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November 10, 2014

U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Docket Operations
1200 New Jersey Avenue, SE
Washington, DC 20590

**Re: Docket Number PHMSA-2011-0143 (HM-253)
Notice of Proposed Rulemaking
Hazardous Materials: Reverse Logistics (RRR)**

Dear Sir or Madam:

The American Pyrotechnics Association (APA)¹ appreciates the opportunity to provide the following comments in response to the Pipeline and Hazardous Materials Safety Administration (PHMSA) Notice of Proposed Rulemaking (NRPM) regarding possible changes to the Hazardous Materials Regulations (HMR) concerning shipments in reverse logistics (RRR) that was published on August 11, 2014.²

Overview of Comments

The APA supports efforts by PHMSA to work with retailers and shippers regarding the reverse distribution of hazardous materials. Additionally, APA supports the safe transportation of all hazardous materials. In fact, safety is the number one priority of APA member companies. Conceptually the APA applauds the agency for including Division 1.4S and 1.4G fireworks within the scope of hazardous materials being considered under the reverse logistics proposal, and our comments will provide detailed information to the agency to ensure that such shipments offered in reverse logistics do not compromise safety, and in particular, the stellar transportation record of the fireworks industry.

Applicability

Reverse Logistics is a topic of great interest to many companies involved in the Consumer Fireworks business dealing with fireworks devices classified by the U.S. Department of Transportation (DOT) as Fireworks UN0336, 1.4G. There is a smaller quantity of pyrotechnic devices used for close proximity special effects by the entertainment industry, that are classified by DOT as Articles Pyrotechnic, UN0431, 1.4G, and UN0432, 1.4S, that are occasionally involved in Reverse Logistics as well. We will use the term “fireworks”

¹ The APA is the leading national safety and trade association of the fireworks industry representing manufacturers, importers, distributors, retailers, suppliers and professional display companies. The APA has over 240 member companies. Along with their subsidiaries, APA’s member companies are responsible for ninety (90) percent of the fireworks manufactured, imported, distributed and professionally displayed in the United States.

² 79 FR 46748 (August 11, 2014).

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in our comments to cover all of these materials. The APA is in solid agreement with PHMSA on the need for regulatory relief for both of these types of shipments in order to facilitate the safe return of these products to companies familiar with all of the transportation and storage requirements for the specific materials being transported. We are not proposing any regulatory relief under the Reverse Logistics rule for shipments of Fireworks classed as 1.3G or 1.1G by DOT.

Requirements for 1.4S and 1.4G Fireworks

PHMSA has granted several Special Permits (SPs) to APA member companies that are specifically related to the reverse logistics transportation of consumer fireworks products from retail sales locations back to company warehouses for restocking or possible subsequent disposal. All of these SPs, to our knowledge, require that the products be transported solely by private motor carrier, or dedicated motor carrier under exclusive use of the shipper, in order to obtain relief from some of the otherwise-applicable DOT requirements. Any shipments offered for transport by a common carrier must be made in full compliance with all applicable DOT regulations. The APA strongly supports the separation of requirements based on the type of carrier that is used.

Set forth below, is a summary of the requirements typically found in the SPs issued to consumer fireworks companies by the agency for reverse logistics transportation of 1.4G fireworks. Several additional suggestions have been added into these requirements by the APA. For simplicity, and to support our remaining comments, we have also included 1.4S in these procedural requirements:

General “Reverse Logistics” Procedures for 1.4G/1.4S Fireworks and Pyrotechnic Articles:

- i. Packaging Material
 - a. Division 1.4S and 1.4G fireworks are permitted to be returned from permanent or temporary retail outlets to distributors in sturdy, corrugated fiberboard packaging.
 - b. These packagings are not required to be tested and certified per DOT regulations (49 CFR Part 178).
- ii. Package Sealing
 - a. All packaging containing Division 1.4S and 1.4G fireworks for return to a distributor shall be securely sealed, and an orange 1.4S or 1.4G label shall be applied to each carton.
 - b. Cartons shall be secured on the transport vehicle to prevent shifting or damage to the cartons and their contents.
- iii. Non-Tested Packaging
 - a. All return shipments under the Reverse Logistics Rule that are made in non-tested packaging shall be made by private motor carrier.
 - b. Shipments of fireworks by common carrier are not eligible for relief under the Reverse Logistics rule, and shall be made in full compliance with all applicable DOT regulations, including the use of certified packaging.

- iv. Load and Packing Supervision
 - a. All handling and packaging of 1.4S and 1.4G fireworks for return to a distributor shall be done under the direct supervision of a person trained in conformance with 49 CFR Part 172.700, Subpart H.
- v. Driver Requirements
 - a. The driver of a motor vehicle containing 1.4S or 1.4G fireworks that are being returned to a distributor shall be licensed and trained in compliance with all applicable DOT and state regulations. For shipments by private motor carrier that consist of less than 1,000 pounds gross weight of fireworks product, a commercial driver's license and Hazmat endorsement are not required if the motor vehicle does not exceed 10,000 pounds GVWR.
- vi. Shipping Documents
 - a. Shipping papers shall be prepared for all shipments and transported with the 1.4S or 1.4G fireworks that are being returned. A detailed listing on the shipping papers of the specific fireworks products and their EX Numbers is not required; the number of cartons, gross weight, and hazard class of the fireworks is all that is required.
- vii. Placards
 - a. Motor vehicles transporting 1.4S or 1.4G fireworks that are being returned to a distributor shall be placarded as required by DOT regulations.
- viii. Training
 - a. All persons who offer or transport hazardous materials, including pyrotechnic articles and fireworks, shall be provided training in compliance with 49 CFR Part 172.700, Subpart H.
 - b. This training shall include safety awareness, security awareness, and "function specific" training.
 - c. Recordkeeping of training provided for temporary seasonal personnel employed for less than 30 days is not required.

The APA supports the inclusion of the above requirements in the reverse logistics requirements for Division 1.4S and 1.4G fireworks.

Quantity Limitations

One of our key concerns in the NPRM is that the agency is silent on establishing quantity limitations for 1.4S and 1.4G fireworks in reverse logistics. We believe it is critical for PHMSA to establish reasonable quantity thresholds that provide regulatory relief to companies engaged in reverse logistics transportation while at the same time, not compromising public safety in the event of an incident involving these materials. Accordingly, the APA recommends the following:

- For Division 1.4S and 1.4G fireworks offered for transportation by private motor carrier in securely-sealed, sturdy, corrugated fiberboard packaging, no quantity limit applies. The gross weight of any package shall not exceed 66 pounds (30 kilograms).
- If the quantity of these materials on the motor vehicle exceeds 1,000 pounds (gross weight), 1.4S or 1.4G placards (as applicable) must be applied to the vehicle, but no other requirements of the subchapter shall apply to the shipment.
- A document shall be prepared for the driver to carry in the motor vehicle explaining the shipment's regulatory status and placards, along with appropriate emergency response information.
- If the distance of the shipment exceeds 500 miles and the quantity exceeds 1,000 pounds (gross weight), the shipment becomes subject to all applicable requirements in the HMR.
- Transportation must be by private carrier or a dedicated motor carrier under exclusive use of the shipper.
- No other hazardous materials may be transported as cargo on the motor vehicle.

Conclusion

The APA appreciates the opportunity to provide information related to the inclusion of 1.4S and 1.4G fireworks in the agency's reverse logistics rulemaking. The APA and its members support PHMSA in its mission to protect the public and safety of our communities in which our industry operates. However, we believe PHMSA should establish appropriate threshold quantities for the reverse transportation of Division 1.4S and 1.4G fireworks and model such regulatory relief for these return shipments by private motor carrier, or dedicated carrier, by mirroring the provisions set forth within the current Special Permits issued to several of APA's member consumer fireworks companies. PHMSA has data available that demonstrates the safe transportation record of those shipments. Incorporating those requirements into the HMR will facilitate the safe transportation of post Fourth of July consumer fireworks returns from temporary locations to appropriate fireworks warehouses and distribution facilities. Moreover, incorporating the regulatory relief provided in the SPs into the Reverse Logistic regulatory requirements will be beneficial for all members of the fireworks industry handling Division 1.4S and 1.4G fireworks within the spirit of this rulemaking.

Please feel free to contact me if you have any questions regarding APA's comments.

Respectfully submitted,



Julie L. Heckman
Executive Director