



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

October 17, 2024

Mike Millard
President/Chief Safety Officer
AWM Associates, LLC
7911 Morrow Ave NE
Albuquerque, NM 87110

Reference No. 24-0071

Dear Mr. Millard:

This letter is in response to your August 15, 2024, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to cargo tank testing requirements. Specifically, you ask whether it is a violation of the HMR for a non-DOT specification cargo tank without a specification plate to be marked with a "V," indicating it has passed the external visual inspection in accordance with § 180.407. You state that it is your understanding that a cargo tank without a specification plate cannot be marked as passing the external visual test, and that this would be a violation of §§ 180.407(d)(2)(vi), 180.415(a), and 171.1(a). You have also attached two previously issued letters of interpretation (Reference Nos. 17-0026 and 10-0186) which discuss markings on non-specification packagings.

Your understanding is incorrect. The sections you reference do not require the presence of a specification plate as a condition of performing the testing you describe. As stated in PHMSA's previously issued letter of interpretation (Reference No. 17-0026), it is not a violation of the HMR for a cargo tank owner to voluntarily perform requalification tests on a non-DOT specification cargo tank and to mark the cargo tank as having passed those tests. However, by voluntarily applying those markings, the owner of the cargo tank is responsible for performing those tests in accordance with all HMR requirements.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

Alexander Wolcott
Acting Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

From: [INFOCNTR \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#)
Cc: [Hazmat Interps](#)
Subject: FW: Mailed 8/15/2024
Date: Tuesday, August 20, 2024 10:49:45 AM
Attachments: [PHMSA Ltr 2024-08-15 tank markings.pdf](#)

Hello Alice,

Please see the attached interpretation request. Let us know if you need anything.

Sincerely,
Janaye

From: awmassociates@gmail.com <awmassociates@gmail.com>
Sent: Thursday, August 15, 2024 5:11 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: Mailed 8/15/2024

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

For your consideration.

Mike Millard
President/Chief Safety Officer
Cell: 505-595-5158
Email: AWMAssociates@gmail.com

AWM Associates, LLC
7911 Morrow Ave NE
Albuquerque, NM 87110
Cell: (505) 595-5158
Email: awmassociates@gmail.com

August 15, 2024

Mr. Shane Kelley
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Reference: PHMSA Interpretations 17-0026 and 10-0186 test markings for non-DOT packages

Dear Mr. Kelly:

I have questions regarding earlier interpretations by PHMSA regarding marking non-DOT cargo tanks per 49 CFR Part §180.415 considered the complexity of the HMR?

I have cautioned owners of non-DOT cargo tanks about using the “V” for external visual inspections per 49 CFR Part §180.407(d)(2)(vi) “***All markings on the cargo tank required by parts 172, 178 and 180 of this subchapter must be legible;***” If the DOT specification plate is absent, how can the non-DOT cargo tank be marked as passing the external visual test?

I consider the issue to be a violation of 49 CFR Part §180.407(d)(2)(vi), Part §180.415(a) “***Each cargo tank successfully completing the test and inspection requirements contained in § 180.407 must be marked as specified in this section.***” and Part §171.1(a) “***Packagings. Requirements in the HMR apply to each person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce.***”

I have no issues with the “I” for internal inspection, “P” for pressure retest or “K” for leakage test; however, without a DOT specification plate per Part §178.345-14 a non-DOT cargo tank cannot be marked with a “V” indicating it passed an external inspection per Part §180.407(d)(2)(vi.) I believe the “V” marking is a violation of Part §180.415(a) and Part §171.1(a) as the “V” marking implies the non-DOT package fully meets the requirements of the HMR 49 CFR Parts §100 through §199.

I have attached the referenced interpretations for your review. I appreciate your time in responding to my request for a written interpretation regarding the marking of non-DOT cargo tanks with test markings required per 49 CFR Part §180.415.



VIPK markings on a non-DOT tank transporting diesel fuel.

Sincerely;


Michael Millard
President & Chief Safety Officer

Attachments:

**PHMSA Interpretation
Reference No. 17-0026**



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

AUG 15 2017

John Hardridge
Instructor
3908 Vista Drive
Norman, OK 73071

Reference No. 17-0026

Dear Mr. Hardridge:

This letter is in response to your March 9, 2017, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to cargo tank requalification testing and marking. Specifically, you describe a scenario where a person voluntarily marks the retest date and the retest identification marking on a cargo tank in accordance with Part 180, Subpart E. You further note the cargo tank does not have a specification plate, special permit, or registration number.

We have paraphrased and answered your questions as follows:

- Q1. You ask whether the HMR permit a person to perform requalification tests and apply associated markings on a non-Department of Transportation (DOT) specification cargo tank when not required.
- A1. The answer is yes. Nothing in the HMR prohibits a cargo tank owner from voluntarily performing requalification tests on a non-DOT specification cargo tank. Typically, a non-DOT specification cargo tank is not subject to the periodic inspection or retest requirements of the HMR. However, the HMR include scenarios where a non-DOT specification cargo tank must undergo certain requalification testing and marking in Part 180, Subpart E. For example, § 173.315(m)(2) specifies conditions where non-DOT specification cargo tanks containing anhydrous ammonia require certain testing and must be marked in accordance with § 180.415.
- Q2. You ask whether a person who voluntarily tests and marks a non-DOT specification cargo tank in accordance with Part 180, Subpart E is subject to performing the applicable tests and applying the retest markings in accordance with the HMR.
- A2. The answer is yes. Under § 171.2(g), no person may represent, mark, or offer a packaging as meeting the requirements of the HMR unless the packaging is maintained, marked, and retested in accordance with the applicable requirements. Section 171.2(h)(3) specifies that test dates are subject to paragraph (g) when associated with the

"specification, registration, approval, retest, exemption, or special permit markings" that indicate HMR compliance. Therefore, if the "test date" and "retest" identification markings are both applied to the cargo tank, then the applicable HMR requirements for the test and marking must be followed.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

Goodall, Shante CTR (PHMSA)

Lehman
171.2
General Requirements
17-0026

From: INFOCNTR (PHMSA)
Sent: Thursday, March 09, 2017 2:46 PM
To: Hazmat Interps
Subject: FW: Request for interpretation on cargo tank testing of non-spec tanks

Hi Shante/Alice,

Please submit this as a letter of interpretation. Mr. Hardridge spoke with Eamonn.

Please let me know if you have any questions.

Thanks,
Jordan

From: ohp31@yahoo.com [mailto:ohp31@yahoo.com]
Sent: Thursday, March 09, 2017 1:19 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: Request for interpretation on cargo tank testing of non-spec tanks

To whom it may concern,

There has been some controversy over enforcement of test date markings on a non-specification cargo tanks used to transport combustible liquids.

The first piece of information and question involved is as follows:

Situation: An owner of a non-specification cargo tank wishes to test and retest his cargo tank according to Part 180 Subpart D and mark the tank accordingly, even though not required.

Question #1: Is the person conducting the tests and marking the test and test dates on the non-spec tank in violation of Part CFR 49 Part 171.2(h)?

Resulting Enforcement Actions: I have seen some enforcement agencies taking enforcement actions on persons who have voluntarily performed tests and retests of non-spec cargo tanks and have marked said tanks with the test date markings in Part 180. These tests have been conducted to reassure the owners that the tanks involved are in good condition. The test and test date markings are shown as a convenient way to tell the owner when he should conduct the next test or tests. Basically, the owner is complying with the test and marking requirements in Part 180 even though not required. The enforcement agencies involved claim that this is a violation of 171.2(g) due to the next paragraph (h) stating that the prohibition of displaying markings includes: "test dates associated with the specification...."

Involved Regulations:

171.2(g) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter governing its use in the transportation of a hazardous material in commerce unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of this subchapter.

171.2(h) The representations, markings, and certifications subject to the prohibitions of paragraph (g) of this section include:

- (1) Specification identifications that include the letters "ICC", "DOT", "CTC", "MC", or "UN";
- (2) Exemption, special permit, approval, and registration numbers that include the letters "DOT", "EX", "M", or "R"; and
- (3) Test dates associated with specification, registration, approval, retest, exemption, or special permit markings indicating compliance with a test or retest requirement of the HMR, or an exemption, special permit, approval, or registration issued under the HMR or under subchapter A of this chapter.

Comments: The way I have always understood Part 171.2(h) is that the only way to misrepresent a cargo tank as a specification tank, when it is not, is if a specification plate with a certification date is display on a non-spec tank or a tank that does not completely meet the requirements of the specification named on the plate.

The requirement in 171.2(h)(3) dealing with "Test dates associated with specification..." seems to only imply that it is prohibited to display retest dates on a specification cargo tank when the tests indicated by the marking have not been conducted or were conducted improperly. I do not see how markings of tests and tests dates could be interpreted as representing a non-specification tank as a specification tank when the tests were properly conducted according to Part 180, Subpart D, even though it is not required.

If the action above is not a violation of Part 171.2, then the second piece of information and question would be:

Situation: The owner of a non-spec tank chooses to test and mark said cargo tank as required for spec tanks in Part 180. Even though not required, the person follows the regulations as a convenient way to assure the tank is safe.

Question #2: If that person does not follow the retest and marking regulation exactly as written, is the person in violation for not testing and marking correctly?

If you should have questions or need clarifications regarding this request, please do not hesitate to contact me.

Respectfully,

John Hardridge, Independent Instructor for Hazardous Material Transportation Regulations
3908 Vista Drive
Norman, OK. 73071
Phone: (405) 413-7451
E-mail: ohp31@yahoo.com

PHMSA Interpretation
Reference No. 10-0186



U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration

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

OCT 29 2010

Ms. Erin N. Jarman
URS Corporation
1600 Perimeter Park Drive, Suite 400
Morrisville, NC 27560

Reference No.: 10-0186

Dear Ms. Jarman:

This responds to your September 1, 2010 letter regarding packaging requirements for diesel fuel under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Your questions are paraphrased and answered as follows:

- Q1. Is it possible for a packaging to be tested and dual-marked as both an Intermediate Bulk Container (IBC) and a portable tank?
- A1. The answer is no. An IBC is defined by the HMR as a rigid or flexible portable packaging, other than a cylinder or specification portable tank, that is designed for mechanical handling (see § 171.8).
- Q2. If an IBC has not been tested according to the retest requirements set forth in 49 CFR Part 178, Subpart O, must the UN marking be removed or obliterated to continue to be used?
- A2. The requirements applicable to IBC retesting are set forth in 49 CFR Part 178, Subpart O and reference specifically Part 180, Subpart D. As provided by § 173.35, when an IBC is identified as an UN specification container by the specification plate, it must meet the specification and be retested in accordance with Part 180, Subpart D regardless of whether the material is hazardous or not. If an IBC has not been retested, one must obliterate, cover, or make illegible the specification identification on the specification plate in order for the IBC to continue to be used as a non-specification container without being retested.
- Q3. By removing or obliterating the UN Marking of the IBC, it is our understanding based on DOT interpretation Letter Ref. No. 08-0286 that this packaging could be considered a non-specification bulk packaging. Is that correct?
- A3. The answer is yes. The previously issued interpretation (Ref. No. 08-0286) you cite in your inquiry remains valid. Because the specification markings are destroyed, removed, or

covered, the packaging no longer meets the standards of an IBC in accordance with the HMR. The packaging in your scenario is a non-specification bulk packaging.

- Q4. If the answer to Q3 is yes, could this non-specification bulk packaging satisfy the packaging requirements found in § 173.241, which permits the use of non-specification portable tanks for the transportation of high flashpoint diesel fuel?
- A4. The answer is yes. If the specification markings are destroyed, removed, or covered, the packaging no longer meets the standards of a specification packaging in accordance with the HMR. Therefore, the packaging is a non-specification bulk packaging and can be considered a non-specification portable tank. In accordance with § 172.102 special provision B1, a material with a flash point at or above 38° C (100° F) and below 93° C (200° F) can use the bulk packaging requirements in § 173.241, which allow for the use of non-specification portable tanks.

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

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster", with a long horizontal flourish extending to the right.

T. Glenn Foster
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards



September 1, 2010

Mr. Charles E. Betts
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Dear Mr. Betts:

I am writing to you with regards to the packaging requirements for diesel fuel under 49 CFR §172.102, Special Provision B1. Specifically, Special Provision B1 states the following:

"If the material has a flash point at or above 38° C (100° F) and below 93° C (200° F), then the bulk packaging requirements of §173.241 of this subchapter are applicable."

In addition to other types of packaging, 49 CFR §173.241 permits the use of non-DOT specification portable tanks suitable for the transport of liquids. It also permits the use of various intermediate bulk container (IBC) types.

Per the definition for "intermediate bulk container" found in 49 CFR §172.101, the term specifically excludes portable tanks, however the definition of "portable tank" in that same section seems to describe typical IBCs that are used in industry, since many of them are "equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means."

My questions are as follows:

- 1) Is it possible for a packaging to be tested and dual marked as both an IBC and a portable tank?
- 2) If an IBC has not been tested according to the retest requirements set forth in 49 CFR Part 178, Subpart O, must the UN marking be removed or obliterated to continue being used?
- 3) By removing or obliterating the UN marking of the IBC, it is our understanding based on DOT Interpretation Letter Ref. # 08-0286 that this packaging would then be considered a non-specification bulk packaging. Is that correct?
- 4) If the answer to Question 3 is YES, could this non-specification bulk packaging satisfy the packaging requirements found in §173.241 which permits the use of non-specification portable tanks for the transportation of high flash point diesel fuel?

Thank you in advance for your assistance. I look forward to your response.

Sincerely,

Erin N. Jarman

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Benedict
§ 172.101
§ 173.241
Bulk Packaging
10-0186