



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

FEB 27 2019

Ms. Lisa J. Nugent
Jacobs Suppression Tech
BOC Fire & Gas
Mail Stop P.O. Box 340137
Deadhorse, AK 99734

Reference No. 18-0117

Dear Ms. Nugent:

This letter is in response to your August 14, 2018, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to cylinders. Specifically, you seek confirmation of your understanding that the phrase in § 180.205(c) that states, “may remain in service until it is emptied,” is an allowance—instead of a requirement—as it applies to the inspection, installation, testing, and maintenance of fire suppression systems containing cylinders that conform to the International Fire Code (IFC). You note that the IFC requires DOT 3AA cylinders used in carbon dioxide systems to be removed from service in 12-year intervals for hydrostatic testing.

Your understanding is correct. The HMR do not define the phrase “may remain in service until it is emptied”; however, under § 180.205(c) of the HMR, PHMSA allows a cylinder to be used to transport the product it contains until it is emptied, provided the cylinder continues to meet all applicable requirements. There is no time limit on how long a charged cylinder may stay in service before it must be requalified under the HMR, but once emptied, a cylinder due for requalification may not be refilled and offered for transportation unless it has been requalified in accordance with Part 180, Subpart C of the HMR. Further, a cylinder with a specified service life may not be refilled and offered for transportation after its authorized service life has expired.

While a DOT specification cylinder containing a hazardous material need not be emptied to meet a testing schedule under the HMR, Federal and state agencies may have differing requirements or testing intervals for cylinders used in certain non-transportation applications. You should comply with both state and federal laws, as applicable.

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

Sincerely,

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

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18-0117

August 14, 2018

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

Re.: Request for formal letter of interpretation, ref. 49 CFR 180.205(c)

Mr. Kelley:

My letter of inquiry to you is mainly about one part of 49 CFR 180.205(c), which states “a cylinder may remain in service until it is emptied”. I understand that “may” means permitted, but not required. So, it should not be confused with shall or should; may is an allowance, of sorts. I am also of the understanding that 49 CFR 171.1(e) and (f) refer to conflicts of requirements, which “may remain in service until it is emptied” is not a requirement.

Let me further explain myself; I perform the inspection, installation, testing, and maintenance to various fire suppression systems and fire extinguishers. And with that, part of my job entails the inspection, testing, and maintenance of a variety of DOT spec. cylinders. For the State of Alaska, we follow Alaska Statutes; and the state adopted the IFC for our fire code needs. The IFC references which NFPA standards to use for specific types of systems/extinguishers, and states that they will be used as code. Part of my job is to inspect, install, test, and maintain various fire suppression systems and fire extinguishers in accordance with their respective NFPA standards. If I don't follow the NFPA standards, then systems would be out of compliance. I currently work with a few individuals who are under the impression that “a cylinder may remain in service until it is emptied” applies to the cylinders used in fire suppression systems and fire extinguishers. I believe that, in this instance, the permissible “may” doesn't apply at all, and that actually following NFPA guidelines of cylinder hydrotest intervals mirrors the intervals laid out in 49 CFR 180.209. For instance, NFPA 12 states that DOT 3AA cylinders used in carbon dioxide systems shall be removed from service at 12-year intervals, and hydrostatically tested. In this case, I need to follow my state code, based on IFC, to remove those cylinders and test them at 12-year intervals (which reflects the interval specified by 49 CFR 180.209 Table 1). Not only would I be maintaining those systems to state code, but I would also be meeting the requirements of the HMR. If I were to use the allowance of leaving them in service until they were emptied, the system would be out of compliance. For a second example, NFPA 10 designates that nitrogen cylinders used on wheeled fire extinguishers (DOT 3A and 3AA), be removed from service at 5-year intervals, and hydrostatically tested (unless the latest date also bears a star stamp). Here again, if I were to leave the nitrogen cylinders on wheeled fire extinguishers in service until they were emptied, then the wheeled fire extinguisher would be out of compliance.

I do also understand where “may remain in service until it is emptied” is applicable in my world. For instance, we have a couple different service pressure 3AA cylinders that frequent our shop, and other shops in the area. They're outfitted with commercial style CGA-580/-680 outlet valves, and they're typically used for filling smaller cylinders/cartridges. For the sake of any codes, these cylinders are not tied to any applicable *specific* regulations other than those in the HMR. Therefore, they could use the allowance of remaining in service until they're emptied.

Please let me know if I have the information above fully understood. Since the word “may” is utilized in 49 CFR 180.205(c), then I see no conflict that would necessitate referencing 49 CFR 171.1(e) and (f), as it is not a requirement, but an allowance. Since it's an allowance, or permitted act (and not a requirement), then any stricter requirement that applies to the use of the cylinder should apply, as long as that other requirement has no further conflict with an actual CFR requirement. I am hoping that your response will entail something along the lines of me having a very thorough understanding of the HMR, and what becomes applicable in different segments of my line of work. I have reviewed several past letters of interpretation that were recommended by a regulatory specialist. In the event that your response is similar to others that I've read, I will be prepared with further information that highlights requirements specific to my line of work from 29 CFR 1910.

Regards,



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