATF provides no justification for this change, IME cannot evaluate the merit of this proposal. In addition to providing such justification, ATF should state why it apparently believes this proposal is an appropriate new information collection. ATF does not address this new information collection in the NPRM section on PRA compliance.

ATF should also consider whether this proposal is consistent with current regulations that *require* licensees and permittees to submit ATF F 5400.13/5400.16 or ATF F 5400.21 upon renewal.²⁴

Q/D and Temporary Storage [555.63(a) and (f)]

ATF proposes that “magazines used for temporary storage of explosives are subject to the table of distances.” Further, ATF proposes changes to its regulations stressing that this requirement applies to Type 3 magazines. ATF claims this proposal is necessary to “clarify” the regulations. Informal discussions with ATF officials indicate that by this proposal, ATF intends to apply Q/D to Type 3 magazines whenever the explosives contained in the magazine are not being handled. In other words, if a supplier delivers explosives to a construction site at 8:00 AM, but loading does not commence until 11:00 AM, Q/D would be applied from 8:00 until 11:00.

IME adamantly opposes this apparent change in ATF’s long-standing interpretation of its own regulations. ATF does not satisfactorily explain why it has suddenly determined that a change to its 30-year enforcement practice is warranted. Neither does ATF provide adequate justification for the need to radically alter an accepted standard of safety and security that has been recognized and observed in the explosives industry for decades before creation of the FEL.

The effect of the above interpretation would be enormous in the construction field. The majority of construction sites that use explosives will be barred from using Type 3 magazines under this interpretation. In order to maintain compliance, such construction site operators would be forced to arrange for as-needed delivery and return of explosives (thereby dramatically increasing the time that explosives are involved in transportation), or by engaging in practices that do not involve the use of magazines. Both of these options, albeit legal, increase explosives safety and security risks.

²⁴ 68 FR 13785, 555.45(c), March 20, 2003.

In our opinion, this reduction in public safety would violate one of ATF's primary regulatory objectives.

ATF should not change the current regulation or its long-standing policy in this area.

Notifying ATF of Completion of Magazine Changes [555.63(b)(c) and (d)]

IME supports ATF's proposal to eliminate the requirement for notifying ATF that changes to magazines have been completed before they are used for explosives storage.

Computerized Record Keeping [555.121]

IME supports ATF's decision to permit computerized record keeping so that a variance from ATF will no longer be needed to keep records such as inventory on a computer.

However, we believe that ATF imposes new and unreasonable information collection burdens on computerized record keeping that are not placed on manual record keeping. For example, ATF proposes that computerized records must have a "daily memory backup capability acceptable to ATF."²⁵ This would be the same as requiring paper records to be kept in duplicate in a specific format of ATF's choosing, which is not required. Another difference is that ATF would require computerized records to include the manufacturer and importer of foreign-made explosives. This is not required of paper record systems. Guidance issued by OMB on agencies' implementation of E-SIGN states that agencies' rules on electronic records must be substantially the same as those for paper records.²⁶

The phrase "acceptable to ATF" mentioned above gives unfettered authority to ATF to require a specific data backup system(s). E-SIGN requires that agencies' rules be technology neutral.²⁷

IME believes that it is unreasonable to require a company to keep any one type of record entirely on computer or paper. Since the magazine transaction record, acquisition record and distribution record are all separate, independent records, the computerization of one should not require the computerization of all. The wording of proposed paragraph 555.121(a)(1)(i) reads as if the computerized system must contain all of the records required by 27 CFR 555, Subpart G. Actually, most of the stipulations in 555.121(a)(1), especially paragraph (xi), seem to focus on either all or none of ATF's mandated records being kept electronically. Since the current variance criteria allow computerization of any of the records in Subpart G, it appears that the wording may not reflect ATF's true intent.

This "all-or-none" standard for electronic record keeping appears to be inconsistent with E-SIGN's requirements that agencies may not require the use of paper.²⁸ IME does not believe that the exception allowing agencies to require paper records applies in this case.²⁹ If ATF disagrees, it should explain in detail why there is a "compelling governmental interest relating to law

²⁵ For technical correctness, the term "memory" should be replaced with the term "data."

²⁶ Guidance on Implementing (sic) the Electronic Signatures in Global and National Commerce Act (E-Sign), downloaded from <http://www.whitehouse.gov/omb/memoranda/esign-guidance.pdf> on April 10, 2003, and E-SIGN Section 104(b)(2)(C)(ii)(I).

²⁷ E-SIGN Section 104(b)(2)(C)(iii).

²⁸ E-SIGN Section 104(c)(1).

²⁹ E-SIGN Section 104(b)(3)(B).

enforcement or national security for imposing such requirement; and imposing such requirement is essential to attaining such interest.”

ATF should include discussion of this new information collection in ATF’s discussion of its PRA compliance.

ATF should change paragraph 555.121(a)(1)(i) to read “The system contains all the information required in the section of this subpart applicable to the type of record.”

Inventory Records [555.122(a), 555.123(a), 555.124(a), and 555.125(a)]

ATF proposes to require licensees and permittees to record the same data for inventories that is recorded for distribution. ATF claims this “will facilitate the tracing of explosives that may be intended for criminal use.” Although IME does not fully understand ATF’s reasoning on this matter, we do believe that ATF imposes new information collection burdens and has not addressed them in ATF’s discussion of its PRA compliance.

Reconciliation of Inventory Discrepancies [555.122(a)(4), 555.123(a)(4), 555.124(a)(4), and 555.125(a)(4)]

ATF proposes that all discrepancies disclosed between the physical inventory of explosive materials and other records required by ATF must be reconciled by the close of the next business day. Currently, licensees and permittees must report a theft or loss of explosives within 24 hours “of discovery.” There is no regulatory time-limit on reconciliation of discrepancies disclosed between the physical inventory of explosive materials and other records required by ATF, which could constitute “a discovery.” IME agrees that this loophole in the regulations should be closed so that licensees or permittees could not indefinitely delay reporting a loss or theft. However, the standards of safety and security recognized in the explosives industry do not allow enough time to reconcile discrepancies by the end of the “next business day.”

Since many discrepancies will not be rectified by the end of the next business day, licensees and permittees will have to submit loss or theft reports to ATF prematurely. Most of the reported losses or thefts will turn out to be neither. IME believes this to be an inefficient use of ATF’s law enforcement arm, siphoning resources away from other vital law enforcement activities. It will also unnecessarily involve resources of the licensee or permittee in the ATF investigation that could be used to identify the discrepancy.

As an alternative, IME suggests the following for domestic shipments. If there is no evidence of theft or loss, licensees and permittees should report to ATF that a discrepancy exists between the physical inventory of explosive materials and other records required by ATF within three business days of learning of the discrepancy. If the discrepancy cannot be rectified within 5 business days after reporting the discrepancy to ATF, a report of loss or theft must be submitted to ATF.

Recording the Date of Use of Explosives [555.122(c)(1), 555.123(c)(1), and 555.124(c)(1)]

ATF proposes that licensees must now record the date of use in records of explosive transactions. IME supports the position that the date of use of explosive materials should always be recorded. The proposed changes appear to close a loophole for record keeping of use. However, we believe that

ATF imposes new information collection burdens without addressing them in its discussion of the PRA compliance section of the NPRM.

New Exception for Manufacturers' Record Keeping [new 555.124(c)(2)]

IME supports ATF's proposal to exempt manufacturers from the record keeping requirements in 555.123(c) "if the explosive materials are manufactured for his own use and used within a 24-hour period at the same site." ATF should expand this exception to cover marking requirements as well.

Positive Identification of Nonpermittees [new 555.126(b)(2)]

ATF proposes to eliminate the option of distributing explosives to a nonpermittee that "is known to me" as indicated on form 5400.4. Proof of identification must be provided by the nonpermittee and noted on the form 5400.4. This proposal is moot because implementation of the Safe Explosives Act prohibits any purchases by nonpermittees after May 24, 2003.

Export Documentation [new 555.129(b) and (c)]

ATF proposes to require exporters of explosive materials to make the following documents available to ATF for inspection:

1. a copy of the export license, and
2. proof of exportation, and
 - a. a certificate of lading executed by a Customs officer of the foreign country to which the explosive materials are exported; or
 - b. a sworn statement of the foreign consignee covering the receipt of the explosive materials; or
 - c. the return receipt, or a reproduced copy thereof, signed by the addressee or his agent, where the shipment of explosive materials was made by insured or registered parcel post.

ATF claims this requirement is needed "to prevent diversion activities." However, ATF does not discuss any identified incidences of diversion activities underlying its proposal. Nor does ATF elaborate on the number of diversion activities it estimates will be prevented by this proposal. IME maintains that the FEL does not give ATF requisite authority over exports, and that ATF has no statutory authority to promulgate regulations in this area. With regard to exports, Congress has clearly charged the Department of Commerce to prevent diversion of commercial explosives and the Department of State to prevent diversion of military explosives. Diversion provisions are already contained in the regulations of those departments.

IME assumes that ATF refers in the NPRM to an "export license" obtained pursuant to the Export Administration Regulations (EAR) in 555.129(b). Because the vast majority of commercial explosive exports do not require an export license under the EAR, compliance with this provision would be impossible. Also, requiring exporters to obtain one of the three documents listed in 555.129(b)(1)(2) or (3) (a, b, or c above) is an unreasonable burden and is not one normally required under the EAR.³⁰ ATF does not require this sort of documentation for domestic deliveries of explosives and has not demonstrated the need for, nor the regulatory jurisdiction necessary to require such documentation for export. The requirements for substantiating exports should be no different

³⁰ Such documentation is only required on highly controlled items under the EAR (such as components of weapons of mass destruction) and is not required for explosives exported under the EAR.

than those required for substantiating domestic distributions of explosives (i.e., the requirements of 555.124(c)). Proof of export documentation, in that it is related to the disposition of the explosive materials, is the only document ATF should require.

ATF should not promulgate new 555.129(b) and (c).

IME Bullet Resistance

IME supports ATF's proposal to adopt IME's bullet resistance standard of ¼ inch steel plate and three inches of hardwood or the equivalents as specified in IME standards.³¹ ATF proposes to give licensees and permittees one year after the date of publication of the final rule to make the changes to Type 1 magazines. Type 2 magazines would need to meet IME standards by January 29, 2004. ATF should explain why it is proposing different effective dates for Type 1 and Type 2 magazines.

½-inch Padlock Shackles

ATF proposes to require that all padlock shackles be ½-inches in diameter. ATF asks commenters to address the physical viability, the benefit to security, and estimated cost of implementation of the proposal.

As justification, ATF states in the NPRM that 3/8-inch shackles are “insufficient to prevent cutting the shackle”; ½ inch shackles provide “added security”; and “in a significant number of explosives thefts, access was gained to the explosives by cutting the padlock.” Such broad statements alone are not persuasive arguments for requiring an increase in the diameter of padlock shackles. Certainly ATF does not mean to suggest that a ½-inch shackle cannot be cut.

The commercial explosives industry uses hoods, a recognized safety and security standard, to protect locks from being cut or pried. In fact, ATF regulations state that padlocks must be protected by hoods “so as to *prevent* sawing or lever action on the locks.”³² In the “significant number of explosives thefts” where access was gained to the explosives by cutting the padlock, IME is curious as to what role the hood played. If there is a problem, perhaps it lies with construction of hoods rather than the type of padlock. IME is concerned that because padlocks with ½-inch shackles are significantly larger than those with 3/8-inch shackles, hoods for the larger locks would allow easier access to the hardware with cutting or prying tools. In essence, a hooded padlock with a ½-inch shackle may actually be less secure than a hooded padlock with a 3/8-inch shackle.

ATF should provide more data in support of its proposal to show there is a problem. For example, the latest ATF data on thefts (1993-1997) show that 26 percent of the time (average of 20 per year); the “method of entry” to a magazine is from “locks cut or pried.” However, during the same period, the “method of entry” was “other/unknown” 62 percent of the time. ATF should address this huge proportion of other/unknown “method of entry” events before proposing a regulatory requirement that may not be relevant to the majority of identified theft incidents.

Rather than arbitrarily increase the minimum shackle diameter of padlocks, ATF should adopt by reference a comprehensive performance standard such as the American Society for Testing and Materials' F 883-97, Standard Performance Specification for Padlocks. Using shackle diameter as

³¹ SLP-1, Construction Guide for Storage Magazines, August, 1993.

³² 30 CFR 555.207(a)(9), 555.208(a)(3), 555.210(a)(4)(v), and 555.211(a)(4)(v).

the sole criteria for measuring a padlock's physical strength ignores a host of other defeat mechanisms. In fact, the width of the padlock case is generally the most critical single element to a padlock's ability to resist defeat.³³

ATF should adopt by reference a minimum of grade "F4" as specified in F 883-97 Forcing Tests for all padlocks used to secure explosives in magazines. This would ensure a level of protection to not only cutting the shackle, but also against:

- pulling the shackle from the body,
- striking the padlock with a weight,
- pulling the plug out of the body, and
- twisting the plug out of the body.

IME believes that specifying a minimum grade of "F4" in Forcing Tests from F 883-97 would provide more protection against forced entry than ATF's current standard.

Federal law directs agencies and bureaus to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical.³⁴ If an agency or bureau makes such a determination, the agency or bureau must transmit to OMB an explanation of the reasons for using such government-unique standards.

Exposure of Sparking Materials [new 555.208(a)(2)(ii), new 555.208(b)(2)(iii), 555.208(c), 555.209, and 555.210(b)(2)]

ATF proposes to insert the same language regarding sparking materials that is currently described for Type 1 magazines into the sections on Type 2, 3, and 4 magazines. Generally, this would require no exposure of sparking materials in addition to the current requirement that these types of magazines be lined with nonsparking materials. As justification, ATF cites a "reduced chance of a sparking hazard." ATF should provide accident data showing that a hazard exists, and that this hazard requires these changes. ATF should define the term "sparking material."

Along with IME's comments in the section on IME's suggestions, ATF should consider that the vast majority of explosives are stored in containers and packages that prevent sparks from contacting the explosives themselves. Credit should be given to the protection afforded by these containers and packages and frictional spark protection should only be required where there exists a demonstrated need.

This proposed regulation imposes an undue burden and unnecessary restriction on law-abiding explosives licensees and users and will result in a proliferation of new nuisance citations. The proposal in the NPRM will have no impact on safety and is regressive in nature.

ATF should not promulgate additional burdens regarding sparking materials.

Immobilization of Vehicular Type 4 and 5 Magazines [555.210(a)(1) and 555.211(a)(1)]

IME supports ATF's proposal to allow steering wheel locking devices for immobilization of Type 4 magazines, if attended. IME supports the position to allow steering wheel locking devices for

³³ ASTM F 883-97, Standard Performance Specification for Padlocks, Section X1.6, page 9.

³⁴ National Technology Transfer and Advancement Act of 1995, P.L. 104-113, sec. 12(d) and OMB Circular A-119 (Feb. 18, 1998)

immobilization of Type 5 magazines and if unattended, secured (but not necessarily by a fence and locked gate) and inspected every 72-hours. This will mean some variances for this activity, commonly known as preloading, will no longer be needed.

IME disagrees with ATF's claim that the proposed requirements for preloading Type 5 magazines are consistent with ATF variances granted for this activity. The requirement for a fence is not consistent with variances obtained by IME members for this activity. IME opposes this requirement on the grounds that ATF does not require a fence for any other type of storage and a higher standard for Type 5 vehicular magazines cannot be justified.

ATF should not require a fence around unattended Type 5 magazines. ATF should define "attendance" as being (1) on the vehicle, awake, and not in the sleeper berth, or (2) within 100 feet with an unobstructed view, or (3) in a fenced and guarded site.

Two Hooded Locks on Vehicular Type 5 Magazines [555.211(a)(4)]

ATF proposes to require two hooded locks on all Type 5 vehicular magazines, commonly called drop-trailers. Bins could be locked with one lock without a hood. ATF asks commenters to address the physical viability, the benefit to security, and estimated cost of implementing the proposal.

The proposal is viable for bins, but not for drop-trailers. ATF does not report theft data by type of magazine, but review of IME's explosive theft data shows that in most instances, Type 5 magazines are entered through the walls, floor, or roof. Thus, IME would be surprised if the proposal to require hoods would add much benefit to security because there are much more attractive potential entry points on a Type 5 vehicular magazine.

If promulgated as proposed, the regulation would require two ATF-specification hoods to be installed on the thousands of drop-trailers currently in service. IME estimates an average cost of \$2,000 per drop-trailer to add two hoods. IME estimates that about 5,000 such trailers are in service, this equates to a total cost of \$10,000,000.

Storage of Shock Tube with Detonators [555.213(b)(1)]

IME has made several requests of ATF to allow shock tube to be stored with detonators and supports this proposal. ATF should issue a ruling immediately on this issue because it arose not from a regulation, but from a Question & Answer in the 2000 edition of the ATF "Orange Book." There is no reason to delay the implementation of this provision until final promulgation of this rule.

Electrical Outlets [555.217(b)]

Current ATF regulations require that "switches" be located outside of the magazine. ATF proposes to expand this requirement by providing that electrical outlets and "devices containing switches" be located outside of the magazine. ATF provides no justification for proposing this new regulatory burden.

The NPRM does not indicate whether ATF has accident data showing incidents are caused by outlets or switches located inside a magazine. IME is unaware of any incidents of this nature. IME opposes this proposal because no additional hazard is created by electrical outlets and "devices containing

switches” located inside a magazine provided the National Electric Code is followed (which is required by ATF). IME is concerned that such a standard would hamper the installation of electronic break-in detection equipment in magazines. For example, switches that detect the opening of a magazine door must be located on the inside of the magazine. This would not be allowed by the proposed standard.

ATF should not promulgate this proposal. If ATF insists on making this change, it should define the term “devices containing switches.”

Elimination of the Low-Volume Highway Column in the ATD

Although not a specific regulatory proposal in the NPRM, ATF states in the preamble that it is considering eliminating the column for highways with less than 3,000 vehicles per day in 555.218, the ATD. ATF is concerned that this column “allows a diminished level of protection to travelers on smaller highways than is afforded travelers on highways with greater traffic volume” and that population growth can lead to noncompliance.

IME is adamantly opposed to this proposal.

Risk assessment calculations prove that the low-volume highway column in the ATD provides an adequate level of protection to occupants of vehicles. On average, the unbarricaded low-volume highway column in the ATD provides eight percent more distance than that called for by using a DoD standard.³⁵ For protection of “public traffic routes”, DoD recommends using the formula, D equals K times W to the one-third power, where D is distance in feet, K is a constant (24 for “public traffic routes”), and W is the weight of explosives in pounds. A constant of 24 will limit overpressure at D from a detonation of W to about 2.3 pounds per square inch (psi), the DoD standard for protection of “public traffic routes.”

In essence, the low-volume highway column provides an adequate level of protection to occupants of vehicles, while the high-volume column is ultra-conservative. Overpressure will be well below 1.0 psi at the distances specified in the high-volume highway column. Deletion of the low-volume highway column will eliminate the incentive for licensees and permittees to locate their magazines away from high-volume highways. In the interest of public safety and security, ATF should encourage persons to locate their magazines away from high-volume highways.

Unlike buildings, highways involve transient exposure of people to risk. The intent of the ATD in relation to highways is to limit overall risk to the public, not to limit the risk to any one individual. Therefore, it is entirely acceptable to provide less protection to a traveler on low-volume highways if that risk is below acceptable limits. Concern over a diminished level of protection to a traveler on smaller highways is inconsistent with the standards of safety and security recognized in the explosives industry.

We do not support these proposed changes to IME copyrighted material. Accordingly, promulgation of the proposed change by ATF would be considered by IME to be an unlawful infringement of its copyright in the ATD. It is IME’s established practice to authorize the inclusion of the ATD in governmental regulations or other publications only where the ATD is produced in its entirety and

³⁵ DoD Ammunition and Explosives Safety Standards, August, 1997, DoD 6055.9 STD.

without modification to the Table's form or content. We would welcome the opportunity to discuss this issue with ATF directly.

ATF should not promulgate this proposal.

Compliance with Federal Administrative Requirements for Rulemaking

Executive Order 12866

ATF has determined that this NPRM is not a significant regulatory action and therefore, a Regulatory Assessment is not required. Executive Order (EO) 12866 defines a significant regulatory action as one that would have an impact of \$100 million or more.

The attached table summarizes IME's estimate of the significant costs of the NPRM to the commercial explosives industry.

This estimated cost of over \$2 billion clearly shows that the NPRM would have a significant impact. Even if the proposed elimination of the low-volume table in the ATD were not included, the estimated costs of this NPRM to the commercial explosives industry alone would be about \$259 million, still considerably above the \$100 million threshold recognized in EO 12866.

ATF should conduct a Regulatory Assessment of the NPRM.

Regulatory Flexibility Act (RFA)

ATF certifies that this NPRM will not have a "significant economic impact" on a "substantial number of small businesses." ATF bases this certification on "the lack of response we received to the RFA analysis set forth in T.D. ATF-293 and comments received on Notice No. 845." The basis of ATF's certification is extremely weak since this NPRM is very different than Notice No. 845. None of the proposals outlined in the attached table were mentioned T.D. ATF-293 or Notice No. 845, which dealt only with fireworks. ATF's certification based on T.D. ATF-293 or Notice No. 845 is without justification.

The vast majority of businesses in the commercial explosives industry are small businesses and the cost to small businesses of this NPRM would be very close to the total costs estimated at over \$2 billion. Thus, the NPRM will have a significant economic impact on a substantial number of small entities and ATF should conduct a regulatory flexibility analysis.

Paperwork Reduction Act (PRA)

ATF believes there are three information collections affected by this NPRM. As pointed out in the section on regulatory proposals above, IME believes that as many as four additional information collections are introduced or modified by the NPRM and not addressed in the discussion of PRA compliance. In review, those information collections are:

1. Renewal of Licenses or Permits [555.46(a)],
2. Computerized Record Keeping [555.121],
3. Inventory Records [555.122(a), 555.123(a), 555.124(a), and 555.125(a)], and

4. Recording the Date of Use of Explosives [555.122(c)(1), 555.123(c)(1), and 555.124(c)(1)].

Following are comments on the necessity, accuracy of the estimated burden, and ways to improve the information collections addressed by ATF in the NPRM.

- Retention of Variances [555.22(c)]. This information collection is not necessary for the performance of ATF's duties. It is very difficult to estimate the accuracy of the burden of this requirement since it hinges on how often ATF might ask licensees and permittees to submit copies of their variances. There is no need for ATF to conduct the information collection as proposed because it can simply retain file copies of variances when issued and review them as needed.
- Notifying ATF of Changes to Magazines [555.63]. ATF should provide more justification for the need to be notified prior to the relocation of a magazine rather than afterwards as it is now. ATF estimated that there will be 1,281 reports of changes to magazines annually caused by 555.63, each taking the respondent an average of 6 minutes to make the report. IME has no way of verifying the accuracy of ATF's estimate of the number of reports made annually. However, IME believes that ATF has significantly underestimated the time needed to make the report. Although six minutes may be enough time to communicate the move to ATF, there will be considerable time needed to plan the move, and this is not considered. IME estimates that at least eight hours will be spent submitting this information collection each time.
- Export Documentation [new 555.129(b) and (c)]. ATF should provide more justification for the additional burdens proposed. ATF's only justification for this action is "to prevent diversion activities." The brevity of this justification does not allow IME to determine why ATF feels this action is necessary for the performance of its duties and leaves IME unable to suggest alternatives.

IME has no way of verifying the accuracy of ATF's estimate of the number of reports made annually. However, IME believes that ATF has significantly underestimated the time needed to make the report. Although two minutes may be enough time to file the documents once obtained, there will be considerable time needed to obtain the documents, and this is not considered. Assuming the proposal requiring an export license is dropped; IME estimates that at least eight hours will be necessary to respond to this information collection. In addition, IME questions ATF's authority to collect this information, as well as the efficacy of its collection given that the export area already is adequately regulated by the Commerce and State Departments. Some of the documentation required by ATF to be filed and made available on demand does not exist or would be extremely difficult to obtain.

We are uncertain that ATF appreciates the importance of this rulemaking to IME and the regulated explosives community. We made every effort to review the NPRM with expediency but with the careful consideration that such a comprehensive rulemaking warrants.

IME was founded in 1913 to, among other things, set industry standards, work with government agencies to protect the public, and reduce accidents. The IME and ATF have a long history of cooperation dating back to the inception of the 1970 FEL. In those same traditions, IME hopes that these comments can lead to not just more, but better regulations.

If you have any questions regarding these comments, please contact me at (202) 429-9280 or ldsantis@ime.org.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lon Santis".

Lon Santis,
Manager of Technical Services

Attachments

Economic Impact of NPRM on Commercial Explosives Operations

Proposed Change	Sites Impacted	Cost per Site	Cost
Definition of “Highway” and “Inhabited building”	600 ³⁶	\$50,000 ³⁷	\$30,000,000
Q/D and Temporary Storage	10,000 ³⁸	\$5,000 ³⁹	\$50,000,000*
Notifying ATF of the Relocation of a Magazine	1,300 ⁴⁰	\$310 ⁴¹	\$403,000*
Export Documentation	5,000 ⁴²	\$197 ⁴³	\$983,000*
IME Bullet Resistance	25,000 ⁴⁴	\$2,500 ⁴⁵	\$62,500,000
½-inch Padlock Shackles	50,000 ⁴⁶	\$200 ⁴⁷	\$10,000,000
Hood modifications for ½-inch Padlock Shackles	37,500 ⁴⁸	\$2,000 ⁴⁹	\$75,000,000
Exposure of Nonsparking Materials	30,000 ⁵⁰	\$500 ⁵¹	\$15,000,000
Immobilization of Vehicular Type 4 and 5 Magazines	400 ⁵²	\$10,000 ⁵³	\$4,000,000
Two Hooded Locks on Vehicular Type 5 Magazines	5,000 ⁵⁴	\$2,000 ⁵⁵	\$10,000,000
Electrical Outlets	500 ⁵⁶	\$2,000 ⁵⁷	\$1,000,000
Eliminate the Low-Volume Highway Column in ATD	37,500 ⁵⁸	\$50,000	\$1,875,000,000
Total Cost in the First Year			\$2,133,886,000

*Recurring annual co

³⁶ IME estimates that 600 magazines are located on shared sites that would have to be relocated.

³⁷ IME estimates that the average total cost to move a magazine would be \$50,000. These costs include finding and acquiring an additional site, constructing the new magazine, and physically moving the explosives. These costs do not include the impact to daily operations such as additional time and mileage needed to reach the magazine.

³⁸ IME estimates that 10,000 Type 3 magazines could not comply with Q/D standards.

³⁹ IME estimates that increased transportation costs caused by the loss of a Type 3 magazine would average \$5,000.

⁴⁰ ATF estimate.

⁴¹ IME estimates that, on average, a technical specialist will need to spend eight hours in determining the proper location for a magazine in advance of informing ATF. Total hourly compensation for “professional specialty and technical” occupations in mining, construction and manufacturing from Employer Costs For Employee Compensation— December 2002, Published by the U.S. Department of Labor, Bureau of Labor Statistics and downloaded from <http://www.bls.gov/news.release/pdf/ecec.pdf> on May 15, 2003, page 15 is \$38.75.

⁴² IME estimates there are at least 5,000 exports annually, not 1,000 as estimated by ATF.

⁴³ IME believes it will take a transportation specialist eight hours to obtain and file one of the documents required by proposed 555.129(b)(1)(2) or (3). Total hourly compensation for “transportation and material moving” occupations in mining, construction and manufacturing from Employer Costs For Employee Compensation— December 2002, Published by the U.S. Department of Labor, Bureau of Labor Statistics and downloaded from <http://www.bls.gov/news.release/pdf/ecec.pdf> on May 15, 2003, page 15 is \$24.58.

⁴⁴ IME estimates that there are 25,000 commercial explosive magazines would need modified to meet new bullet resistance requirements.

⁴⁵ IME estimates that the average total cost of this retrofit to be \$2,500. This includes manpower, materials, and temporary storage of the explosives while the repairs are made.

⁴⁶ IME estimates there are 10,000 commercial explosive operations with an average of 5 magazines in service each and that none of them have padlocks with ½-inch diameter shackles.

⁴⁷ IME estimates that 2 padlocks with ½-inch diameter shackles cost \$75 each and 1.25 hours of technical specialist time will be needed in ordering new locks, installing the new locks, and retiring the old locks.

⁴⁸ IME estimates that 75 percent of commercial explosive magazines mentioned in Footnote 46 will need hood modifications to accommodate padlocks with ½-inch shackles.

⁴⁹ IME estimates that the average total cost of modifying two hoods to be \$2,000. This includes manpower, materials, and temporary storage of the explosives while the installation is made.

⁵⁰ IME estimates that there are 30,000 commercial Type 2, 3, and 4 magazines in service.

⁵¹ IME estimates that the average total cost of compliance to be \$500. This includes inspection, manpower, materials, and temporary storage of the explosives while the retrofits are made.

⁵² IME estimates that 400 sites would need to install fences to comply with preloading regulations.

⁵³ IME estimates that it will cost an average of \$10,000 to install fences around preloaded vehicles.

⁵⁴ IME estimates that its members have 4,000 Type 5 magazines in service and nonmembers have 1,000 in service. All would need two hoods installed.

⁵⁵ IME estimates that the average total cost of installing two hoods to be \$2,000. This includes manpower, materials, and temporary storage of the explosives while the installation is made.

⁵⁶ IME estimates that 1 percent of the magazines mentioned in Footnote 46 have outlets or “devices containing switches” in them.

⁵⁷ IME estimates that the average total cost of removing outlets and “devices containing switches” from inside a magazine and reinstalling them outside to be \$2,000. This includes manpower, materials, and temporary storage of the explosives while the installation is made.

⁵⁸ IME estimates that at least 75 percent of the magazines mentioned in Footnote 30 are limited in quantity by their proximity to a low-volume highway. All of these magazines would be relocated, or new magazines would have to be added, since their quantity would be reduced by over a factor of ten.

Institute of Makers of Explosives

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5/30/2007

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