

May 3, 2010

Desk Officer, DHS/TSA  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Washington, DC 20503

RE: OMB Control Number 1652-0036, Corporate Security Review<sup>1</sup>

Dear Sir or Madam:

On behalf of the Institute of Makers of Explosives (IME), I am submitting comments on the request by the Transportation Security Administration (TSA) to extend a current collection that involves the assessment of security practices used in the motor carrier industry.

Interest of the IME

The IME is a non-profit association founded to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. The IME represents U.S. manufacturers and distributors of commercial explosive materials and oxidizers as well as companies providing related services. These products are used in every state of the Union and are distributed worldwide. The majority of these movements are accomplished by truck.

There is not a segment of our economy that does not use these materials – from energy, manufacturing, construction, defense, transportation, to entertainment, medicine, and agriculture. Commercial explosives are the backbone of our industrial society. As such, our industry has been identified as a component of the nation’s critical infrastructure. We actively participate in both the Chemical Sector Coordinating Council and the Highway/Motor Carrier Sector Coordinating Council.

Comments

We have been following TSA’s ICR renewal request to collect information from Corporate Security Reviews (CSR). In this context, we are aware of comments submitted by the American Trucking Associations (ATA) and the American Bus Association (ABA) requesting that TSA better coordinate its CSR program with that of the Federal Motor Carrier Safety Administration’s (FMCSA) Security Contact Review (SCR) inspections.<sup>2</sup> We would like to use this opportunity to endorse these comments, and to lend additional argument to the merit of the ATA/ABA recommendations.

TSA responded to the ATA/ABA comments stating that, while TSA has a goal to avoid duplication, “overlap with other federal agencies is inevitable [since] there will always be ... overlap between safety and

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<sup>1</sup> 75 FR 21012, (April 22, 2010).

<sup>2</sup> ATA/ABA letter to TSA, August 14, 2009.

security.”<sup>3</sup> This theory of inevitability may explain why there appears to be no substantive change to the agency’s latest ICR notice. However, OMB should note that the coordination we are endorsing is not an overlap between safety and security, but an overlap of security initiatives.

ATA/ABA are correct in their assessment of the security overlaps between TSA and FMCSA when it comes to hazardous materials. FMCSA implements the Hazardous Materials Safety Permit (HMSP). When FMCSA implemented that congressionally-mandated HMSP, the agency stated that the program produced both safety and security benefits. According to FMCSA, the increased security from the HMSP reduces the chance these materials could be used in a terrorist attack.

FMCSA is not the only DOT agency that has security requirements. The Pipeline and Hazardous Materials Safety Administration (PHMSA) also imposed security requirements on carriers and shippers. PHMSA’s security requirements include security planning and training. Duplication of effort exists between TSA and PHMSA as well when these issues are investigated.<sup>4</sup>

Clearly, there is a cost both to the government and to companies who are involved in multiple inspections. Despite the thousands of motor carriers that are registered to transport hazardous materials, one IME member reported receiving an inspection by PHMSA and six months later one by TSA. Both inspections involved two individuals from each agency and four or more company personnel who answered questions and obtained information. The PHMSA inspection lasted two days, the TSA inspection four hours. In 2005, another member reported participating in pilot joint inspection with TSA, FMCSA and the Commercial Vehicle Safety Alliance. While it appears to the regulated community that this joint effort has been abandoned, even if all agencies involved in these types of inspections and audits would share information and coordinate visits, the result would be a more efficient, less costly exercise for all.

In this current request, TSA does not even guesstimate a cost burden despite estimating that annually 400 respondents will spend 1,200 hours annual to meet with TSA investigators. Although “voluntary,” companies will often feel compelled to participate.<sup>5</sup> The perception that an audit, voluntary or otherwise, does not financially impact a business is troubling. There is no merit to TSA’s assertion that there is no cost burden from these inspections.<sup>6</sup>

### Conclusion

We are not opposed to security compliance inspections. However, the significant overlap between federal agencies does not produce a measurable security dividend. We do believe that government and industry resources would be better used if TSA and FMCSA/PHMSA inspections were coordinated.

Your attention to our concerns and recommendations is appreciated.

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<sup>3</sup> TSA letter to ATA/ABA, November 6, 2009.

<sup>4</sup> Although PHMSA has had regulations for security planning and training in place since 2003, TSA’s solution to the overlap is to use its scarce resources to issue its own rules with no other goal than “to supersede the PHMSA security plan and security training requirements.” (Training Initiative for Highway Transportation of Highway Security Sensitive Materials, TSA, August 20, 2009.)

<sup>5</sup> A decision not to participate may well lead to a referral to PHMSA or FMCSA to investigate under their regulatory authority.

<sup>6</sup> In an earlier iteration of this ICR, TSA estimated “the total annual cost burden to respondents is \$30,000.” (74 FR 9620 (March 5, 2009).) Even this is a gross underaccounting given the agency’s expectation of 3-hour reviews and input from 590 respondents.

Respectfully,

A handwritten signature in black ink, appearing to read "Cynthia Hilton". The signature is written in a cursive style with a prominent dot above the letter 'i'.

Cynthia Hilton  
Executive Vice President