

*Statement of*

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President  
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*before the*

House Government Reform Committee  
Subcommittee on National Security, Emerging Threats and International Relations

*concerning*

Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities

August 2, 2004

Mr. Chairman and Members of the Subcommittee:

I am Christopher Ronay, President of the Institute of Makers of Explosives commonly referred to as the IME.

The IME represents the U.S. manufacturers of industrial high explosives and other companies that distribute explosives or provide related services. Over 2.5 million metric tons of industrial explosives are consumed annually in the United States. Of this, IME member companies produce over 98 percent of the high explosives and the great majority of the blasting agents and oxidizers. These products are used in every state of the Union and are distributed worldwide. The value of this essential commodity is estimated in excess of \$1 billion annually. The ability to manufacture, transport and distribute these products safely and securely is critical to this industry.

Industrial explosives are essential to mining, quarrying, construction, demolition, petroleum production and natural resource exploration. They are the backbone of our industrial society. Metals, minerals, petroleum, electricity, construction activities and

materials, and consumer products are available today because commercial explosives make them possible.

The IME is the safety and security institute serving the commercial explosives industry and the government for over 90 years. 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. This is not a trade association. The Institute is prohibited by its bylaws from engaging in any activity that is marketing or sales related.

The history of IME's involvement in the development of the federal explosives law dates back to 1913. Explosive industry best practices and recommendations are codified in our Safety Library Publications. These recommendations were developed over the years through scientific application of engineering principals and practical experience.

The first significant explosives security legislation of the century was the Organized Crime Control Act of 1971. It was modeled after our industry's best practices, which were embodied in the IME's recommendations. This Act was also the enabling legislation for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Ever since that time, the IME has worked closely with the ATF as well as many other federal, state and local agencies in the development of uniform and realistic rules to govern the safe and secure handling of industrial explosives.

Immediately following the horrific events of September 11<sup>th</sup>, 2001, the IME developed the attached "Enhanced Security Measures" in recognition of the need to step up vigilance due to increased terrorist threats to America. One of the most significant recommendations was for government-administered background checks and security clearances for those who not only direct explosive operations but also those who handle explosives.

Throughout the post 9/11 period, the IME has endorsed and disseminated the security advisories and recommendations issued by various federal agencies, including the Department of Transportation (DOT), the Department of Homeland Security (DHS) and the ATF.

The Institute actively participates in DHS's National Critical Infrastructure Protection Program through the Chemical Sector Council. IME member security representatives are kept advised of DHS advisories and notices as appropriate.

We continually encourage and provide enhanced security training at industry forums and national and regional blasting seminars. The IME participates in the safety and security work of other standard setting organizations like the American National Standards Institute, National Fire Protection Association, International Code Council and the United Nations.

The Institute promotes advancements in technology that allow the explosives industry to operate in a safer and more secure manner, and in this regard we have endorsed and participated in the development of explosive detection technologies for more than 30 years. It is a testament to the self-regulating nature of the explosives industry that it conscientiously continues to be one of the safest and most secure hazardous material enterprises in America.

This self-regulation has been fostered by liability and insurability concerns as well as a most genuine concern for the safety and security of the people, property and businesses involved in the manufacture, transportation, storage and use of our products. The recommendations of the industry have been embodied in our Safety Library Publications since 1914 and cover all aspects of industry operations.

This industry has always taken security very seriously and supports the development of appropriate measures to safeguard our operations. By any standard, the commercial

explosives industry was already one of the most highly regulated businesses in America at the time of 9/11. The IME has always supported this high level of regulation. We have worked closely with Congress and federal agencies in the development of enhancements to the federal explosives law.

Most recently, we were instrumental in strengthening the language of this statute, which resulted in the Safe Explosives Act of 2002 (SEA) - the most comprehensive legislation affecting the explosives industry since the Organized Crime Control Act of 1971. Over the last thirty years prior to enactment, the Institute had expressed concern about the shortcomings of federal law which exempted intrastate purchasers of explosives from federal permit requirements. The reasons for our concern were that state regulation of intrastate purchasers was inconsistent and sometimes lacking, and that ATF data showed that persons without federal permits accounted for nearly half of all explosives thefts reported to the Bureau.<sup>1</sup> IME has always held that all purchasers of explosives should be required to obtain a federal permit and meet all safety and security conditions necessary to obtain such permit. At our urging, the SEA closed the long-standing loophole exempting in-state purchasers of explosives from the requirement to obtain an ATF permit.

The SEA, however, created other issues when it provided a “limited permit” option for intrastate purchasers. Of particular relevance to this hearing, ATF is required to conduct a physical inspection of applicants for “user permits” or renewals prior to obtaining a user permit to ensure that storage requirements are being met. Once a user permit is issued, ATF may conduct repeat inspections without prior cause. However, the SEA allows ATF to issue limited permits without a prior inspection. In addition, a physical inspection of a limited permittee is only allowed once every three years. As contrasted to other regulated entities, ATF is effectively prohibited from inspecting limited permittees without a search warrant.

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<sup>1</sup> This statistic together with the fact that ATF routinely recovers more explosives than are reported stolen suggests that an even higher percentage of thefts resulted from non-permittees inasmuch as they were not required to keep inventory records nor were they subject to ATF inspections unless a search warrant was obtained. On the other hand, ATF licensees and permittees are routinely audited for inventory discrepancies.

As noted earlier, the IME's Enhanced Security Measures recommend background checks for all explosives handlers. In 2002, the SEA provided for, and IME supported, background checks for all explosives handlers and company directors that set explosives policy.

In addition to the contribution our best practices have made to federal explosives law, our recommendations have also been embedded in the many federal regulations in existence today. Many, including those regarding the storage of explosive materials, are enforced by the ATF.

The IME has recommended for many years that all industrial explosives moved in commerce in the United States bear manufacturers' identification markings for safety and security reasons. ATF emphasizes that the lack of such markings inhibits law enforcement from tracing explosives to their source. However, the regulations omit a similar requirement that imported products bear these markings. Four years ago, IME petitioned the ATF to require the same identification markings on imported high explosives as for domestically manufactured explosives.

When ATF issued a rulemaking on this matter last year, a different marking scheme was proposed for imports than that in effect for domestic manufacturers. Among other things, the proposed rule would allow foreign manufactured explosives into the commerce of the Nation for 24 hours before markings would be required. It is our belief, that for the most part, the only persons who would take advantage of this loophole to apply marks after clearing customs would be those with no intention to mark these materials. Congress has joined us in this concern. Earlier this year, the leadership of the House and Senate Judiciary Committees urged the Department of Justice to take prompt action to close the loophole by using the same marks as required of domestic manufacturers. Most recently, Senator Herb Kohl (D-WI), who along with Senators Orrin Hatch (R-UT), Mike DeWine (R-OH), and Dianne Feinstein (D-CA) introduced S. 2563 to require that this loophole be closed within six months. IME strongly supports this bill and recommends it for your consideration and endorsement. In the meantime, thousands of metric tons of high

explosives have been imported into the United States without identification markings necessary for tracing.

Another area of concern, which I believe will be of interest to the Subcommittee, is the potential proliferation of explosives storage sites in America. Explosives storage sites must be set-back a safe distance from “inhabited buildings,” and historically, the government has accepted IME’s definition to exclude those buildings which are occupied in connection with explosives operations. This definition has been adopted by all commercial regulating and standard setting entities in the United States. The exclusion allows multiple entities to collectively store explosives at one shared facility, thereby more effectively securing the site and consolidating the inspection procedure.

Today, the ATF is contemplating a regulation that would require these shared sites to separate into numerous smaller locations based on the ownership or control of the explosive operation by changing the definition of “inhabited building” to include all buildings not operated by the same entity.<sup>2</sup> Such a policy would diminish redundant security controls typical at shared facilities and compound industry compliance and agency enforcement obligations. Such regulation is contrary to the best practices of the industry.

While the IME “Enhanced Security Measures” of 2001 addressed security background checks, facility and transportation security, the restriction of public information about movements of explosives and the exact locations and status of storage facilities; which at the time were above and beyond the current requirements - this was only the beginning.

The IME is developing a 30-page set of comprehensive recommendations regarding the security of all operations involving explosive materials. It is anticipated that these recommendations will be published in the Fall of this year. This document is intended to address security in routine daily operations as well as measures applicable to elevated security threat conditions. It includes vulnerability assessment methods and security plan

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<sup>2</sup> Docket 2000R-9P, Reference # 968, 68 FR 4406 (January 29, 2003).

development. While companies involved in explosives operations have long conducted vulnerability assessments and developed security plans, this document will provide guidelines for a performance-based approach to these efforts and will codify the industry recommendations in this regard.

Another significant initiative is our development of a quantitative risk assessment tool for the enhanced management of storage facilities and other explosives operations. It is intended that this tool have a component addressing escalating security threat levels as well as normal activity and is modeled after risk assessment tools used by the armed forces.

I would like to make note of the safety and security materials produced by the IME. For more than 90 years, the Institute has produced countless materials promoting safety and the security of our products. We promote not only our Safety Library, but posters and training videos as part of our product stewardship program to encourage the safe and secure handling of industrial explosives.

A few years ago, the ATF joined us in the production of a video training program conveying the principals of safe and secure storage of industrial explosives. The result was the program titled: "Safe Storage of Explosive Materials," which has been used ever since in the education of industry and government employees.

With all of these activities under way, it is with some concern that we note the issuance of government inspection security checklists developed without the benefit of industry involvement. As the goals of these checklists closely mirror IME's, it would seem to be in the best interests of security and consistency to develop guidelines in partnership with the regulated community. Such unofficial checklists can be unevenly and inappropriately applied and will be perceived as mandatory. This is a circumvention of the regulatory process and results in uncertainty and confusion. It, in fact, raises fears of non-compliance in daily operations and places an undue burden on the industry.

Finally, I would like to emphasize that the IME's founding documents in 1913 set forth safety and security as a platform of the organization. Regulating entities have relied on us ever since as the most knowledgeable and competent source of information on which to base their explosives related regulations. We do not take that responsibility lightly, and strive to fulfill our part of the mandate set forth in the federal explosives law: The government "*shall take into consideration ... the standards of safety and security recognized in the explosives industry.*" It therefore stands to reason that any unilateral development of regulations or recommendations by the government leaves industry disenfranchised from the most serious responsibility of securing America.

I want to thank this Subcommittee for the opportunity to present the best practices of the industrial explosives industry as they relate to the storage of these essential products. Despite the fact that on September 11<sup>th</sup> terrorists used no explosives in their attacks on the United States, history shows that they will use explosives to further their ends. We praise the efforts of the Subcommittee to address the sensitive and important issues surrounding the storage of explosive materials.

This concludes my testimony. I would be pleased to answer any questions.