

Mr. John W. Hill, Administrator
Federal Motor Carrier Safety Administration
400 7th Street, S.W.
Washington, D.C. 20590

RE: Petition for Rulemaking
Hazardous Materials Safety Permits
49 C.F.R. § 385, Subpart E

Dear Administrator Hill:

I am the president of the National Fireworks Association (NFA). The NFA is an association that represents 300 members. The NFA is dedicated to promoting compliance, security, and safety for its membership and the fireworks industry.

In the past two years we have experienced several members of our association going out of business due being over burden by regulatory requirements that have been directed to companies such as fireworks companies since September 11, 2001.

Rightly so, there was and still is need for changes to some regulations. However it appears that some of the new regulations simply were not given proper evaluation as to their need for additional security or safety, nor how they would directly affect industry.

Companies that have a zero safestat score with no crash rate, all SEA's below 75, and no safety management score within your agency's Motor Carrier Management Information System (MCMIS), are denied the issuance of a Hazardous Materials Safety Permit (HMSP) because they have had one Out of Service (OOS) in the Hazardous Materials Area. This is mainly due to a roadside officer deeming that due to any void, no matter how little, it would allow a box to move. In some instances even if the box did not move, when the officer put pressure on it attempting to get it to shift in either direction the company would still receive an OOS. Drivers have been told that even if the box didn't shift, since there is a void which could be sometime less than an inch, it could move if the vehicle is involved in an accident. I do not consider an accident normal transportation.

Most fireworks companies do not receive more than 1 to 4 inspections per year while some have never been inspected. It seems that it depends largely on the state or perhaps the location within a state, as to if the state officers are actively involved in inspecting our smaller vehicles.

The NFA board members have received and reviewed a petition that the International Society of Explosives Engineers (ISEE) submitted to you. The fireworks industry is being treated unfairly and feeling a tremendous negative impact under the present OOS requirements in order to be granted the HM Safety Permit to continue operating. It is impossible for our companies to receive enough inspections to offset a single HM OOS.

Some of our member companies have been advised by members of your staff to put fireworks in trucks and drive around trying to get enough good inspections to achieve getting below the 30% national average. We object to this approach and believe that this severely jeopardizes security for the sake of getting inspections.

The NFA agrees that companies should be required to maintain a Satisfactory Safety Rating in order to be granted the HMSP. We do not believe the requirement should be below the national average in OOS, when almost all companies do not receive many, if any inspections each year.

The NFA board hereby supports the petition submitted by the ISEE to abolish the requirement of companies to be below the national average of OOS in order to receive the HMSP and ask that you personally review and abandon that specific requirement of the regulation as it is forcing fireworks companies out of business daily.

Sincerely,

Kevin Lynch, President
National Fireworks Association