

March 6, 2009

Office of Information and Regulatory Affairs
Records Management Center
Office of Management and Budget
Attn: Mabel Echols
Room 10102
NEOB
725 – 17th St., NW
Washington, DC 20503

RE: Executive Order on Federal Regulatory Review¹

Dear Ms. Echols:

On behalf of the Institute of Makers of Explosives (IME), I am submitting comments on the benefits of federal regulatory review by Office of Information and Regulatory Affairs (OIRA).

Interest of IME

The IME is the safety and security institute of the commercial explosives industry. Our mission is to work with government agencies to protect employees, users, the public and the environment through rules and regulations for the manufacture, transportation, storage, handling, use and disposal of explosive materials that 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. Our products are transported by every mode, in every state and worldwide. The explosives industry contributes to a positive balance of trade for the United States. Without these materials, the Nation's economic recovery would be that much harder.

Background

We have a long history of proactive attention to the safe and secure transportation of our products. Our industry is among the most closely regulated sectors of the economy. Business appreciates the certainty that is provided and protected by notice and comment rulemaking under the Administrative Procedure Act. The explosives industry, more than most, needs a

¹ 74 FR 8819 (February 26, 2009).

robust regulatory process that is risk-based, values innovation, builds flexibility into this highly regulated environment, and aims to facilitate, not stifle, commerce.

At the federal level, the products we manufacture and distribute are primarily regulated by the US Department of Transportation, the US Department of Homeland Security, the US Department of Commerce, the US Department of Labor, the US Department of Justice, and the Environmental Protection Agency. From time to time, we have taken advantage of the opportunity to carry our concerns or our support about various agency rulemakings to OIRA. OIRA is uniquely positioned to appreciate the collective impact of regulation as no single agency can do. OIRA review serves as the final checkpoint to ensure that regulations, especially significant regulations, are justified in light of administrative priorities, budgetary constraints, and other societal tradeoffs, and that rules have been coordinated government-wide to avoid gaps and overlaps. OIRA review is not an anti-regulatory process. With this background, we offer the following comments.

Comments & Recommendations

- OIRA Relationships

The notice asks for recommendations governing the relationship between OIRA and the agencies. In our experience, OIRA has always informed and invited affected agencies to join us every time we have requested or participated in a meeting with OIRA on a regulatory matter. Whether the relationship between OIRA and the agencies is cooperative or adversarial may depend on the rulemaking being considered. What is important, however, is that an established process is followed that allows all stakeholders an opportunity to participate.

- Public Participation

The notice asks for recommendations about disclosure and transparency of OIRA activities and about ways to encourage public participation. In our experience, OIRA has made public record of meetings we have participated in and the topic of the conversation. We have never been denied an opportunity to present issues to OIRA. We believe that we exercise our current prerogative to meet with OIRA judiciously, and only after we have fully participated in the regulatory process of the agency whose rule is under consideration. For the process to be open and fair, public disclosure of these meetings must continue. The OIRA Webpage² has been a great source of information about the status of rulemakings and when they are under review by the office. We are also very supportive of OIRA's on-line posting of the semi-annual regulatory agenda of the federal government and the continued identification of significant rules. Additionally, we support the role that OIRA plays in support of the Small Business Regulatory Enforcement Fairness Act. It is important that OIRA continue to provide opportunity for public input on rules it is reviewing. In deference to OIRA staff that may be overwhelmed by requests for meetings, we think it is reasonable to limit access to those who have participated in the public comment process of the agency whose rule is under review.

² <http://www.reginfo.gov/public/do/eoPackageMain>

- Cost-benefit Analysis and Other Distributional Considerations

The notice asks for recommendations about the role of cost-benefit analysis and other distributional considerations. In general, all policy options have societal trade-offs. Cost-benefit analysis is a way to capture and express such trade-offs in terms that should allow a common frame of reference for rulemaking government-wide. While we believe cost-benefit analysis is critical to evaluating competing options, we believe there needs to be more transparency in how cost-benefit analyses are developed. For example, various agencies use different values for a human life. We question whether this is appropriate. As another example, we often see information collection requests which only report estimated regulatory burdens attributed to completing a government form. Rarely does the regulatory burden look at the costs of collecting the information to be reported or the cost of retaining the record. As these examples show, we would be open to building more accountability into the cost-benefit process. We would not, however, favor efforts to eliminate cost-benefit analysis as a rational way to look at regulatory options.

Some costs of a regulation may not be quantifiable because they involve market inefficiencies that cause service to be avoided, and thus not counted. An example may be credentialing requirements that vary from location to location or activity to activity. The transactional costs of obtaining the multiple credentials may cause some to avoid locations or markets. Cost-benefit analysis may not be the best or only tool to capture these disincentives. Yet, clearly market inefficiencies affect communities and businesses that are not or inefficiently served, and collectively they are a drag on the economy. OIRA should be able to look for such regulatory impacts.

- Undue Delay

The notice asks for recommendations to ensure that regulatory review does not produce undue delay. OIRA has established timeframes in which to review rulemakings. In our experience, sometimes these deadlines are not adhered to, and sometimes rulemakings are expedited. We have found OIRA staff to be responsive when we have needed rules expedited. It must also be acknowledged that sometimes delay can be attributed to the agencies whose rules are being reviewed, especially when rules are returned by OIRA for additional consideration or justification.

- Tools to Achieving Public Goals

The notice asks for recommendations about the best tools for achieving public goals through the regulatory process. Again, we want to emphasize that OIRA review is not an anti-regulatory process. Over the years, how OIRA handles rulemakings has become more, not less transparent. We appreciate the information OIRA posts on-line. We encourage this type of disclosure. One recommendation would be to allow tracking of rulemakings on the OIRA Website by agency docket number as well as the RIN. Another recommendation would be to reinstate OIRA's ability to review guidance documents. Some agencies have skirted notice and

comment rulemaking through “guidance” documents. In 2007, Executive Order (E.O.) 13422 directed agencies to submit guidance documents to OIRA for review. This E.O. was a source of criticism for several reasons and President Obama revoked it earlier this year. While aspects of the E.O. may have overreached, we believe OIRA should be able to review guidance documents that have regulatory effect.

Conclusion

We applaud President Obama’s commitment to openness, transparency and accountability in the way rulemaking is conducted. We believe OIRA performs a necessary and key role in meeting these goals as a final arbiter of the regulatory process. We appreciate the opportunity to submit these comments and recommendations.

Respectfully,

A handwritten signature in black ink, appearing to read "Cynthia Hilton". The signature is written in a cursive, flowing style.

Cynthia Hilton
Executive Vice President