

currently classed as Class B explosive to Class C explosive.

DATE: Comments must be received by February 14, 1985.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation Washington, D.C., 20590. Comments should identify the docket and be submitted, if possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C., 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Irving R. Abis, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C., 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION: On October 26, 1984, the United States Display Fireworks Association (USDFA) filed a petition for rulemaking under the provisions of 49 CFR § 106.31. The petition is published verbatim in this notice. MTB's publication of the USDFA's petition as an Advance Notice of Proposed Rulemaking does not constitute a decision by MTB to undertake a rulemaking action on the substance of the petition. This Advance Notice is issued solely to obtain comments on the merits of the petition from interested parties as one aspect of its decision on whether to proceed with rulemaking.

List of Subjects

49 CFR Part 172

Hazardous materials transportation. Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation. Packaging and containers.

Petition for Rulemaking Proposed by the United States Display Fireworks Association

I. Introduction

A. Preamble

As compared to fireworks used by the general public and display projectiles used for military purposes, special (or display) fireworks are most commonly used on the Fourth of July and at public events and are handled by professional pyrotechnic managers or semi-professional personnel. This is an industry that is characterized by small, family owned businesses, often dating back seven to ten generations to Italy.

These professional artisans developed public display pyrotechnics in the United States based on age-old technologies, practices and methods. The tools and materials of this industry segment have changed little over the last two hundred years. Nonetheless, the industry has, in the main, complied with the recent trends toward more government regulation and have done so willingly. Yet a point has come where federal regulations governing transportation of special fireworks products threaten the livelihood of businesses and degrade rather than promote certain attendant safety factors. Such demands of cost and time beyond what can be reasonably expected in the public interest often seriously hinder the quality of service to users and customers and threaten to drive these small companies further into unprofitability as well as to discourage new generations and new entrants of people into the field. One result of this trend is the importation of more foreign made fireworks products. In addition, more domestic manufacturers are having difficulty taking delivery on foreign and domestic materials needed to manufacture safe display pyrotechnics which have now become synonymous with the birthday of our country.

We respectfully ask that the Secretary of Transportation provide regulatory relief for this industry and heed its safety recommendations.

B. Purpose of Petition

In accordance with the provisions in Part 106 of 49 C.F.R. the U.S. Display Fireworks Association proposes a rulemaking for the establishment of amendments to the present rules contained in Parts 172.101-173.100. The purpose of the proposed rulemaking is to seek relief from regulatory over-classification of the transportation of display fireworks and to enhance safety in transporting products on public roads by differentiating between special and display fireworks and reclassifying display articles under Class C regulations.

C. Reason for Petition

The companies comprising the display fireworks industry make up a unique segment of the pyrotechnics industry. These mostly family owned, small businesses use long established artisan oriented techniques for producing and using special fireworks.

Because (sic) of federal regulations these companies can no longer ship products by means of air freight or rail. Now, however, enforcement of

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM-195]

Reclassification of Special Fireworks

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Notice solicits comment on the merits of a petition for rulemaking filed with the MTB proposing to reclassify certain fireworks

Department of Transportation regulations has effectively precluded economic shipment by common carrier trucks. Regulatory requirements caused by classification of display fireworks as Class B result in truck companies demanding a "mini-rate" charge which is economically prohibitive. Certain other regulations often make shipment, even by company owned vehicles, cost prohibitive because of required additional employees attendant in the trucks during stops where rural safe havens are not readily available. From a safety standpoint, required placards announcing "B-Explosive" flatly invite vehicle breakins and theft of fireworks which are then unsafely and improperly ignited (without a projection tube).

In summary, the reason for this petition is threefold: (1) make truck common carrier transportation economically available to the display fireworks industry; (2) make company vehicle transportation economic and time efficient; and (3) enhance safety by the elimination of placards entitled "B-Explosives".

D. Definitions

Display Fireworks: special fireworks that are not military in use and whose purpose is for typical, local display events which are prepared and activated by trained personnel

In this petition, special fireworks and display fireworks may be used interchangeably.

Company Operated Vehicle: a roadway vehicle owned or operated by the manufacturer or distributor of display fireworks who is not a contract transportation agent or a common carrier

Manufacturer: a domestic person or company who makes or modifies or sells or activates display fireworks articles

Distributor: a domestic person or company who sells or activates display fireworks

Foreign Display Fireworks: articles which are originally manufactured outside the United States and that are not modified or operationally enhanced by a domestic manufacturer

The Industry: the segment of the pyrotechnics and special fireworks industry in the United States that manufactures and distributes display fireworks

II Proposed Rulemaking

A. Amendment of Specific Sections

As experienced by manufacturers and distributors of display fireworks, Part 173.88(d) effectively constitutes an over-classification of display fireworks. In order to achieve relief from the

requirement that a motor vehicle "must be attended at all times by its driver or a qualified representative of the motor carrier that operates it", it is recommended that special fireworks, as defined in Part 173.88(d), be redefined so as to separate display fireworks articles from military projectiles (for which no relief is sought) by reclassifying display fireworks under Class C of Part 173.100 of 49 C.F.R.

This change also requires amending Part 172.101 to add to a listing of "Fireworks, display" so that Column 3 reads "Class C explosive", Column 4 reads "Explosive C", Column 5(a) reads "none", Column 5(b) reads "173.100", Column 6(a) reads "Forbidden: 6(b) reads "150" and Columns 7(a) and (b) read "1.2" with 7(c) reading "Passenger vessels in metal lockers only". Inclusion of display fireworks under Class C would apply to the transportation of display fireworks in vehicles operated by fireworks manufacturers and distributors, and by common carriers or contract carriage operators.

These amendments reclassify display fireworks as Class C but, as a result of Part 172.101, 6(a) prohibit the transport of such material by passenger carrying aircraft or railcar. This restriction is in industry recognition of the safety needs peculiar to those modes of transportation and to continue those overriding safety measures which should remain unmodified.

B. Assessment of Proposed Rulemaking

1. **Safety Considerations.** On February 16, 1984, the applicant provided a Statement of Safety Considerations For The Transportation of Class B, Special Fireworks (Appendix A) to, and at the request of, the Office of the Secretary. Other safety considerations are detailed as follows.

a. **Record:** The absence of any on-the-road accident involving explosion or ignition of special fireworks is clear demonstration that the industry is capable of exercising a high degree of safety in transporting its products. Obviously, this safety record demonstration is operational in nature and provides empirical evidence of safety over the period of time since DOT and other Federal agencies have been keeping data and records.

b. **Professional Managers and Technicians:** Because of the pyrotechnic nature of special fireworks, the personnel involved in transporting products in manufacturer and distributor operated vehicles are almost always trained, technical artisans. Rarely do industry members employ vehicle drivers only to haul products to customer sites. When common carriers

are involved in shipping special fireworks, packages are adjusted in size and weight so that such products can be transported without the presence of professional managers. Therefore, safety is enhanced by such professional personnel who are normally involved in special fireworks handling.

c. **Safety Comparison:** In comparing the transportation safety record of display fireworks and petroleum products (which are not required to have vehicle attendance at all times), the relative operational safety of display fireworks is generally greater. For example, a load of gasoline can immediately ignite upon contact of spark or flame. This is not particularly true of display fireworks. This comparison demonstrates and suggests an over-classification of display fireworks as Class B.

d. **Placard Related Safety:** The special fireworks industry is unfortunately plagued by breakin and robbery of company owned vehicles because of both placarding reading "B-Explosive" and company names that include the word "fireworks". Many companies have not used the name "fireworks" because of this reason.

By reclassification of display fireworks as Class C, placards announcing explosives will be eliminated which will further enhance safety by stopping theft and the unprofessional use of stolen fireworks.

2. **Indirect Considerations.** There have been occurrences (sic) where domestic, special fireworks manufacturers and distributors have found that federal transportation regulations have tended to restrict sale and delivery of products to customers in certain geographical areas. Therefore, there has been some tendency in the domestic industry in recent years not to market its products as widely and to the full array of domestic users it once did. This industry retreat is not unrelated to the problems and the often excessive costs of complying with Class B regulations which confront this particular industry.

At the same time, and not unrelated to adjustments in the marketplace, there has been a rise in the importation and use of foreign made display fireworks (sic) which typically are less safe than domestic products. For various reasons, unenhanced and unmodified foreign projectiles have tended to be sold directly (and without the benefit of modifications) to domestic users, many of whom once purchased from domestic sources.

Increasingly, there is a tendency for customers to buy more available, cheaper and unsafe foreign fireworks.

Foreign government subsidization of fireworks manufacturing and export and the fact that product liability is usually not enforceable and, finally, the use of less "lifting powder" all make foreign products cheaper to U.S. customers who often can not get timely and economical delivery of safe bona fide products from domestic manufacturers due to what becomes regulatory barriers. There is a demonstrable record of mishaps and unsafe operation of such foreign special fireworks, the latest of which was premature detonation of fireworks that occurred in the Washington metropolitan area on the Fourth of July, 1984. This information is offered because of the accompanying safety degradation that may be of significance to the Department.

3. *Regulatory Compliance.* It has been proven that it is difficult to comply with certain Class B regulations and still profitably and safely deliver special fireworks to users. For example, approximately two thirds of most transportation of display fireworks takes place in areas where no safe havens exist. Therefore, it often requires greater driving time and transportation logistics to safely transport products than if certain regulatory requirements for display fireworks did not exist. In some respects this increased "exposure time" degrades transportation safety.

4. *Regulatory Precedent.* The applicant believes that this petition is similar in nature to Docket HM-187, Amendment Numbers 172-92 and 173-175, a petition of the Sporting Arms and Ammunition Manufacturers Institute. DOT acted favorably on that petition for reasons such as successful transportation history and minimal hazard. We believe this rulemaking is a precedent which provides certain justification to grant the request under this petition.

5. *Operational Relief and Business Benefits.* The applicant has assessed the operational problems posed by the referenced regulations against what specific and minimal amendments are necessary to give relief from the encumbrances which are typically experienced from over-classification of display fireworks. Those amendments are specified in Section II, A of this petition. The following are real and operational relief and benefits which will result from amending regulations.

a. *Cost and Time:* An amendment under this petition will relieve the inflation of employee and operational time cost which have threatened the economic viability of the display fireworks industry and the probable success of its business future.

b. *Service to the Public:* The applicant states that its ability to safely serve the public would be significantly enhanced by the removal of display fireworks from Class B Hazardous Material Transportation Regulations thereby allowing both company and common carrier vehicles to deliver fireworks to the customer in less time and with less exposure to circumstances which pose safety hazards.

c. *Placards Regulations:* Removal of Class B placarding requirements through reclassification of display fireworks will enable the industry to more successfully avoid vehicle breakins and thus protect against illegal detonation of fireworks articles by thieves.

6. *Legislative History and Congressional intent.* The petitioner references the hearing record of S. 1933, The Federal Railroad Safety Act of 1969, as an example of the intent of Congress to provide relief as is recommended under this petition. Title III (Hazardous Materials Control) of the Act created a hazardous materials technical staff to oversee all transportation of dangerous materials. The Department of Transportation testified in these hearings on cost/benefit in which transportation of explosives is cited. The Department noted that "The regulations should minimize the hazard to the public, within the limits of economic feasibility." (Appendix B)¹

7. *Supportive Data.* An industry survey of the Association's eighty members confirmed the restrictive impact of current Class B regulations on the transportation of display fireworks. The forty-five responses to the survey establish a substantial assessment pattern. Federal regulations have brought changes in transporting display fireworks that render members unable to satisfactorily serve customers. Two-thirds of the companies do a significant portion of business in rural areas where there are no readily available safe havens. Although two-thirds of the companies are over twenty years old, no one has reported or ever known of a highway accident resulting in fire or explosion of display fireworks in transport. Members unanimously believe manufacturers and distributors, as well as common carriers, can safely transport display fireworks without the application of the regulatory requirements occasioned by classification under Class B Explosives

These professionals have historically shown their understanding transportation safety and their ability to self regulate transportation of products in the industry.

III. Conclusion

The applicant respectfully requests a rulemaking and approval of this petition based on Congressional intent, regulatory purpose, enhancement of safety in the public interest and the need to maintain economic integrity of the display fireworks industry.

Appendix A

1. *History*—There has never been accidental explosion of Class B fireworks during transportation—according to an informal survey of professionals in the Class B industry.

2. *Shipping Containerization*—All Class B products are packed tightly in lined, waterproof cartons and banded for safety purposes.

3. *Manufacturer Operated Vehicles*—All trucks are locked and have metal-lined exteriors and woodlined interiors.

4. *Ignition Safety Properties*—Class B products will only ignite by application of direct flame to ignition devices. Ignition will not occur from high temperature or impact alone.

5. *Transportation Safety Comparison*—It is commonly held by industry personnel that Class B products, in transit, are less subject to explosion than gasoline or petroleum products in transit.

(49 U.S.C. 1804, 1806; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 105)

Issued in Washington, D.C., on November 13, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

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¹ The petitioner cites the following document as Appendix B: Hearings on S. 1933, S.2915, and S. 3061 Before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 91st Cong., 1st Session, ser. 91-32 at 55 (1969). It is available for review in the docket file.