



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

October 12, 2006

Docket Management System
U.S. Department of Transportation
Room PL- 402
400 Seventh Street, SW
Washington, DC 20590-0001

RE: HM-2151¹

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) notice of proposed rulemaking to amend the Hazardous Materials Regulations to maintain alignment with international standards.

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. 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.

Over 3.5 million metric tons of explosives are consumed annually in the United States, of which IME member companies produce over 98 percent of the high explosives and a great majority of the blasting agents and oxidizers. 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. The value of this indispensable industry to the economy is estimated at \$1 billion per year. As an export, the transportation of explosives contributes positively to our trade balance. The ability to transport and distribute these products safely and securely is critical to this industry.

¹ Docket PHMSA-06-25476, 71 FR 51894 (August 31, 2006).

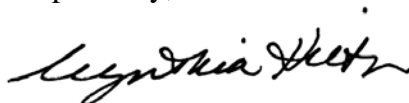
As noted above, IME's member companies benefit from international harmonization and generally support this rulemaking with one notable exception. The exception concerns the proposed automatic "sunset" provision in this notice.² PHMSA's goal appears to be aimed at facilitating the adoption of updated "more relevant or technically superior standards."³ Rather than facilitating this goal, we see this option as a compliance nightmare and as a deterrent to safety. The option signals that various provisions would have different sunsets. If the agency failed to take action on a provision subject to the sunset, the regulatory standard would revert to the prior standard in place before the sunset provision was added. In short, the "more relevant or technically superior standard" that sunsets would be replaced by an older less-relevant or technically superior standard. Tracking of provisions subject to various sunsets and training will soon become unmanageable.

PHMSA is currently in a substantial regulatory backlog of unaddressed congressional directives and NTSB recommendations, and open dockets, a number of which are designated as "significant." These open rulemakings do not take into account rulemaking petitions, which the agency has accepted but has not yet assigned to a specific rulemaking action. PHMSA has identified 66 such rulemaking petitions.⁴ The oldest dates to 1986. The sunset option, as described, would only worsen this situation.

PHMSA is already engaged in a 10-year regulatory review cycle mandated by section 610(a) of the Regulatory Flexibility Act.⁵ The benefit of the "610" exercise is that it is a forcing event to assess the relevance of current requirements, but if those requirements are adequate, it requires no additional action to retain them. The agency's goal to achieve more relevant or technically superior standards can be achieved through its on-going 610 review process.

We support the concept and practice of periodic regulatory review. We see no merit in an automatic sunset of regulatory requirements as proposed. We appreciate your attention to this comment.

Respectfully,



Cynthia Hilton
Executive Vice President

² 71 *FR* 51895 (August 31, 2006).

³ *Id.*

⁴ http://dms.dot.gov/reports/PHMSA_report.cfin, February 22, 2006.

⁵ 5 U.S.C. 601. Requires each agency to have a plan for the periodic review of its rules that have a significant economic impact on a substantial number of small entities.