

117TH CONGRESS
2D SESSION

S. 5237

To require the Secretary of Transportation to promulgate regulations relating to the approval of foreign manufacturers of cylinders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2022

Mr. PORTMAN (for himself, Ms. BALDWIN, Mr. HAGERTY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Secretary of Transportation to promulgate regulations relating to the approval of foreign manufacturers of cylinders, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Compressed Gas Cyl-
5 nder Safety and Oversight Improvements Act of 2022”.

6 **SEC. 2. REGULATION OF FOREIGN MANUFACTURERS OF**
7 **CYLINDERS USED IN TRANSPORTING HAZ-**
8 **ARDOUS MATERIALS.**

9 (a) DEFINITIONS.—In this section:

1 (1) CYLINDER.—The term “cylinder” means
2 any cylinder specified under any of sections 178.36
3 through 178.68 of title 49, Code of Federal Regula-
4 tions (or successor regulations).

5 (2) FOREIGN MANUFACTURER OF CYLINDERS;
6 FMOC.—The term “foreign manufacturer of cyl-
7 inders” or “FMOC” means an entity that manufac-
8 tures cylinders outside of the United States that are
9 intended to be represented, marked, certified, or sold
10 as qualified for use in transporting a hazardous ma-
11 terial in commerce in the United States.

12 (3) IN GOOD STANDING.—The term “in good
13 standing”, with respect to an FMOC, means that
14 the FMOC—

15 (A) is approved by the Secretary pursuant
16 to section 107.807 of title 49, Code of Federal
17 Regulations (or a successor regulation); and

18 (B) has demonstrated 3 years of compli-
19 ance with—

20 (i) part 107 of title 49, Code of Fed-
21 eral Regulations (or successor regulations);

22 and

23 (ii) chapter 51 of title 49, United
24 States Code.

1 (4) SECRETARY.—The term “Secretary” means
2 the Secretary of Transportation.

3 (b) APPROVAL OF FOREIGN MANUFACTURERS OF
4 CYLINDERS.—

5 (1) IN GENERAL.—The Secretary shall promul-
6 gate regulations to provide that an approval pro-
7 vided to an FMOC pursuant to section 107.807 of
8 title 49, Code of Federal Regulations (or a successor
9 regulation), shall be for a period of not longer than
10 1 year, except as provided under paragraph (2).

11 (2) 5-YEAR APPROVAL.—The Secretary may
12 provide a 5-year approval of an FMOC pursuant to
13 section 107.807 of title 49, Code of Federal Regula-
14 tions (or a successor regulation), if the following re-
15 quirements are met:

16 (A) The FMOC attests that none of the
17 cylinders made by the FMOC are prohibited
18 from entry to the United States under section
19 307 of the Tariff Act of 1930 (19 U.S.C.
20 1307).

21 (B) The FMOC certifies that—

22 (i) the information provided pursuant
23 to subsection (e) is accurate; and

1 (ii) the FMOC has a proactive respon-
2 sibility to inform the Secretary if any such
3 information materially changes.

4 (C) The Secretary determines that the
5 FMOC is in good standing.

6 (3) FACILITY INSPECTIONS.—

7 (A) DEFINITION OF OBSTRUCTS.—In this
8 paragraph, the term “obstructs” means taking
9 actions that are known, or reasonably should be
10 known, to prevent, hinder, or impede an inspec-
11 tion.

12 (B) PENALTIES.—The Secretary may sus-
13 pend or terminate an approval of an FMOC if
14 the FMOC obstructs or prevents the Secretary
15 from carrying out an inspection under section
16 107.807(c) of title 49, Code of Federal Regula-
17 tions (or a successor regulation).

18 (4) INTERACTION WITH OTHER STATUTES,
19 AGREEMENTS, REGULATIONS.—Nothing in this sec-
20 tion may be construed to prevent the harmonization
21 of cylinder standards otherwise authorized by law.

22 (5) OTHER CAUSE FOR SUSPENSION OR TERMI-
23 NATION.—The Secretary may suspend or terminate
24 an approval of an FMOC on determination that the
25 FMOC knowingly or intentionally misrepresented re-

1 sponses to the Secretary required by law, including
2 under subsection (e).

3 (c) REEVALUATION BY REQUEST FOR RELATED VIO-
4 LATIONS.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of enactment of this Act, the Sec-
7 retary shall promulgate such regulations as are nec-
8 essary to establish a process, as determined by the
9 Secretary, for any interested party to request a re-
10 evaluation of the approval of FMOC cylinders under
11 section 107.807 of title 49, Code of Federal Regula-
12 tions (or a successor regulation), to review the accu-
13 racy and safety of the actions of the FMOC.

14 (2) PETITION FOR REEVALUATION.—The regu-
15 lations promulgated under paragraph (1) shall allow
16 an interested party to file a petition if that party
17 has evidence of inaccurate, changed, or fraudulent
18 attestations or responses made by an FMOC to the
19 Secretary under subsection (e).

20 (d) NOTICE AND COMMENT FOR APPLICATIONS BY
21 FOREIGN MANUFACTURERS OF CYLINDERS.—On receipt
22 of an application for approval under section 107.807 of
23 title 49, Code of Federal Regulations (or a successor regu-
24 lation), the Secretary shall—

1 (1) timely publish notification of the application
2 on the website of the Pipeline and Hazardous Mate-
3 rials Safety Administration; and

4 (2) provide 30 days for public comment on the
5 application prior to approval.

6 (e) ADDITIONAL QUESTIONS TO ENSURE SAFETY
7 AND COMPLIANCE WITH DOT PROCESSES.—

8 (1) ADDITIONAL QUESTIONS.—The Secretary
9 shall require, as part of an application for approval
10 pursuant to section 107.807 of title 49, Code of
11 Federal Regulations (or a successor regulation), that
12 the applicant answer the following questions:

13 (A) Whether the FMOC applying, or any
14 entity controlling more than 10 percent of that
15 FMOC, has ever been subject to a civil mone-
16 tary penalty under title 49, United States Code,
17 relating to any actions carried out as an ap-
18 proved FMOC or during the application for ap-
19 proval under that section.

20 (B) Whether the FMOC applying, or any
21 entity controlling more than 10 percent of that
22 FMOC, has been delinquent in the payment of
23 any civil monetary penalties or other fines or
24 fees under title 49, United States Code.

1 (C) Whether the FMOC applying, or any
2 entity controlling more than 10 percent of that
3 FMOC, is subject to the Do Not Pay Initiative
4 established under section 3354 of title 31,
5 United States Code, as of the date of the appli-
6 cation.

7 (D) Whether the FMOC applying, or any
8 entity controlling more than 10 percent of that
9 FMOC, is listed in the Military End User List
10 of the Department of Commerce as of the date
11 of the application.

12 (E) Whether the FMOC applying, or any
13 entity controlling more than 10 percent of that
14 FMOC, is identified by the Department of De-
15 fense as an entity listed under section 1237 of
16 the Strom Thurmond National Defense Author-
17 ization Act for Fiscal Year 1999 (50 U.S.C.
18 1701 note; Public Law 105–261) as of the date
19 of application.

20 (F) Whether the FMOC applying, or any
21 entity controlling more than 10 percent of that
22 FMOC, has been found guilty of a criminal
23 penalty or assessed a civil penalty under section
24 1760 of division A of the John S. McCain Na-

1 tional Defense Authorization Act for Fiscal
2 Year 2019 (50 U.S.C. 4819).

3 (G) Whether the FMOC applying, or any
4 entity controlling more than 10 percent of that
5 FMOC, is subject to a final antidumping or
6 countervailing duty order from the Department
7 of Commerce as of the date of application.

8 (2) DENIAL OF APPLICATION.—The Secretary
9 may deny under section 107.709 of title 49, Code of
10 Federal Regulations (or a successor regulation), an
11 application for approval under section 107.807 of
12 that title (or a successor regulation) based on the re-
13 sponses to the questions required under paragraph
14 (1).

15 (f) FOREIGN MANUFACTURERS LISTING APPROV-
16 ALS.—Not later than 1 year after the date of enactment
17 of this Act, and annually thereafter, the Secretary shall
18 publish and maintain on the website of the Department
19 of Transportation a list of approved foreign manufacturers
20 of cylinders and the duration of those approvals.

21 (g) AUTHORIZING FOREIGN INSPECTIONS.—Not
22 later than 180 days after the date of enactment of this
23 Act, the Secretary shall revise section 107.807(d) of title
24 49, Code of Federal Regulations—

1 (1) to require that in any case in which the
2 Secretary determines there is good cause, an inspec-
3 tion under that section shall be carried out annually
4 for such duration as the Secretary determines appro-
5 priate;

6 (2) to specify that a refusal of inspection under
7 that section shall result in a loss of the status of in
8 good standing;

9 (3) to allow the Secretary to request, at the dis-
10 cretion of the Secretary—

11 (A) production of test and production
12 records; and

13 (B) random sample testing; and

14 (4) to allow for the recovery of all associated
15 costs of foreign inspections to include travel, time,
16 and other costs, as determined by the Secretary.

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