

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Part 173

[Docket No. HM-172B; Notice No. 84-12]

Cylinder Retester Identification
Procedures**AGENCY:** Materials Transportation
Bureau (MTB), Research and Special
Programs Administration, DOT.**ACTION:** Notice of proposed rulemaking.**SUMMARY:** MTB proposes to revise the
Hazardous Materials Regulations
(HMR): (1) To establish new procedures
under the periodic retesting of cylinders
which would require that cylinders be
marked with the cylinder retester's
identification number to provide means
for the identification of the retesters
who retested a particular cylinder, and
(2) to expand the functions performed by
approval agencies to include inspections
other than manufacturer related testing
specified under Part 178.**DATE:** Comments must be received no
later than January 3, 1985.**ADDRESSES:** Address comments to:
Dockets Branch, Materials
Transportation Bureau, U.S. Department
of Transportation, Washington, D.C.
20590. Comments should identify the
docket and notice number and be
submitted in five copies. Persons
wishing to receive confirmation of
receipt of their comments should include
a self-addressed stamped post card. The
Dockets Branch is located in Room 8428
of the Nassif Building, 400 Seventh
Street, SW., Washington, D.C. 20590.
Public dockets may be reviewed
between the hours of 8:30 a.m. and 5:00
p.m., Monday through Friday.**FOR FURTHER INFORMATION CONTACT:**
David E. Henry, Office of Hazardous
Materials Regulation, Research and
Special Programs Administration,
Washington, D.C. 20590, (202) 472-5982.**SUPPLEMENTARY INFORMATION:** On
August 17, 1978, MTB amended
§ 173.34(e)(1) to require, as pertinent
here, that:

Each person who represents that he
performs retesting [of cylinders] in
accordance with [paragraph (e)] must have a
retester's identification number issued by the
MTB or have a valid Bureau of Explosives
approval issued prior to August 17, 1978. Such

persons holding a B or E approval without a
termination date must obtain a retester's
identification number from MTB before
December 31, 1979. [Docket HM-163; 43 FR
36445; August 17, 1978.]

This action was part of an overall
program to withdraw all delegations of
authority previously made to the Bureau
of Explosives (B of E). At the time, MTB
believed that the cylinder retest
verification and approval functions
being performed by the B of E could be
performed by persons qualified as
independent inspection agencies as
provided in § 173.300a under the
direction of MTB. MTB believes the
soundness of its actions relative to
cylinder retesting have been
substantiated by the favorable
experience of the independent
inspection program since August 1978. It
is primarily this experience which is the
foundation of the proposals in this
notice.

To assure the continuity of the
cylinder oversight responsibility, MTB
developed procedures and requirements
for retesters to assure that cylinder
hydrostatic retesting would be
performed by qualified retesters. These
procedures and requirements are
available to prospective cylinder
retesters upon request from MTB.

The cylinder retest approval
procedures require a prospective
applicant to request, in writing, an
application form and a list of
participating independent inspection
agencies approved under § 173.300a. The
applicant must make arrangements to
have an independent inspection agency
perform an inspection of his cylinder
retest facility. Based upon a favorable
recommendation from the independent
agency, and other data demonstrating
that the applicant has capabilities in
both personnel and equipment to retest
cylinders, the applicant is issued a
cylinder retester identification number
by MTB. Each retester identification
number is valid for five-years.
Conditions contained in each document
granting a retester identification number
include the following:

- a. Limits on the types of cylinders that
may be retested.
- b. A requirement that testing must be
performed by or in the presence of a
designated hydrostatic test operator
whose performance has been witnessed
by the independent inspection agency,
or one who has been qualified in a
program acceptable to MTB.
- c. A requirement that a copy of the
document which grants the retester his
identification number must be
maintained adjacent to the testing
apparatus, and a copy of the document
must be signed by the facility manager

and returned to MTB within 20 days of
receipt by the facility.

d. A requirement that the retester
notify MTB within 20 days of any
change in management, equipment, or
designated testers.

Requirements for notification of
changes in management pertain only to
those management employees directly
responsible for supervision of the
retesting. Depending on the size and
organization of some companies, MTB
believes it may be advantageous for
some retesters to maintain a centralized
personnel listing of all testing personnel
throughout the company. Consequently,
in place of notification, a retester may
be permitted to maintain a current
listing, with qualifications, of each
person who conducts retesting by
making a written request and securing
written acceptance by MTB. Similarly,
notification of changes in equipment is
required only for replacement of a
component which would cause the
cylinder hydrostatic retest equipment to
be different from that observed and
recommended by the independent
inspection agency.

In addition, the retester is required to
request authorization from MTB to
retest cylinders other than those upon
which the inspector's report was based.

The above description of the current
retester qualification program is
intended to serve two purposes. First, it
is presented to offer notice that the
program exists and to explain its
operation, so as to avoid expanding the
already voluminous provisions of
§ 173.34(e) through codification of these
procedures therein. It should be noted
that a general recodification of § 173.34
is being developed by MTB, and this
action is consistent with that effort.
Secondly, it is necessary to describe the
current program and procedures in order
to provide a basis for the additional
requirements proposed below.

It is proposed to enable MTB to
specify certain special conditions in
addition to the standard conditions,
based on its review of the applicant's
retest program and the completed report
of the independent inspection agency. If
special conditions were specified, the
applicant would be given 20 days to
submit written comments on those
conditions to MTB. Pending a decision
by MTB on the applicant's request for
adjustments, the applicant could
proceed with its retesting program if it
complied with all conditions contained
in the issuance document, including
those special conditions being
challenged.

The other proposed new provision
{which would appear as an amendment

to § 173.34(e)) is that upon the successful completion of each retest, the retester would be required to stamp the cylinder with his identification number and the date of retest. MTB believes this proposal is important because it would identify the person who performed the test. The application of the retest markings could not adversely affect other required markings on the cylinder.

In proposing to adopt the procedures and requirements discussed above, and to give full effect to the program generally, it is necessary to propose a change to § 173.300a to reflect the fact that independent inspection agencies approved thereunder would be eligible to perform inspections in functional areas other than the currently stated limitation manufacturer's testing under Part 178. As proposed, an approved independent inspection agency could perform inspection functions as required by any provision in the Hazardous materials Regulations (49 CFR Parts 171-189) for which it has been qualified.

MTB requests that persons commenting on this notice include any information that they may have concerning the difficulties, and burdens experienced by currently authorized cylinder retesters in meeting the conditions of their registration. MTB also requests that any special problems concerning corporate organizations (i.e., centralized programs or decentralized programs) be brought to our attention.

a. *Non-Major Rule.* MTB has determined that this proposed regulation would not be a "major rule" under the terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034), nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

b. *Paperwork Reduction Act.* Information collection requirements contained in this regulation which pertain to the procedures that cylinder retesters must follow are not yet approved by OMB. The requests for OMB approval will be submitted in the near future.

c. *Impact on Small Entities.* Based on limited information available concerning size and nature of entities likely to be affected by this proposal, I certify that this proposal would not, if promulgated, have a significant economic impact on a substantial number of small entities because the overall economic impact of this proposal would be minimal. A regulatory evaluation and environmental assessment are available for review in the docket.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Part 173 would be amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. In § 173.34, the introductory text to paragraph (e), (e)(1), (e)(6) and Note 1 in paragraph (e)(9) would be revised to read as follows:

§ 173.34 Qualification, maintenance and use of cylinders.

(e) *Periodic retesting of cylinders.* Each cylinder that becomes due for periodic retest specified in the following table and exceptions, must be retested in conformance with the applicable requirements of this paragraph.

(1) This periodic retest must include a visual internal and external examination in accordance with CGA Pamphlet C-6, and a test by interior hydrostatic pressure in a water jacket or other apparatus of suitable form for determination of the expansion of the cylinder. The internal inspection may be omitted for cylinders of the type and in the service described under paragraphs (e) (9) and (10) of this section.

(i) No person may represent that he has retested a DOT specification cylinder under this section, by marking the cylinder with a test date or by any other means, unless that person holds a current retester's identification number issued by the MTB pursuant to that person's application and a recommendation from an independent inspection agency qualified under § 173.300a of this subchapter. Under its terms, a retester's identification number is valid for five years from the date of issuance, and may be renewed upon application and submitted at least 90 days prior to expiration of the current authorization in the manner of the original issuance. Application may be obtained upon request from the Office of Hazardous Materials Regulation, U.S. Department of Transportation, Washington, D.C. 20590.

(ii) The marking of a test date on a DOT specification cylinder is considered to be a certification by the person affixing the date that all applicable requirements of this section have been met with respect to that cylinder. The equipment used for retesting under this section must be maintained in the condition and the capabilities demonstrated by the retester in complying with the cylinder

retester's criteria approved by the Associate Director for HMR.

(iii) No cylinder required to be retested in accordance with this paragraph, or paragraphs (e) (9) or (10) of this section, may be used for the transportation of a hazardous material unless it has been retested successfully under this section, and the retester has marked the cylinder by stamping the cylinder retester identification number and date of retest plainly and permanently into the metal of the cylinder or on a metal plate which must be permanently secured to the cylinder.

(6) Each cylinder passing retest must be marked with the cylinder retester's identification number set in a square pattern between the month and year of the retest date, in not less than 1/8-inch characters with the first character occupying the upper left corner of the square pattern. The second character must be in the upper right position, the third in the lower right, and the fourth in the lower left. Example: A cylinder retested in May, 1984, and approved by a retester who has been issued identification number A123 would be stamped:

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      A 1
    5   84
      3 2
  
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Stamping must be in accordance with the location requirements of the specification. Date of previous tests must not be obliterated. Cylinders which are subject to the requirements under subparagraphs (8), (9) (modified hydrostatic test only), (10), and (12) are not required to be marked with a retester's identification number.

(9) * * *

Note 1.—Cylinders requalified by the modified hydrostatic test method or external inspection shall be marked after each retest or reinspection by stamping the date of retest or reinspection on the cylinders followed by the symbol E (external inspection) or S (modified hydrostatic test method) as appropriate.

2. In § 173.300a, paragraph (d) would be amended by adding a sentence at the end of the paragraph to read as follows:

§ 173.300a Approval of independent inspection agency.

(d) * * * After approval, the Associate Director for HMR may authorize, upon request, the independent inspection agency to perform other inspections and functions for which the Associate Director for HMR finds the applicant to be qualified. Such

additional authorizations will be noted
on each inspector's approval documents.

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(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App.
A. to Part 1)

Issued in Washington, D.C. on September 27,
1984.

Alan I. Roberts,

*Associate Director for Hazardous Materials
Regulation, Materials Transportation Bureau.*

[FR Doc. 84-26342 Filed 10-3-84; 8:45 am]

BILLING CODE 4910-65-M