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*The safety and security institute of the commercial explosives industry since 1913*

May 11, 2011

Office of Management and Budget  
Attention: Desk Officer for PHMSA  
725 – 17<sup>th</sup> St., NW  
Washington, DC 20503

RE: OMB Control No: 2137-0557<sup>1</sup>

Dear Sir or Madam:

On behalf of the Institute of Makers of Explosives (IME), I am submitting comments on the Pipeline and Hazardous Materials Safety Administration's (PHMSA) revised information collection request (ICR) pertaining to approvals for hazardous materials which was received by the Office of Management and Budget (OMB) on January 20, 2011.

#### Interest of the IME

The Institute of Makers of Explosives (IME) is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. IME represents U.S. manufacturers and distributors of commercial explosive materials and oxidizers as well as other companies that provide related services. The majority of IME members are "small businesses" as determined by the U.S. Small Business Administration.

IME members manufacture and transport the vast majority of explosive articles that, as a result of new final rules, must successfully pass the so-called "Type 6(d) test" in order to maintain a Division 1.4S classification. Only those Division 1.4 products with a compatibility classification of "S" may be transported by passenger aircraft.

#### Background

PHMSA's new Type 6(d) testing requirements stem from recommendations of the United Nations Subcommittee of Experts on the Transport of Dangerous Goods.<sup>2</sup> As such, it was necessary that PHMSA adopt the new test and procedures so that U.S. businesses can continue to supply the world market with these products.<sup>3</sup> At the same time, it is incumbent on PHMSA

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<sup>1</sup> ICR Ref. No. 201012-2137-002.

<sup>2</sup> UN Manual of Tests and Criteria, 5<sup>th</sup> revised edition.

<sup>3</sup> PHMSA-2009-0126 (HM-215K), Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, 76 FR 3308 (January 19, 2011).

to assess the burden of these new requirements and to seek ways to minimize the burden of the collection on respondents.<sup>4</sup>

As a result of the Type 6(d) test requirements, new burdens were imposed on manufacturers of eight Division 1.4 explosive articles.<sup>5</sup> First, all affected explosive articles with a current Division 1.4S classification had to either pass the Type 6(d) test or be reclassified to a compatibility group other than “S” that does not allow for transport on passenger aircraft. Second, manufacturers of new explosives articles with the eight affected UN numbers would need to seek a classification from PHMSA that included the Type 6(d) test if the products would eventually be offered for transport by passenger air.

### Comments

In its final rule implementing the new UN rules, PHMSA estimated that annually four (4) percent or 465 of the total 10,723 respondents to this ICR would be affected by this regulatory change. Further, the agency estimates that the burden of the new requirement is five (5) hours per response. Using an average hourly wage of approximately \$25, PHMSA estimates that the annual increase in the burden to process all approval applicants is only \$58,125.<sup>6</sup> We find these burden estimates to fall far short of actual costs to the regulated community for the following reasons:

- According to PHMSA there are currently 2,247 such articles affected by the new U.N. rules.<sup>7</sup> Even if the agency’s estimate is prospective, meaning that it expects to annually receive applications for 465 new Division 1.4S explosive article classifications, the burden estimate does not account for the 2,247 currently affected articles.
- PHMSA’s simplest analysis to estimate the burden of the new requirements based, apparently, on staff time to submit an application to PHMSA with the new testing data, is wholly inadequate. Based on testing experience to date, the cost of compliance is currently \$2,600 per article, over 20 times the \$125 estimate of the agency.
- Based on our calculations of existing affected approvals, the cost of these requirements would be \$5,842,200. If the agency was correct that, on average, 465 new applications are submitted, the annual cost to industry would be \$1,290,000, not \$58,125.

Given these costs, PHMSA should be eager to set up procedures minimize the burden of the new Type 6(d) test on affected U.S. businesses. We have two suggestions.

First, PHMSA should ensure that any classification approval issued for a covered explosive article that has passed the Type 6(d) test be notated that the approval is based on successful

<sup>4</sup> Paperwork Reduction Act.

<sup>5</sup> UN0323, UN0366, UN0441, UN0445, UN0455, UN0456, UN0460 and UN0500.

<sup>6</sup> Supporting Statement, Approvals for Hazardous Materials, OMB Control No. 2137-0557, Office of the Chief Information Officer, DOT, pages 6-7.

<sup>7</sup> Source: <http://prod-web1.phmsa.dot.gov/hazmat/regsp-a/approvals/serach>, May 9, 2011, 1:30pm EDT.

completion of the 6(d) test. Since classification approvals do not expire, such approvals for Division 1.4S explosives articles that were issued prior to the imposition of the new Type 6(d) test may still be in use. It is important that any Division 1.4S classification approval based on the Type 6(d) test have that fact affirmed on the approval so that our global trading partners know that the classification is compliant with the latest U.N. requirements.<sup>8</sup>

Second, PHMSA should continue the practice of issuing “family” classification approvals. Regulations require that new explosives receive a classification approval before they are offered for transport. Prior to issuing the approval, the regulations require that explosives be examined and tested by a laboratory approved by PHMSA. The testing criteria are based on standards recognized worldwide, and typically cost tens of thousands of dollars. The expense of this rigorous testing, both in terms of product sacrificed as well as the costs of the tests, is borne by the applicant. Given that the testing is difficult and time consuming, explosive products are often grouped into “families” when the size of the products, not design characteristics or explosive specifications, differs. Testing is performed on the largest product within the family and all other products in the family receive the classification of that largest product. When the process is followed, there is no evidence of misclassification of explosive products. Family approvals provide a safe, efficient means for industry to comply with the costly and time-consuming explosives approval requirements and have been used safely for more than two decades. Yet, without any evidence of abuse or risk to public safety, PHMSA has announced that it is relooking at the merit of family approvals, and has asked some applicants to break up long-standing family groups. This only adds to the costs and burdens on both the applicant and the agency to prepare and process additional applications.

### Conclusion

The current ICR for OMB Control No. 2137-0557 is due to expire June 30, 2011. We urge OMB to use the opportunity presented by the agency’s request to renew this ICR to direct PHMSA to ensure that classification approvals based on the Type 6(d) test be notated to that effect, and that PHMSA continue to recognize family approvals that are not part-number specific. At minimum, the costs of the new Type 6(d) testing requirements should be amended to better align with real world experience.

Respectfully,

*Cynthia Hilton*

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<sup>8</sup> We understand that PHMSA is making these notations on Division 1.4S classification approvals if requested by the approval holder. PHMSA should be making the Type 6(d) test affirmation as a matter of course.