



DEPARTMENT OF TRANSPORTATION
MATERIALS TRANSPORTATION BUREAU

WASHINGTON, D.C. 20590

1919

[49 CFR Parts 173, 178]

[Docket No. HM-74; Notice 76-1]

CYLINDERS MANUFACTURED OUTSIDE
UNITED STATES

Revised Notice of Proposed Rulemaking

This docket was established in January 1971, when the Hazardous Materials Regulations Board published a notice of public hearing (36 FR 838) on the subject of DOT Specifications 3A, 3AA, and 39 cylinders manufactured outside the United States. The hearing convened on February 23, 1971, and because of the amount of public interest shown, a second session was scheduled and the public comment period was extended (36 FR 3836). On June 10, 1971, the Board proposed a series of amendments to authorize chemical analyses and tests for DOT specification compressed gas cylinders to be performed outside the United States under conditions to be approved on a case-by-case basis by the Department of Transportation, and to require Departmental approval of all disinterested inspectors of DOT specification cylinders, whether manufactured within or outside the United States (36 FR 10000). The close of the public comment on that proposal, which was first extended on September 14, 1971, was extended to November 1, 1971 (36 FR 13793). The Board later reopened the Docket for the purpose of receiving additional comments on possible changes to the existing cylinder specifications and recommendation as to the qualification standards for cylinder inspectors (37 FR 2588). In connection with seeking this additional information, the Board announced that it would continue its study and examination of the specifications and inspection requirements. The Docket subsequently received comments in response to that request, as well as supplemental staff materials bearing on the subject. At the time the Hazardous Materials Regulations Board was abolished on July 7, 1975, and authority to issue regulations transferred to the newly created Materials Transportation Bureau (40 FR 30821), the Board had not taken any further action on the proposal.

The Bureau believes to be sound the premises underlying the Board's proposal of June 10, 1971 (36 FR 3836), to make all "disinterested" (i.e., independent) inspectors of cylinders directly subject to a DOT-administered approval system and to then recognize their performance of cylinder inspections and verifications as required by DOT regulations without regard to geographic limitations. However, as indicated by its February 1972, the Board was of the view that the specifics of its proposal could afford a degree of refinement. It was also conscious of questions raised during the course of the proceeding as to the quality of the existing domestic system of in-

spectations, particularly with regard to so-called low pressure cylinders as carried out through "interested" inspectors.

As the Board's successor in this effort, the Bureau is now prepared to receive public comments on a modified version of a series of amendments which would implement the basic changes earlier proposed by the Board and provide for the independent inspection of low pressure cylinders. Specifically, the modified procedures provide for the following:

1. The term "independent inspection agency" is used to describe what is now covered by the term "competent and disinterested inspector". Except for persons currently holding Bureau of Explosives' approval as "competent and disinterested inspectors", applicants (foreign or domestic) would be evaluated and, if qualified, approved by DOT. Provision is made for converting Bureau of Explosives approved holders. (Proposed § 173.300a.)

2. Foreign cylinder manufacturers and U.S. manufacturers who may manufacture cylinders outside the United States could apply to DOT for authorization to have their cylinders inspected and tests verified outside the United States by an approved independent inspection agency. (Proposed § 173.300b.)

3. To ensure continuing DOT jurisdiction over approvals issued to non-U.S. domiciled inspection agencies and manufacturers, it would be necessary for them to establish a U.S. domiciled agent. (Proposed § 173.300c.)

4. Commencing on the effective date of the proposed amendments, cylinders manufactured, inspected and tested outside the United States in accordance with all the appropriate requirements of the cylinder regulations (49 CFR, Part 178) would be acceptable for use in transportation within the United States. (Proposed § 173.301(1).) Foreign manufactured cylinders which do not meet all of the requirements would only be acceptable for export. (Proposed amendment to § 173.300(1).)

5. The inspection provisions of each DOT cylinder specification would be revised to reflect the change from "disinterested inspector" to "independent inspection agency" and to recognize the method whereby approval could be obtained for inspections to be performed and chemical analyses to be verified outside the United States by approved independent inspection agencies. In addition, those specifications which now authorize inspection by "interested" inspectors would be changed to require all inspection and test verifications (both within and outside the United States) to be performed by approved independent inspection agencies. (Proposed amendments to §§ 178.36-3(a) through 178.68-3(a).)

6. In the case of those cylinders domestically manufactured in accordance with DOT specifications in which authorization for interested inspectors is to be dropped, the manufacturers could con-

tinue to use interested inspectors until January 1, 1978.

7. The Bureau's out-of-pocket costs for any inspections or tests it must perform in approving an inspection or manufacturing facility located outside the United States would be borne by the applicant.

The proposed effective date is May 1, 1978.

Interested persons are invited to submit views and comments on this revised proposal. Comments should refer to the docket number and be submitted to: Docket Section, Materials Transportation Bureau, U.S. Department of Transportation, Trans Point Building, Washington, D.C. 20590. All comments received before the close of business on March 15, 1976, will be considered, and will be available in the docket for examination both before and after the closing date. Comments received after the closing date and too late for consideration will be treated as suggestions for future rulemaking.

In consideration of the foregoing, it is proposed to amend 49 CFR, Parts 173 and 178 as follows:

PART 173—SHIPPERS

1. Add new §§ 173.300a, 173.300b, and 173.300c to read as follows:

§ 173.300a Approval of independent inspection agency.

(a) Any person who does not manufacture cylinders for use in the transportation of hazardous materials may apply to the Department of Transportation for approval as an independent inspection agency for the purpose of performing cylinder inspections and verifications required by Part 178 of this subchapter.

(b) Each application filed under this section for approval as an independent inspection agency must:

(1) Be submitted in writing to: Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590;

(2) State the name, address and telephone number of the applicant and the name and address of each facility where tests and inspections are to be performed;

(3) If the applicant is not a permanent resident of the United States, include a designation of a permanent resident of the United States as his agent for service of process in accordance with § 173.300c;

(4) Set forth a detailed description of the applicant's inspection and testing facilities and capability to perform the inspections and verify the tests required by Part 178 of this subchapter;

(5) Identify by name each individual who the applicant proposes to employ as an inspector responsible for certifying test results and a statement of that person's qualifications; and

(6) Specify the identification or qualification number assigned to each individual inspector.

(c) Upon the request of the Director, OHMO, the applicant shall allow the Director to inspect the applicant's inspection and testing facilities. In the case of inspection and testing facilities located outside the United States, the applicant shall bear the cost of the inspection.

(d) The Director, OHMO, issues an approval if, on the basis of information submitted in the application and his own investigation, he finds that the applicant is qualified to perform the inspections and verifications required by Part 178 of this subchapter for cylinders to be used in the transportation of hazardous materials.

(e) The Director, OHMO, will issue an approval as an independent inspection agency for the purpose of performing inspections and verifications for cylinders manufactured within the United States to any competent and disinterested inspector of cylinders so designated by the Bureau of Explosives before May 1, 1976, who submits a copy of that designation together with the name, the assigned identification or qualification number, and a statement of the qualifications of each person employed as an inspector under that designation to: Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590.

(f) An approval issued under this section is not transferable and is effective until surrendered or withdrawn or otherwise terminated by the Director, OHMO.

(g) The holder of an approval issued under this section shall notify the Director, OHMO, within 20 days after the date there is any change in the information submitted in the application for the approval.

§ 173.300b Approval of non-domestic chemical analyses and tests.

(a) Any person who manufactures cylinders outside the United States may apply to the Department for approval to have the chemical analyses and tests of those cylinders required by Part 178 performed outside the United States for the purpose of qualifying them for use in the transportation of hazardous materials to, from, or within the United States.

(b) Each application filed under this section for approval to perform chemical analyses and tests of cylinders outside the United States must:

(1) Be submitted in writing to: Office of Hazardous Materials Operations, U.S. Department of Transportation, Washington, D.C. 20590;

(2) State the name, address and telephone number of the applicant and the name and address of each facility at which cylinders are to be manufactured and chemical analyses and tests are to be performed;

(3) If the applicant is not a resident of the United States, include a designation of a permanent resident of the United States as his agent for service of process in accordance with § 173.300c;

(4) Set forth complete details concerning the dimension, materials of construction, wall thickness, water capacity, shape, type of joints, location and size of openings and other pertinent physical characteristics of each specification cylinder for which approval is being requested, including calculations for cylinder wall stress and wall thickness which may be shown on a drawing or on separate sheets attached to a descriptive drawing. If units of weights and measures are expressed in the metric system they must also be stated in the English system equivalents; and

(5) Identify the independent inspection agency to be used.

(c) Upon the request of the Director, OHMO, the applicant shall allow the Director to inspect the applicant's cylinder manufacturing and testing facilities and shall provide such materials and cylinders for analyses and tests as the Director may specify. The applicant shall bear the cost of the inspection, analyses, and tests.

(d) The Director, OHMO, issues an approval if, on the basis of the information submitted in the application and his own investigation, he finds that the applicant has the proper equipment and facilities and is otherwise capable of performing the chemical analyses and tests required by Part 178 of this subchapter for cylinders to be used in the transportation of hazardous materials.

(e) An approval issued under this section is not transferable and is effective until surrendered or withdrawn or otherwise terminated by the Director, OHMO.

(f) The holder of an approval issued under this section shall notify the Director, OHMO, within 20 days after the date there is any change in the information submitted in the application for the approval.

§ 173.300c Service of process on foreign inspectors and manufacturers.

(a) *Designation of agents for service.* Each independent inspection agency or manufacturer of cylinders for use in the transportation of hazardous materials to, from, or within the United States who is not a resident of the United States shall designate a permanent resident of the United States as his agent upon whom service of process, notices, orders, decisions, and requirements may be made for him and on his behalf. The agent may be an individual, a firm, or a domestic corporation. Any number of inspection agencies and manufacturers may designate the same person as agent. A designation is binding on the inspection agency or manufacturer even if it is not in compliance with all the requirements of this section, until rejected by the Department. A designated agent may not assign performance of his functions under the designation to another person.

(b) *Form and contents of designation.* The designation shall—

(1) Be in writing and dated;

(2) Be made in the legal form required to make it valid and binding on the inspection agency or manufacturer under the laws, corporate by laws, or other requirements governing the making of the designation by the inspection agency or manufacturer at the place and time where it is made and the person or persons signing the designation shall certify that it is so made;

(3) State the full legal name, principal name of business and mailing address of the inspection agency or manufacturer;

(4) Provide that it remains in effect until withdrawn or replaced by the inspector or manufacturer;

(5) State the legal name and mailing address of the agent; and

(6) Bear a declaration of acceptance duly signed by the designated agent.

(c) *Method of service.* Service of any process, notice, order, decision, and requirement of the Department may be made by registered or certified mail addressed to the agent with return receipt requested or in any other manner authorized by law. If service cannot be effected because the agent has died (or, if a firm or a corporation ceases to exist) or moved, or otherwise does not receive correctly addressed mail, service may be made by publication in the FEDERAL REGISTER.

2. Revise § 173.301(h), (i), and the introductory text of (j) to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders.

(h) *Domestic containers manufactured before 1978.* Notwithstanding any other requirement of this subchapter, in the case of any of the following specification cylinders manufactured within the United States before January 1, 1978, the inspections required by Part 178 of this subchapter may be performed by a permanent interested inspector:

DOT 3B (\$ 178.38)	DOT 4AA480 (\$ 178.56)
DOT 3BN (\$ 178.39)	DOT 4L (\$ 178.57)
DOT 3C (\$ 178.40)	DOT 8 (\$ 178.59)
DOT 3E (\$ 178.42)	DOT 8AL (\$ 178.60)
DOT 4B (\$ 178.50)	DOT 4BW (\$ 178.61)
DOT 4BA (\$ 178.51)	DOT 39 (\$ 178.65)
DOT 4C (\$ 178.52)	(Service pressure 900
DOT 4D (\$ 178.53)	psig or lower)
DOT 4B240ET	DOT 4E (\$ 178.68)
(\$ 178.55)	

(i) *Foreign cylinders in domestic use.* A charged cylinder manufactured outside the United States may not be offered for transportation to, from, or within the United States unless it has been manufactured, inspected, and tested in accordance with the applicable DOT specification set forth in Part 178 of this subchapter.

(j) *Charging of foreign cylinders for export.* Unless it has been manufactured, inspected, and tested in accordance with the applicable DOT specification set forth in Part 178 of this subchapter, a cylinder manufactured outside the United States and received in the United States for charging with compressed gas may be charged and shipped for export only.

PART 178—SHIPPING CONTAINER SPECIFICATIONS

3. Revise §§ 178.36-3(a), 178.37, 178.38-3(a), 178.39-3(a), 178.40-3(a), 178.41-3(a), 178.42-3(a), 178.43-3(a), 178.44-3(a), 178.45-3(a), 178.47-3(a), 178.48-3(a), 178.49-3(a), 178.50-3(a), 178.51-3(a), 178.52-3(a), 178.53-3(a), 178.54-3(a), 178.55-3(a), 178.56-3(a), 178.57-3(a), 178.58-3(a), 178.59-3(a), 178.60-3(a), 178.61-3(a), 178.65-3(a), and 178.68-3(a) to read as follows:

(a) Inspections and verifications must be performed by an independent inspection agency approved in writing by the Director, OHMO, in accordance with § 173.300a. Chemical analyses and tests as specified must be made within the United States unless otherwise approved in writing by the Director, OHMO, in accordance with § 173.300b.

These amendments are proposed under 18 U.S.C. 834, 46 U.S.C. 170(7), 49 U.S.C. 1472(h) (1), 49 CFR 1.53(f)-(h)

Issued in Washington, D.C., on January 8, 1976.

ALAN I. ROBERTS,
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Hazardous Materials Operations.*
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