



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

36445

Title 49—Transportation

CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-163; Amdt. Nos. 171-41, 173-119, 178-49]

BUREAU OF EXPLOSIVES

Withdrawal of Certain Delegations of Authority

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Final rule.

SUMMARY: The purpose and intended effect of these amendments to the Department's hazardous materials regulations is to withdraw all of those delegations of authority to the Bureau of Explosives (hereinafter referred to as the B of E) which pertain to (1) examination and approval of cigarette lighters or other similar ignition devices (§ 173.21(d)); (2) cylinder test apparatus approval (§ 173.34(e)(1)); (3) registration of container manufacturer's mark or symbol; and (4) filing of labels. The few references to the B of E in Part 179—Specifications for Tank Cars—are not included in this rulemaking and will be included in a future notice. This action is being taken as an additional step in conforming existing programs with the purposes of the Hazardous Materials Transportation Act.

DATE: The effective date is August 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Alan I. Roberts, Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, Washington, D.C. 20590, 202-426-0656.

SUPPLEMENTARY INFORMATION: Upon the formation of the Department of Transportation in 1967, the functions of the Interstate Commerce Commission (ICC) relative to formulating regulations for the safe transportation of explosives and other dangerous articles (hazardous materials) pursuant to 18 U.S.C. 831-835 were transferred to the Secretary of Transportation by section 6(e)(4) of the Department of Transportation Act (49 U.S.C. 1657(e)(4)). The hazardous materials regulations have been administered by the Department of Transportation since that time.

As a matter of routine, the ICC had delegated certain functions to a non-governmental body, the B of E. Such delegations were made pursuant to paragraph (e) of 18 U.S.C. 834, which provided that:

(e) In the execution of sections 831-835, inclusive, of this chapter the Commission may utilize the service of carrier and shipper associations, including the Bureau for the safe transportation of explosives and other dangerous articles \* \* \*

The Hazardous Materials Transportation Act (title I of Pub. L. 93-633) (HMTA), enacted January 3, 1975, under which authority the hazardous materials regulations were reissued effective January 3, 1977, does not contain any reference to this practice of Federal reliance on authority delegated to the B of E. The HMTA directs the Secretary of Transportation to "take all steps necessary to bring \* \* \* regulations into conformity with (its) purposes and provisions \* \* \* as soon as practicable \* \* ." (§ 114(b)(2)). Reissuance of the hazardous materials regulations was undertaken to comply with this direction. Withdrawal of delegations to the B of E is being undertaken for the same reason.

Over the past several years, a number of the delegations have been deleted or assumed by the Department in conjunction with various specific rulemaking projects, including the recent docket HM-103/112 amendments (41 FR 15972, 41 FR 40614, and 41 FR 57018) which consolidated all of the Department's hazardous materials regulations into 49 CFR Parts 100-199.

These amendments constitute the first action in an overall phased program to withdraw all of the delegations of authority to the B of E in 49 CFR Parts 100-199. The amendments herein constitute a withdrawal of some of the functions previously delegated and an assumption thereof by the Materials Transportation Bureau (MTB). The MTB has engaged the Department's Transportation Systems Center (TSC), Cambridge, Mass., to perform all of the functions addressed herein under the direction and supervision of the MTB, with the exception of § 173.34(e)(1). The delegations to the B of E remaining after this action will be dealt with in future rulemaking actions.

In the case of functions herein assumed by the MTB, or to be performed by the TSC, as well as those to be considered in future rulemaking, it is necessary to provide for continuity and continued effectiveness of existing B of E registrations for a specified transition period. Accordingly, a new section 171.18 is being added to pro-

vide for continued effectiveness of any registration that is valid at the time MTB assumes that registration function. Such registrations continue to be valid until they lapse in the normal course, with one exception in § 173.34(e)(1), or are otherwise restricted by regulation. "Registration" (e.g. § 178.1-4(a)), a clerical function, is distinct from the filing of "reports" (e.g. § 178.1-9(f)), also a clerical function, but one for which renewal is unnecessary. Both functions are distinct from "approval," a judgmental function to be treated in a subsequent notice of proposed rulemaking (except for §§ 173.34(e)(1) and 173.21(d), treated herein).

In the course of evaluating B of E delegations, the MTB expects to propose amendments to many of the sections requiring departmental action in order to establish substitute performance criteria, or to simplify, clarify, or delete such requirements. The amendments in this document may be subject to further rulemaking.

The function in section 173.34(e)(1) herein withdrawn from the B of E will be performed on an interim basis by persons qualified under section 173.300a. Section 173.34(e)(1) presently requires B of E approval of equipment used in periodic retesting of DOT specification compressed gas cylinders. Persons qualified under section 173.300a are presently authorized to verify inspections and tests required in the construction of new cylinders. Because the knowledge and skills required for inspection and test verifications on new cylinders are clearly adequate for inspection of retesting equipment, the MTB intends to rely on persons so qualified to inspect retest equipment until such time as other criteria may be developed. However, an existing backlog of applications for equipment inspection under section 173.34(e)(1) requires immediate attention. During this interim period, anyone wishing to arrange for inspection under section 173.34(e)(1) should contact the MTB.

Since these amendments do not impose additional requirements, public notice has not been provided and this amendment is effective without delay. The MTB has determined that the environmental and economic impact associated with these amendments is minimal. Primary drafters of this document are Darrell L. Raines, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, and George W. Temley, Office of Chief Counsel, Research and Special Programs Administration.

In consideration of the foregoing, 49

CFR Parts 171, 173, and 174 are amended as follows:

**PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

1. In § 171.8 new definitions of the abbreviations "MTB" and "MTB-TSC" are added immediately following the definition of "Motor vehicle" to read as follows:

**§ 171.8 Definitions and abbreviations.**

"MTB" means the Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

"MTB-TSC" means the Transportation Systems Center, Cambridge, Mass. 02142 (for functions performed under the direction and supervision of the MTB).

2. § 171.18 is added to read as follows:

**§ 171.18 Continuation of effectiveness of existing Bureau of Explosives registrations.**

A registration filed with the Bureau of Explosives in compliance with a requirement of this subchapter, which is valid at the time that registration function is assumed by the MTB or MTB-TSC, remains valid to the same extent as if it had been filed originally with MTB or MTB-TSC.

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKINGS**

3. In § 173.21 paragraph (d) is revised to read as follows:

**§ 173.21 Prohibited packing.**

(d) The offering for transportation of any package containing a cigarette lighter or other similar ignition device charged with fuel and equipped with an ignition element, or any self-lighting cigarette, is forbidden unless the design of the device and its packaging insofar as they affect safety in transportation have been examined and approved by MTB-TSC. (An approval which was issued by the B of E remains valid to the same extent as if it had been issued by MTB-TSC.) For lighters containing flammable gases, also see § 173.308.

4. The words "Bureau of Explosives" is changed to read "MTB-TSC" in § 173.24(c)(1)(ii).

5. In § 173.34 paragraph (e)(1) is revised to read as follows:

**§ 173.34 Qualification, maintenance, and use of cylinders.**

(e) \* \* \*

(1) This periodic retest must include a visual internal and external examination together with a test by interior hydrostatic pressure in a water jacket or other apparatus of suitable form for the determination of the expansion of the cylinder. Each person who represents that he performs retesting in accordance with this paragraph must have a retester's identification number issued by the MTB or have a valid Bureau of Explosives approval issued prior to August (effective date of these amendments) 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. 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.

6. The words "Bureau of Explosives" are changed to read "MTB-TSC" each time they appear in the following sections:

- Sections 173.34(1)(2); 173.34(1)(3); 173.119(b)(3) note 1.

**PART 178—SHIPPING CONTAINER SPECIFICATIONS**

7. The words "Bureau of Explosives" are changed to read "MTB-TSC" each time they appear in the following sections:

- § 178.1-4(a)
- § 178.1-9(f)
- § 178.2-6(a)(2)
- § 178.3-8(a)(2)
- § 178.4-4(b)
- § 178.4-8(f)
- § 178.5-9(f)
- § 178.6-10(f)
- § 178.7-7(a)(2)
- § 178.8-7(a)(2)
- § 178.12-9(a)(2)
- § 178.13-5(a)(2)
- § 178.14-7(a)(2)
- § 178.15-7(b)
- § 178.19-6(a)(3)
- § 178.24-8(a)(2)
- § 178.33-9(a)(2)
- § 178.35-3(b)(2)
- § 178.36-4(d)
- § 178.37-4(d)
- § 178.38-4(d)
- § 178.39-4(d)
- § 178.40-4(d)
- § 178.41-4(d)
- § 178.42-4(d)
- § 178.43-4(d)
- § 178.44-4(d)
- § 178.47-4(d)
- § 178.48-4(d)
- § 178.49-4(d)
- § 178.50-4(d)
- § 178.51-4(d)
- § 178.52-19(a)(2)
- § 178.1-8(a)(2)
- § 178.2-4(a)
- § 178.3-4(a)
- § 178.3-9(f)
- § 178.4-7(a)(2)
- § 178.5-7(a)(2)
- § 178.6-8(a)(2)
- § 178.7-3(a)
- § 178.7-8(f)
- § 178.9-7(a)(2)
- § 178.13-2(a)
- § 178.14-3(a)
- § 178.14-8(f)
- § 178.18-8(a)(2)
- § 178.21-2(b)(2)
- § 178.27-2(c)(2)
- § 178.33a-9(a)(2)
- § 178.35a-2(c)(2)
- § 178.36-20(a)(3)
- § 178.37-20(a)(3)
- § 178.38-20(a)(2)
- § 178.39-19(a)(2)
- § 178.40-20(a)(2)
- § 178.41-19(a)(2)
- § 178.42-14(a)(2)
- § 178.43-20(a)(2)
- § 178.44-23(a)(2)
- § 178.47-21(a)(2)
- § 178.48-19(a)(2)
- § 178.49-19(a)(2)
- § 178.50-19(a)(2)
- § 178.52-4(d)
- § 178.53-4(d)

- § 178.53-18(a)(2)
- § 178.54-20(a)(2)
- § 178.55-20(a)(2)
- § 178.56-19(a)(2)
- § 178.57-20(a)(3)
- § 178.58-21(a)(2)
- § 178.59-18(a)(2)
- § 178.60-22(a)(2)
- § 178.61-20(a)(2)
- § 178.68-19(a)(2)
- § 178.81-11(a)(2)
- § 178.83-11(a)(2)
- § 178.85-10(a)(2)
- § 178.88-10(a)(2)
- § 178.90-10(a)(2)
- § 178.92-12(a)(2)
- § 178.98-9(a)(2)
- § 178.100-9(a)(2)
- § 178.102-4(a)(2)
- § 178.107-9(a)(2)
- § 178.109-9(a)(2)
- § 178.111-8(a)(2)
- § 178.115-10(a)(2)
- § 178.117-11(a)(2)
- § 178.119-10(a)(2)
- § 178.131-9(a)(3)
- § 178.133-9(a)(2)
- § 178.135-8(a)(3)
- § 178.140-6(a)(2)
- § 178.146-15(a)(2)
- § 178.148-5(a)(2)
- § 178.150-7(a)(3)
- § 178.165-13(b)
- § 178.169-18(d)
- § 178.171-17(d)
- § 178.176-6(b)
- § 178.181-11(b)
- § 178.185-19(b)
- § 178.186-19(b)
- § 178.190-9(a)(2)
- § 178.193-6(a)(2)
- § 178.196-15(a)(2)
- § 178.198-4(a)(2)
- § 178.206-18(a)(2)
- § 178.208-12(a)(2)
- § 178.209-14(a)
- § 178.211-6(a)(2)
- § 178.214-17(a)(2)
- § 178.218-10(a)(2)
- § 178.219-13(a)(2)
- § 178.224-4(a)(2)
- § 178.225-3(a)(2)(ii)
- § 178.230-8(a)(2)
- § 178.234-9(a)(2)
- § 178.237-7(b)
- § 178.239-7(b)
- § 178.241-5(b)
- § 178.255-15.
- § 178.54-4(d)
- § 178.56-4(d)
- § 178.57-4(d)
- § 178.58-4(d)
- § 178.59-3(c)
- § 178.60-3(c)
- § 178.61-4(d)
- § 178.68-4(d)
- § 178.80-11(a)(2)
- § 178.82-11(a)(2)
- § 178.84-11(a)(2)
- § 178.87-11(a)(2)
- § 178.89-9(a)(2)
- § 178.91-11(a)(2)
- § 178.97-9(a)(2)
- § 178.99-9(a)(2)
- § 178.101-9(a)(2)
- § 178.103-6(a)(3)
- § 178.108-9(a)(2)
- § 178.110-8(a)(2)
- § 178.112-10(a)(2)
- § 178.116-10(a)(2)
- § 178.118-10(a)(2)
- § 178.130-8(a)(3)
- § 178.132-9(a)(3)
- § 178.134-4(a)(3)
- § 178.136-9(a)(3)
- § 178.141-7(a)(2)
- § 178.147-15(a)(2)
- § 178.149-7(a)(2)
- § 178.156-12(a)(2)
- § 178.168-18(d)
- § 178.170-17(d)
- § 178.172-19(b)
- § 178.177-6(b)
- § 178.182-4(a)(2)
- § 178.185-22(c)(2)
- § 178.187-5(b)
- § 178.191-9(a)(2)
- § 178.194-8(f)
- § 178.197-14
- § 178.205-18(c)
- § 178.207-18(a)(2)
- § 178.209-13(a)(2)
- § 178.210-12(a)(2)
- § 178.212-8(a)(2)
- § 178.214-18(a)
- § 178.218-11(a)
- § 178.219-14(a)
- § 178.225-3(a)(1)(ii)
- § 178.228-4(a)(2)
- § 178.233-9(a)(2)
- § 178.236-7(b)
- § 178.238-7(b)
- § 178.240-10(a)(2)
- § 178.245-7(a)

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

The Materials Transportation Bureau has determined that this final regulation will not have a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (43 FR 9532). A regulatory evaluation is available for review in the docket.

Issued in Washington, D.C., on August 10, 1978.

L. D. SANTMAN,  
Acting Director,  
Materials Transportation  
Bureau.

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