



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

MAR 22 2012

Mr. David H. Baker
General Counsel
Lighter Association, Inc.
1701 Pennsylvania Ave., N.W., Suite 300
Washington, D.C. 20006

Ref. No. 12-0006

Dear Mr. Baker:

This responds to your letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the expiration of lighter design approvals. Specifically, you ask whether a previously-approved lighter design must be reexamined and reapproved every five years if no changes have been made to the design that affects its gas leakage capability.

The answer is no. As prescribed in § 173.21(i), except for a design sample, the transportation in commerce of a lighter design containing a Division 2.1 flammable gas that has not been examined and successfully tested by an authorized person in accordance with § 173.308(a) is forbidden. As prescribed in § 173.308(b)(1), a lighter design is considered as not having been examined and successfully tested if it differs from the original design in any manner that may affect the escape (leakage) of gas. Provided the previously-approved lighter design meets this criterion, the HMR do not mandate the expiration of its approval. For your information, the expiration of approval you refer to in your letter applies to the authorized testing agency as a condition of its approval; it is issued by the Associate Administrator and authorizes the testing agency to examine, test, and classify lighter designs for a period of five years.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

December 12, 2011

Mr. Michael Stevens
Transportation Regulation Specialist
Regulatory Review and Reinvention
Office of Hazardous Materials Standards and Rulemaking
Pipeline & Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
PHH-12
Washington, D.C. 20590

Re: Expiration of Lighter Classification Approvals (LAAs)

Dear Mr. Stevens:

Lighter classification approvals are issued pursuant to 49 CFR Section 173.308(b). This provision was revised in 2006 (71 Fed. Reg. 3418, January 23, 2006). Prior to that time, all lighter approvals were issued without a date of expiration. All lighters are now required to be reviewed again under the terms of the new provision (relating to escape of gas) prior to January 1, 2012. Section 173.308(b)(5).

We have observed that some authorized lighter testing companies are issuing these new approvals (commonly referred to as LAAs as compared to the former T approvals), with a five year expiration date. Only some testing companies are setting forth five year expirations. However, it has caused enough confusion in the industry for us to bring this issue to your attention. Apparently, the authorizations issued to the lighter testing companies contain a five year expiration. The reference to the five year expiration of *their* approval, has been confused into the imposition of a five year approval for some lighter classification approvals.

We would ask PHMSA to clarify that new lighter approvals have no expiration. This interpretation is consistent with the prior policy of the agency. Moreover, it serves absolutely no purpose for the same lighter design to be re-approved every five years. Once it is confirmed that the lighter design does not allow for the escape (leakage) of gas (Part 173.308(b)(1)), there is no purpose in reviewing the lighter again five years later. And, obviously, in this extremely difficult economy, it makes no sense to impose an approximately \$500 expense per lighter on manufacturers and distributors, every five years.

Accordingly, we would request that you issue an interpretation that the new lighter classification approvals do not expire.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "David H. Baker", written in a cursive style.

David H. Baker
General Counsel

DHB:bd