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August 19, 1993

Hand Deliver

FHWA Docket MC-92-4
Room 4232
Office of the Chief Counsel
Federal Highway Administration
400 Seventh Street, S.W.
Washington, D.C. 20690

FHWA-97-2180-44

Re: **FHWA Docket MC-92-4; Comments of the American Pyrotechnics Association**

Dear Sir or Madam:

The American Pyrotechnics Association (APA) submits the following comments concerning the Federal Highway Administration (FHWA) Notice of Proposed Rulemaking (NPRM) establishing the hazardous materials motor carrier safety permit program. 58 Fed. Reg. 33418 (June 17, 1993). As discussed more fully below, APA believes that the program is not warranted. The program will create unnecessary and burdensome paperwork requirements for our already struggling industry and will do little, if anything, to further enhance transportation safety. Additionally, APA is greatly concerned by the proposed implementation schedule for Class A and B explosives.

APA is the principal industry association representing manufacturers, importers and distributors of fireworks in the United States. APA currently has approximately 170 member companies, located both in the U.S. and overseas. The fireworks industry consists of display fireworks companies that transport UN 1.3G Explosives (formerly classified as Class B Explosives) and consumer fireworks companies that transport UN 1.4 Explosives (formerly Class C Explosives). Some of our members transport both 1.3 and 1.4 Explosives. The APA has a long-standing commitment to the safe transportation of fireworks. The APA continuously works with its members and the FHWA to ensure that all concerned have a complete understanding of the FHWA regulations and their impact on public safety.

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Our comments focus on the impact of the proposed safety permit program on display fireworks companies transporting UN 1.3G Explosives (Class B). We believe that the proposal presents unnecessary burdens for the display fireworks industry and provides no public safety benefits when applied to our industry. The fireworks industry is highly seasonal, with most transportation of display fireworks occurring within a twenty-day period surrounding the Fourth of July. Transporters must comply with all of the DOT regulations set forth under Title 49 Parts 390 - 397. Additionally, transporters of display fireworks, at present, must possess a Commercial Driver's License (CDL) and obtain a state hazmat endorsement.^{1/}

Transporters handling quantities of 1,000 pounds or more of display fireworks are generally manufacturers or specialty carriers with many years of experience in handling and transporting fireworks. The fireworks industry has an excellent transportation safety record. As evidence of this record, we have enclosed a DOT Report of Highway Incidents Involving fireworks during the twenty-year period 1971-1989. You will note that there was only **one** reported incident involving display fireworks (Salt Creek Freightways) resulting in only \$36 in damages. It is our understanding that the Pacific Intermountain Express incident involved theatrical effects, and the Three Coast Carriers incident involved U.S. Department of Defense explosives; neither incident involved display fireworks.

Since the implementation of the CDL requirements, DOT has issued another regulation that requires fireworks operators to be trained in the safe handling and transportation of fireworks. Docket HM-126F, 56 Fed. Reg. 20944 (May 15, 1992). APA embraced this regulation because HM-126F mandated training in areas relevant to the specific job performed. During the months of April and May, 1993, APA conducted six seminars across the U.S. to educate its members in the HM-126F training requirements. APA strongly believes that the proposed permit program will do nothing to enhance public safety beyond that which will be achieved through the HM-126F training.

Further, in July 1992, RSPA implemented a hazardous materials registration and fee assessment program. 57 Fed. Reg. 30620 (July 9, 1992). Fireworks companies offering 55 pounds or more of display fireworks for transportation must be registered and pay an annual registration fee. Many of our member companies are just beginning to feel the impact of the registration program as states have begun to establish their own registration programs

^{1/} APA filed a Petition for Waiver with FHWA under Title 49 CFR Part 383.7 (Petition No. 91-03) and a Request for Reconsideration on April 13, 1993. The Request for Reconsideration is still pending.

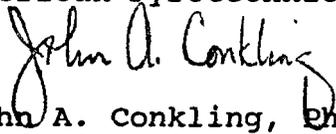
and fee assessments. APA is concerned that under the FHWA proposed rule, states will develop their own safety permit programs. If each of the fifty states develops its own program, industry will face duplicative permit requirements and unnecessary, burdensome paperwork. Thus, rather than enhancing safety, the proposed rule will cause mass industry confusion as companies attempt to comply with the varying permit requirements.

Finally, APA urges the Agency to delay the November 16, 1993, effective date for transporters of 1,000 pounds or more of Class A or Class B explosives. If FHWA does intend to review every transporter to ensure a satisfactory safety rating, the mandatory effective date will be impossible to comply with. At a minimum, a six month extension should be considered.

We appreciate the opportunity to provide our comments on the safety permit program proposed rule. If we can provide any additional information, please do not hesitate to contact me.,

Respectfully submitted,

American Pyrotechnics Association


John A. Conkling, Ph.D.
Executive Director

Enclosure

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HAZARDOUS MATERIALS INFORMATION SYSTEM
HAZARDOUS MATERIALS INFORMATION SYSTEM

HIGHWAY INCIDENTS INVOLVING FIREWORKS (COMMON, SPECIAL) -- 1971 - 1989

CARRIER	INCIDENT LOCATION	DATE	COMMODITY NAME	CLASS	MJ-INJ-MN	DEAD	RESULTS	DAMAGES	SHIPPER	SHIPMENT ORIGIN	MODE a & CONT-1	CONT-2	CAPACITY	SHIPD	FAILD	AMT	RELEASE	REPORT a
133 MAY MOTOR FRI	TULSA, OK	4/19/73	COMMON FIREWORKS	F. S.	0	0	0	\$45	DENVER, CO									
PACIFIC INTERM E	ERIE, PA	4/30/73	COMMON FIREWORKS	EXPL. C.	0	0	0	\$5000	RIVER GROVE, IL									
ACME SPECIALTY COR	ACME SPECIALTY COR			H-H	5	5	5	73050408A										
11 J v	LIMON, CO	12/11/73	COMMON FIREWORKS	EXPL. C.	0	0	0	\$100	COLORADO SPRINGS, CO									
SALT CREEK FREIGHTWAYS*	SHERIDAN, WY	6/17/74	FIREWORKS SPECIAL	EXP. B.	0	0	0	\$36	SIOUX FALLS, SD									
RICH EKOS 30	SHERIDAN, WY	6/17/74	FIREWORKS SPECIAL	H-H	0	0	0	\$36	SIOUX FALLS, SD									
ARKANSAS-BEST FREIGHT SYSTEM	MILWAUKEE, WI	10/10/77	FIREWORKS COMMON	EXPL. C.	0	0	0	\$30	FORT SMITH, VA									
HOLMES TRANSPORTATION INC	WHITE RIV JCT, VT	6/20/78	FIREWORKS COMMON	EXPL. C.	0	0	0	\$0	ST JOSEPH, MO									
SCHWEITZER FIREWORKS & O	WHITE RIV JCT, VT	6/20/78	FIREWORKS COMMON	EXPL. C.	0	0	0	\$0	ST JOSEPH, MO									
STONERAKER-BATON ROUGE IMP CO	HAMILTON, AL	11/ 6/78	FIREWORKS COMMON	EXPL. C.	0	0	0	79030582X	BATON ROUGE, LA									
PACIFIC INTERMOUNTAIN EXPRESS	SACRAMENTO, CA	6/10/79	FIREWORKS SPECIAL	EXPL. B.	0	0	0	\$10	SAN FERNANDO, CA									
DE LA MAKE ENGINEERING INC	SACRAMENTO, CA	6/10/79	FIREWORKS SPECIAL	EXPL. B.	0	0	0	\$10	SAN FERNANDO, CA									
THREE COAST CARRIERS INC	JEFFERSONVILLE, IN	4/28/89	FIREWORKS SPECIAL	EXPL. B.	0	0	0	\$13637	BLUE GRASS, KY									
U S GOVT - DOD	JEFFERSONVILLE, IN	4/28/89	FIREWORKS SPECIAL	EXPL. B.	0	0	0	\$13637	BLUE GRASS, KY									

THWA DOCKET MC-92-4-46
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4 RECORDS FOUND
9 INCIDENTS

	INCIDENTS	PERCENTAGE
	DUE TO VEHICULAR	DUE TO VEHICULAR
	TOTAL ACCIDENTS/DERAILMENTS	ACCIDENTS/DERAILMENTS
NUMBER OF INCIDENTS:	9	0.00
INJURIES		
MAJORS:	0	0.00
MINORS:	0	0.00
DEATHS:		
	0	0.00
TRAVELERS:		
	13,858	0.00
VACUATIONS:		
	0	0.00