



DEPARTMENT OF TRANSPORTATION
MATERIALS TRANSPORTATION BUREAU
WASHINGTON, D.C. 20590

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Title 49—Transportation
CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-134; Amdt. Nos. 173-100, 178-40]

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

PART 178—SHIPPING CONTAINER SPECIFICATIONS

Hazardous Materials Regulations
Reissuance; Corrections

On September 9, 1976, the Materials Transportation Bureau (MTB) published a series of amendments under Docket No. HM-134 to 49 CFR Parts 171-179, effective January 3, 1977 (41 FR 38175). MTB subsequently made changes in those amendments (September 20, 41 FR 40475; September 27, 41 FR 42206; and December 30, 41 FR 56807). This document makes five additional changes in those amendments. Two changes are technical corrections. Three other changes will insure that certain practices, presently authorized under 49 CFR 173.22(a) and under 49 CFR Part 178, will continue to be authorized on and after January 3, 1977.

CHANGES TO SECTION 173.22(a)

Section 173.22(a) states that it is the shipper's responsibility to see that shipments of hazardous materials are made in containers that comply with the specifications of Parts 178 and 179. Prior to the HM-134 amendments, this section authorized the shipper to meet his responsibility by reliance on the manufacturer's specification markings or certification, or by reliance on the carrier's certification when containers are supplied by the carrier.

As amended by HM-134, § 173.22(a) is silent on whether a shipper may rely on a carrier's certification that containers supplied by the carrier meet DOT specifications. This omission has caused concern among several shippers who frequently ship hazardous materials by highway in carrier-supplied cargo tanks. It was not the intention of MTB to eliminate this practice but, as published, the HM-134 amendment of § 173.22 may have that effect. This publication returns to the section an express authorization for shipper reliance on carrier certifications.

CHANGES TO PART 178 CYLINDER SPECIFICATIONS

The amendments in Docket HM-134 as published also amend DOT compressed gas cylinder specifications to require that registered symbols and serial numbers, must appear on compressed gas cylinders, be those of the manufacturer or, instead of those of the user or purchaser as was previously authorized. The intent of this change is to ensure that

the manufacturer of a cylinder is readily identifiable. However, it is common practice for persons making cylinders also to mark them with the purchaser or user's symbol and serial numbers for purposes of evidencing ownership. There is not any compelling reason to change this practice beyond ensuring identification of the maker. In fact, identification of user or purchaser as well as maker is desirable as a tool to assist the investigation of problems arising in the transportation of gas cylinders, and to establish accountability. Accordingly, in response to a number of petitions on this subject, this document alters the HM-134 amendments to allow continuation of the practice of marking user or purchaser symbols and serial numbers on gas cylinders, provided the cylinder manufacturer also is identified.

An additional change to § 178.65 is being made which concerns Specification 39 nonreusable compressed gas cylinders. Those cylinders are required to be marked (§ 178.65-14(b)(8)) with a warning of Federal criminal sanctions applicable to persons wrongfully transporting such containers should they be refilled. Previous to the HM-134 amendment, the warning cited 18 U.S.C. 831-835, but on and after January 3, 1977, the HM-134 amendment would require referencing Section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809) and differing criminal sanctions. It is permissible for this warning to be displayed on Specification 39 cylinders by use of labels. The MTB has been advised that a substantial manufacturer's inventory of such labels referencing 18 U.S.C. 831-835 exists which will have to be discarded on January 3, 1977, and that new labels may not be available by that date.

Display of the warning on Specification 39 cylinders is intended solely as a warning of the serious criminal nature of transporting unauthorized, refilled cylinders and does not carry with it any specific legal effect. Consequently, the MTB is permitting continued use of old labels for a period of one year to allow depletion of existing inventories of labels.

In consideration of the foregoing, in FR DOC 76-26376 appearing at pages 38175-38183 in the FEDERAL REGISTER of September 9, 1976, the following changes are made.

1. At 41 FR 38180 (as corrected at 41 FR 40476), item "8." is revised to read as follows:

8. In § 173.22, paragraph (a) is revised to read as follows:

§ 173.22 Shipper's responsibility.

(a) Unless otherwise provided in this part, before offering a hazardous material for shipment in a container the shipper shall determine that the container has been made, assembled with all parts or fittings in their proper place and properly secured, and marked in

compliance with applicable specifications prescribed in Parts 178 and 179 of this subchapter or with specifications of the Department in effect at date of manufacture of container. In determining whether a specification container is manufactured in accordance with applicable specifications, the shipper may accept the manufacturer's certification or specification marking. (See §§ 178.0-2 and 179.1 of this subchapter.) For containers supplied by the carrier, the shipper may rely on the manufacturer's identification plate, specification marking, or on certification by the carrier. When a shipper performs a function covered by or having an effect on a specification requirement of Part 178 or Part 179, the shipper must perform that function in accordance with the specification.

2. At 41 FR 38180, item "15." is revised to read as follows:

15. In Part 178, new §§ 178.0, 178.0-1, and 178.0-2 are added immediately preceding Subpart A to read as follows:

§ 178.0 Purpose, scope, and applicability.

§ 178.0-1 Purpose and scope.

This part prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials in commerce.

§ 178.0-2 Applicability.

(a) Any person who performs a function prescribed in this part, shall perform that function in accordance with this part.

(b) When this part requires (either expressly or by reference to § 173.24 of this subchapter) a packaging or container to be marked with a DOT specification (for example, DOT-1A, DOT-17E-304HT, DOT-23G40), compliance with that requirement is the responsibility of the packaging or container manufacturer. Marking the packaging or container with the DOT specification shall be understood to certify compliance by the manufacturer, that the functions performed by the manufacturer, as prescribed in this part, have been performed in compliance with this part. (See also § 173.28 "Reuse of containers." That section envisions the marking of containers to be performed by a person other than the original manufacturer.)

(c) Except as specifically provided in §§ 178.337-18 and 178.340-10, the manufacturer of a packaging or container should inform each person to whom that packaging or container is transferred of any specification requirements which have not been met at time of transfer.

3. At 41 FR 38181, item "30." is revised to read as follows:

30. In §§ 178.38-20, 178.39-19, 178.40-20, 178.41-19, 178.42-14, 178.43-20, 178.44-

23, 178.47-21, 178.48-19, 178.49-19, 178.50-19, 178.52-19, 178.53-18, 178.54-20, 178.55-20, 178.58-21, 178.59-18, 178.60-22, and 178.68-19, the second sentence in paragraph (a) (2) is revised and in §§ 178.36-20, 178.37-20, and 178.57-20, the second sentence in paragraph (a) (3) is revised to read as follows:

The symbol and numbers must be those of the maker, or of the purchaser or user if the maker's symbol also appears near the date of the original test.

4. At 41 FR 38181, item "31." is revised to read as follows:

31. In §§ 178.51-19, 178.56-19, and 178.61-20, the first sentence in paragraph (a) (2) is revised to read as follows:

A serial number and an identifying symbol of the maker, except that numbers and symbols of user or purchaser are also authorized if the maker's symbol appears near the date of original test.

5. At 41 FR 38181, item "32." is revised to read as follows:

32. In § 178.65-14, paragraph (b) (8) is revised to read as follows:

§ 178.65-14 Marking.

* * *

(b) * * *
(8) The following statement: Federal law forbids transportation if refilled—penalty up to \$25,000 fine and 5 years imprisonment (49 U.S.C. 1809).

Note.—Preprinted labels complying with 49 CFR 178.65-14(b) (8) in effect January 2, 1977, may be used until January 3, 1978.

* * *
(49 U.S.C. 1803, 1804, 1808 and 49 CFR 1.53 (e))

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