

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171 and 173**

[Docket No. HM-202; Notice No. 88-1]

Standard for Construction of Fireworks and Novelties; Approval for Transportation**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: RSPA proposes to simplify requirements in the Hazardous Materials Regulations (HMR) for approval of Class B and C fireworks and Class C novelties (a novelty being a device which produces limited visible or audible effects; e.g., toy smoke devices, trick noise makers). The proposal, based on a petition filed by the American Pyrotechnics Association, Inc. (APA), would eliminate the examination of certain fireworks and novelties prior to their approval for transportation by the Director, Office of Hazardous Materials Transportation (OHMT) and incorporate by reference APA's Standard 87-1, entitled "Standard for Construction and Approval for Transportation of Fireworks and Novelties." The intended effect of this action is to expedite the DOT approval process for fireworks and novelties, and to reduce paperwork and costs in processing applications for approval.

DATE: Comments must be received by April 4, 1988.

ADDRESS: Address comments to Dockets Unit, Office of Hazardous Materials Transportation (DHM-30), U.S. Department of Transportation, Washington, DC 20590. Comments should be submitted, when possible, in five copies and should identify the docket. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except public holidays.

FOR FURTHER INFORMATION CONTACT:

Christine E. Whitney, (202) 366-4514, Office hours are 7:30 a.m. to 4:00 p.m., Exemptions and Approvals Division; or

Hattie L. Mitchell, (202) 366-4488, Office hours are 8:00 a.m. to 4:30 p.m., Standards Division, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: RSPA has been petitioned by the American Pyrotechnics Association (APA) to amend the HMR to incorporate by reference APA Standard 87-1, "Standard for Construction and Approval for Transportation of Fireworks and Novelties" (September 1987). APA requested that the requirements for obtaining approval of certain Class B and C fireworks and Class C novelties be simplified by eliminating the need for the Bureau of Explosives (BOE) or the Bureau of Mines (BOM) to examine these devices if they conform with APA Standard 87-1. Except for explosives made by or under the direction or supervision of the Department of Energy or the Department of Defense and certain small arms ammunition, the HMR currently require that all new explosives, including fireworks and novelties, be examined by the BOE or the BOM prior to their being classed and approved by the Director, OHMT. In supplementary information submitted in support of the petition, APA stated, in part:

Most of the firms in the fireworks industry are very small businesses. The requested changes would therefore be especially beneficial, since they would greatly simplify the burden and expense of complying with the DOT regulations.

The DOT regulations presently require that all fireworks be examined by the Bureau of Explosives [BOE] or other laboratory acceptable to DOT for the proposed classification. The reports must then be submitted to DOT for approval and assignment of an EX Number. In many cases, firms have had to wait for several weeks for a report due to a heavy backlog of samples at the [BOE] Laboratory. Under the proposed procedure the paperwork and time involved would be eliminated in most cases because information sufficient to classify an item would be submitted directly to DOT. The chemical mixtures that would be involved have been in use for more than 50 years and their safety and stability are well known. A laboratory examination would still be required for potentially-unstable or new compositions.

In addition, there would be very significant financial benefits for this small industry. Currently, sample examinations by [BOE] each cost between \$90 and \$105. Based on the number of samples examined in the last three years, this would amount to a savings of more than \$400,000.00, if the proposed changes are promulgated.

ARA further stated:

Also, present regulations prohibit shipment of unclassified fireworks, including samples. It therefore becomes necessary to go through the additional step of obtaining a special authorization to even ship a sample to the laboratory for examination. This, of course, is in addition to the burden and expense of packaging and shipping the sample itself.

Obviously the requested changes would also reduce the regulatory paperwork required of DOT, and expedite the approval process. As stated in our original submission, these changes would in no way compromise the public safety because all current safeguards regarding transportation safety would remain unchanged.

APA Standard 87-1 contains detailed information on different types of fireworks and novelties, including definitions, descriptions, and drawings of the different devices. It contains descriptions of test procedures and acceptable test results to be used for evaluating the thermal stability of fireworks and novelties. It also outlines procedures for obtaining DOT approval and the applicable requirements in Parts 172 and 173 for offering the devices for transportation. Those paragraphs contained in APA Standard 87-1 that are applicable to the transportation of fireworks and novelties are marked with an asterisk. APA Standard 87-1 contains additional information that may alert manufacturers, importers and distributors to the existence of other Federal, state, and local agencies' requirements applicable to fireworks and novelties. RSPA has reviewed APA Standard 87-1 and believes that its adoption would enhance uniformity and safety in the construction and transportation of common and special fireworks and novelties. A copy of APA Standard 87-1 is available for review in the Dockets Unit.

RSPA agrees with the petitioner that it should not be necessary for each manufacturer to go through the examination process if the manufacturer produces fireworks and novelties of a chemical composition and construction identified in APA Standard 87-1. Within the past five years, RSPA has classed and approved over 5,000 fireworks and novelties, a number of which were identical or similar in chemical composition and construction. Requiring that these standard devices be repeatedly submitted for examination is costly and time-consuming for the fireworks industry. Furthermore, such examinations offer little or no additional safety benefits to the public. RSPA believes that adoption of APA Standard 87-1 would provide an equivalent level of safety for classifying and approving fireworks and novelties while significantly reducing the regulatory burden of the fireworks industry. Therefore, RSPA is proposing to incorporate APA Standard 87-1 by reference.

As proposed, the Director, OHMT would continue to approve finished fireworks and novelties, but an

examination by the BOE or the BOM would not be required if the devices conform with APA Standard 87-1, and the manufacturer certifies such compliance in his application. At his discretion, the Director, OHMT may require examination of a device if he has reason to believe that an examination is necessary; for example, when insufficient information has been submitted to support proper classification of a device or to determine its safety in transportation.

This proposed change would only apply to fireworks and novelties. The chemical mixtures identified in APA Standard 87-1 have been in use for more than 50 years and the safety and stability of these mixtures are well known. For other types of explosives, other than certain types of small arms ammunition, manufacturers would continue to submit each new explosive compound, mixture or device for examination and approval even though it may appear to be the same product as that submitted for examination and approval by another facility.

Review by Section

Section 171.7. APA's mailing address would be added under paragraph (c)(33), and APA Standard 87-1 would be incorporated by reference under paragraph (d)(29).

Section 171.8. A definition for "EX number" would be added. The EX number would be assigned by the Director, OHMT, and would be used to provide better identification of explosives.

Section 173.86. Requirements for approval of new explosives are contained in § 173.86. Paragraph (b) would be revised to indicate that there are exceptions to the requirement for examination of explosives and for clarity. The latest edition of the Explosives Hazard Classification Procedures contained in DOD TB 700-2 also would be referenced in paragraph (b).

New paragraph (j) would contain the requirements applicable to the examination of fireworks and novelties. Under these provisions, a manufacturer of a firework or novelty produced in conformance with APA Standard 87-1 may submit a written application to the Director, OHMT, containing the information outlined in the APA Standard. This information would include a detailed description of the device, including shape, size and a diagram showing location of the explosive components; the chemical composition, including a list of formulas; and the test results for thermal stability. The applicant would also indicate the

DOT hazard classification sought for the device. If the Director, OHMT, determines that an application contains adequate justification to support that a device is satisfactory for transportation, the applicant would be sent a letter of approval. At his discretion the Director, OHMT may require that a device be examined by the BOE or the BOM. Of course, for a device containing chemicals not addressed by APA Standard 87-1, the applicant would submit a report of examination by the BOE or BOM for each component contained within the device, as is presently required by § 173.86(b).

Also, a requirement that packages of fireworks and novelties be marked with the "EX number" assigned by the Director, OHMT, would be added under paragraphs (j)(1)(ii) and (j)(1)(iii). RSPA believes this notation will help to alert carriers transporting the devices and enforcement personnel that the devices being shipped have been approved for transportation under § 173.86. Because of the importance of such identification, not only for fireworks and novelties but for all explosives, RSPA plans to propose under a separate rulemaking action that the EX number be marked on all packages containing explosives and all shipping papers covering shipments of explosives. Many shippers are presently following this practice, even though it is not required in the HMR.

Sections 173.88 and 173.100. Various paragraphs in these sections would be removed or revised to eliminate unnecessary duplication with APA Standard 87-1. In § 173.88, paragraph (d) which contains a definition of Class B special fireworks would be revised to reference the definitions in APA Standard 87-1. A similar change would be made in § 173.100 (r) which defines Class C common fireworks. Paragraphs (t) and (x) of § 173.100 containing definitions of certain Class C novelties would be removed and reserved. Paragraph (u), in § 173.100, would be amended by removing the referenced to a "toy smoke device" which is a novelty covered in the standard.

Administrative Notices

Executive Order 12291

Based on limited information available concerning size and nature of entities likely to be affected, I certify that the proposed regulations will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. RSPA has further determined that this rulemaking (1) is not "major" under Executive Order 12291. (2) is not "significant" under DOT

Regulatory Policies and Procedures [42 FR 11034; February 26, 1979]; (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act [49 U.S.C. 4321 *et seq.*]. A regulatory evaluation is available for review in the docket.

Paperwork Reduction Act

Information collection requirements contained in the current § 173.86 pertaining to the approval of new approvals have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned control number, OMB No. 2137-0557.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR Parts 171 and 173 would be amended to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1.

2. In § 171.7, paragraphs (c)(33) and (d)(29) would be added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

(33) APA: American Pyrotechnics Association, P.O. Box 213, Chestertown, Maryland 21620.

(d) * * *

(29) APA Standard 87-1 is titled, "Standard for Construction and Approval for Transportation of Fireworks and Novelties", September 1987 edition.

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3. In § 171.8, a definition for "EX number" would be added, in alphabetical sequence, to read as follows:

§ 171.8 Definitions and abbreviations.

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"EX number" means a number, preceded by the prefix "EX-" which is

assigned by the Director, OHMT, to identify a new explosive.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. The authority citation for Part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

5. In § 173.86, paragraph (b) would be revised and paragraph (j) would be added to read as follows:

§ 173.86 New explosive definitions; approval and notification.

(b) Except as otherwise provided in this section, no person may offer a new explosive for transportation unless—

(1) It has been examined and assigned a recommended shipping description and hazard class by the Bureau of Explosives, Association of American Railroads or the Bureau of Mines, U.S. Department of Interior and has been classed and approved by the Director, OHMT;

(2) It has been examined, classed and approved by the U.S. Army Material Development and Readiness Command (DRCSF), Naval Sea Systems Command (NAVSEA 06H), or HQUSAF (IGD/SEV) when made by, or under the direction or supervision of, the DOD and tested in accordance with the Explosives Hazard Classification Procedures contained in DOD TB 700-2 (September 1982), (NAVSEAINST 8020.8 AFTO 11A-1-47, DSAR 8220.1) and has been accepted for filing by the Director, OHMT; or

(3) It has been examined, classed and approved by the U.S. Department of

Energy (DOE) when made by, or under the direction or supervision of, the DOE and tested in accordance with the Explosives Hazard Classification Procedures contained in DOD TB 700-2 (September 1982) and has been accepted for filing by the Director, OHMT.

(j) *Fireworks and novelties.* (1)

Notwithstanding the provisions of paragraph (b) of this section, Class B and C fireworks and Class C novelties may be classed and approved by the Director, OHMT, without examination by one of the agencies listed in paragraph (b)(1) of this section, and offered for transportation, if—

(i) The fireworks and novelties conform to the applicable requirements in APA Standard 87-1, entitled "Standard for the Construction and Approval for Transportation of Fireworks and Novelties" (which is incorporated by reference);

(ii) The manufacturer of the fireworks or novelties submits an application in conformance with the applicable requirements in APA Standard 87-1 to the Director, OHMT, who acknowledges, in writing, to the manufacturer that the fireworks or novelties have been classed, approved and assigned an EX number; and

(iii) Prior to being offered for transportation, each package containing the approved fireworks or novelties is marked with the EX number assigned to each approved material in the package, and no hazardous materials other than those identified by the EX number are in the package.

(2) At his discretion, the Director, OHMT may require that the fireworks or novelties be examined by an agency listed in paragraph (b)(1) of this section.

6. In § 173.86, paragraph (d) would be revised to read as follows:

§ 173.86 Definitions of Class B explosives.

(d) Special fireworks, see definitions found in APA Standard 87-1 (which is incorporated by reference).

7. In § 173.100, paragraphs (t) and (x) would be removed and reserved and paragraphs (r) and (u) would be revised to read as follows:

§ 173.100 Definition of Class C explosives.

(r) Common fireworks, see definitions found in APA Standard 87-1 (which is incorporated by reference).

(t) [Reserved]

(u) Toy propellant devices consist of small paper or composition tubes or containers containing a small charge of slow burning propellant powder. These devices must be so designed that they will neither burst nor produce external flame except through the nozzle on functioning. Ignition elements, if attached, must be of a design examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT.

(x) [Reserved]

Issued in Washington, DC, on February 8, 1988, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88-2994 Filed 2-11-88; 8:45 am]

BILLING CODE 4910-60-M