A EPO WHERE ART MEETS SCIENCE

THE ALLIANCE OF SPECIAL EFFECTS & PYROTECHNIC OPERATORS, INC.

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Wednesday, December 16, 2009

Peter Orszag
Director
Office of Management and Budget
1600 Pennsylvania Avenue NW
Washington, DC 20500

re: Docket No. PHMSA-06-25885 (HM-232F)

Dear Mr. Orszag,

We are writing on behalf of the board and membership of ASEPO, our non-profit, mutual benefit organization which represents the hard-working men and women who create special effects for stage and screen, to express our concerns regarding the potential impact of this notice of proposed rulemaking on motion picture and television production.

It has been requested that we express this impact in economic terms. Though our members are naturally experts on the economics of creating special effects, our organization's expertise does not extend to those of overall movie and TV production except in a very general and basic sense.

Given that this request was received on extremely short notice and that it falls during Hanukkah and shortly before the Christmas and New Year holidays, it was not possible despite our best efforts to engage the expertise of colleagues in the production field within the available timeframe who might have provided more detailed insight.

Nonetheless, as expressed in our previous comments of November 7, 2008 (attached) we strongly feel that the potential impact could be quite significant. In the absence of a more detailed analysis, which is difficult to achieve in any case given the unique and highly variable nature of the motion picture/television business, we have sought to quantify the possible economic impact as follows:

As stated previously, it is foreseeable that the implementation of the rule would tend to drive filming out of this country. Run-away production has been an on-going issue for many reasons and this would add another important incentive to film outside the U.S.

Filmmaking is a global business and one which values creative freedom highly. The ability to shoot what is necessary to tell a particular story on screen when and where it is most desirable is paramount in the minds of directors and producers. They will go where they perceive the production conditions to be most favorable.

For many decades, filmmakers have been accustomed to having a system which delivers the safe and spectacular special effects they want, quickly and reliably, at their disposal. If they perceive that they no longer have that here in the U.S., they will seek it elsewhere.

It is important to realize that many foreign governments offer substantial incentive to lure productions to their countries. While these commonly include tax rebates, co-financing and other similar measures, there are countries which provide facilitation, storage and transportation of explosives and in some cases even the explosives themselves free of charge to productions.

While it is unlikely to be the sole determining factor in deciding where a production will film, the availability of materials required for special effects (or lack thereof) could become decisive when added to the lower crew wages, previously mentioned economic incentives and other related factors and thus become the straw which breaks the proverbial camels back.

It is essential to consider that should a production decide to film outside the country at least in part for the previously stated reasons, the economic impact will be much more than just its special effects budget. When a production films outside the United States, the part of the total budget designated for physical production (i.e. all crew wages, set construction, wardrobe, facility and equipment rentals, meals, lodging, etc.) is almost entirely spent in the other country and in general, very little will be spent domestically or repatriated.

The individual economics of the different types of motion picture and television productions vary considerably and so does the part of the budget designated for physical production. To facilitate quantification, we are assuming that feature films would be primarily affected and that amongst those, mainly action movies would be most likely to use and depend on this type of special effect though it is worth noting that almost any production might at some time make use of them as they have in the past.

Again, to facilitate quantification we will focus on major, "big budget" action movies. While it is common for budgets to be considerably higher, we will assume for this purpose that such a production has an overall budget of circa $100,000,000. Of this, depending upon the exact nature of the production, $35,000,000 to $50,000,000 would usually be designated for physical production, the remainder being devoted to other expenses such as the screenplay, talent/"above the line" costs, post-production, prints and advertising, etc.

The number of such films produced in any given year naturally varies considerably as do the nature and degree to which they utilize any particular type of special effect. As a purely informal observation, in recent years it seems that there have been one to two dozen such major action films produced. Thus simply by multiplication one can see that the possible economic impact of having such films leave the United States for any reason could be said to be ranging from the tens of millions to in the worst case scenario, over a billion dollars.

Clearly the potential impact is substantive even before one takes into account the many smaller motion picture productions, episodic television, etc. which might also leave.

As we have stated previously, we are not suggesting that this single proposal in and of itself will directly and inevitably lead to a vast exodus of productions and the demise of American film, but simply that this and other regulatory changes have to be considered carefully and holistically with respect to their cumulative and long term effects.

A balance between over- and under-regulation has to be struck. We understand and acknowledge this as a well-intentioned attempt to protect public safety from the misuse of hazardous materials by, among others, terrorists.

However, particularly in the case of terrorism, the countervailing economic damage caused by implementation of overly broad regulations has to be considered because at either extreme, the aims of the terrorist to inflict harm are fulfilled.

We firmly believe that secure transportation of the Division 1.4 explosives and 4.1 desensitized explosives used for special effects has already been achieved under our present security measures.

Further regulatory change should only be proposed to correct specific, demonstrable deficiencies in existing practices, if any, and constructed in a balanced manner, with a view toward minimizing the collateral effects, including the potential economic harm.

This issue is a complex one that impacts many people's lives and cannot be successfully resolved in an arbitrary manner or on a "one-size-fits-all" basis. To be fair and effective, industry-, modal- and material-specific alternate means of protection and compliance must be examined.

In the same way that company and carrier security plans are mandated to be, the government's approach to improving our nation's security must be based on detailed, situation-specific risk analyses rather than general ones.

On behalf of our organization, we again thank all concerned for the opportunity to comment on this important issue. As one might expect, this letter does not represent the entirety of our comments and views on the issue of security in transportation, merely those which the previously mentioned constraints of time and our limited resources allowed us to put in writing at present.

We would like to continue to work with the government agencies involved and encourage them to contact us should they desire any further clarification or discussion of our position on these issues and other aspects of hazardous material transportation.

Sincerely,

Matt Sweeney
President

Chuck Hughes
Vice President