



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

**JUN 24 2019**

David Schmitz  
Director of Sales & Product Development  
Gayston Corporation  
721 Richard Street  
Miamisburg, OH 45342

Reference No. 19-0021

Dear Mr. Schmitz:

This letter is in response to your February 19, 2019, email and phone call requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to marking requirements for DOT-39 non-reusable cylinders. Specifically, you describe a scenario where the newly manufactured cylinders will be transported empty with no valves installed and bear the following markings:

- “DOT-39 NRC”
- Service pressure/Test pressure
- M-number for the cylinder manufacturer
- Date of manufacture

You state that the newly manufactured cylinder is not marked with the marking — “Federal law forbids transportation if refilled-penalty up to \$500,000 fine and 5 years imprisonment (49 U.S.C. 5124)” which is a required marking for DOT-39 cylinders (see § 178.65(i)(2)(viii)(B)). You have a written agreement with your customer that they will apply this marking on a durable adhesive label prior to the cylinder being filled.

You state it is your customer’s understanding that it is permissible to transport the empty, valve-less cylinders to their facility without the “Federal law forbids...” marking, and you ask for confirmation of their understanding.

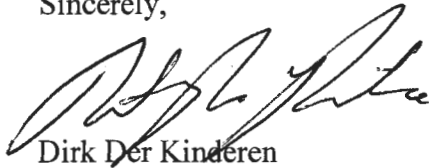
The responsibility for complying with cylinder marking requirements found in Part 178 of the HMR is primarily placed on the packaging manufacturer (see § 178.2(a)(2)). By embossing “DOT-39 NRC” on the base of the cylinder, you have indicated that the packaging meets the requirements applicable to a DOT-39 cylinder, and is suitable for the transportation of hazardous materials in commerce. By placing your M-number on the cylinder, your company is certifying compliance with all DOT-39 requirements. The absence of a valve, which is not itself part of the DOT-39 specification, does not remove the requirement to comply with all DOT-39 requirements, which include the “Federal law forbids...” marking found in § 178.65(i)(2)(viii)(B).

Responsibility for applying this marking may be transferred to your customer through a contract or other agreement; however, both parties may be held responsible if hazardous materials are offered or transported in commerce in DOT-39 cylinders that do not bear all the required markings.

Additionally, please note that DOT-39 cylinders must be marked with the lot number in accordance with § 178.65(i)(2)(vi).

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 'Dirk Der Kinderen', written in a cursive style.

Dirk Der Kinderen  
Chief, Standards Development Branch  
Standards and Rulemaking Division

**Dodd, Alice (PHMSA)**

19-0021

**From:** INFOCNTR (PHMSA)  
**Sent:** Thursday, February 21, 2019 10:46 AM  
**To:** Hazmat Interps  
**Subject:** FW: Interpretation  
**Attachments:** Interpretation.pdf; IMG\_20190219\_172252181~2.jpg; IMG\_20190219\_172336352~2.jpg; IMG\_20190219\_172346474.jpg

Hello Alice and Ikeya,

Attached is a request for letter of interpretation.

Thanks,

Jonathon, HMIC

**From:** David Schmitz [mailto:david.schmitz@precisionimpacts.com]  
**Sent:** Tuesday, February 19, 2019 5:53 PM  
**To:** INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>  
**Subject:** Interpretation

Shane,

Attached, please find our letter of interpretation that we would like your review and advise on.

Please acknowledge and confirm receipt.

Thanks,  
Dave Schmitz  
Director of Sales & Product Development



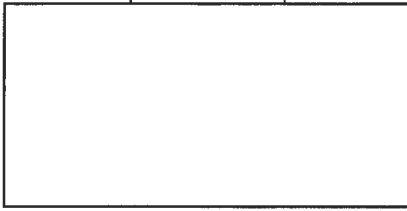
721 Richard Street  
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P: (937) 530-8261  
C: (937) 902-9474  
[david.schmitz@gayston.com](mailto:david.schmitz@gayston.com)

**David Schmitz**  
Director, Sales & Marketing

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45342

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February 4, 2019

Standards Division – PHH-10  
PHMSA  
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202.366.4488

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937.902.9474  
[dschmitz@gayston.com](mailto:dschmitz@gayston.com)

Subject: Interpretation

Shane,

Gayston is a manufacturer of DOT-39 NRC under the registration number M4625. We are working with a customer on a new cylinder opportunity and that customer has determined that their cylinders do not require the following statement to be marked on them after manufacture prior to shipment to their facility:

*"Federal law forbids transportation if refilled-penalty up to \$500,000 fine and 5 years imprisonment (49 U.S.C. 5124)."*


Our customer's arguments for not requiring this marking are as follows:

- 1.) The cylinder will not have a valve installed in it
- 2.) The cylinder will only be shipped empty
- 3.) The cylinder will be marked according to 49 CFR 178.65 and include the following markings:
  - a. DOT-39
  - b. NRC
  - c. The service pressure
  - d. The test pressure
  - e. The registration number (M4625) of the manufacturer
  - f. The date of manufacture

Attached, I have included pictures of the DOT-39 NRC which shows the empty cylinder without valve and absent of the label.

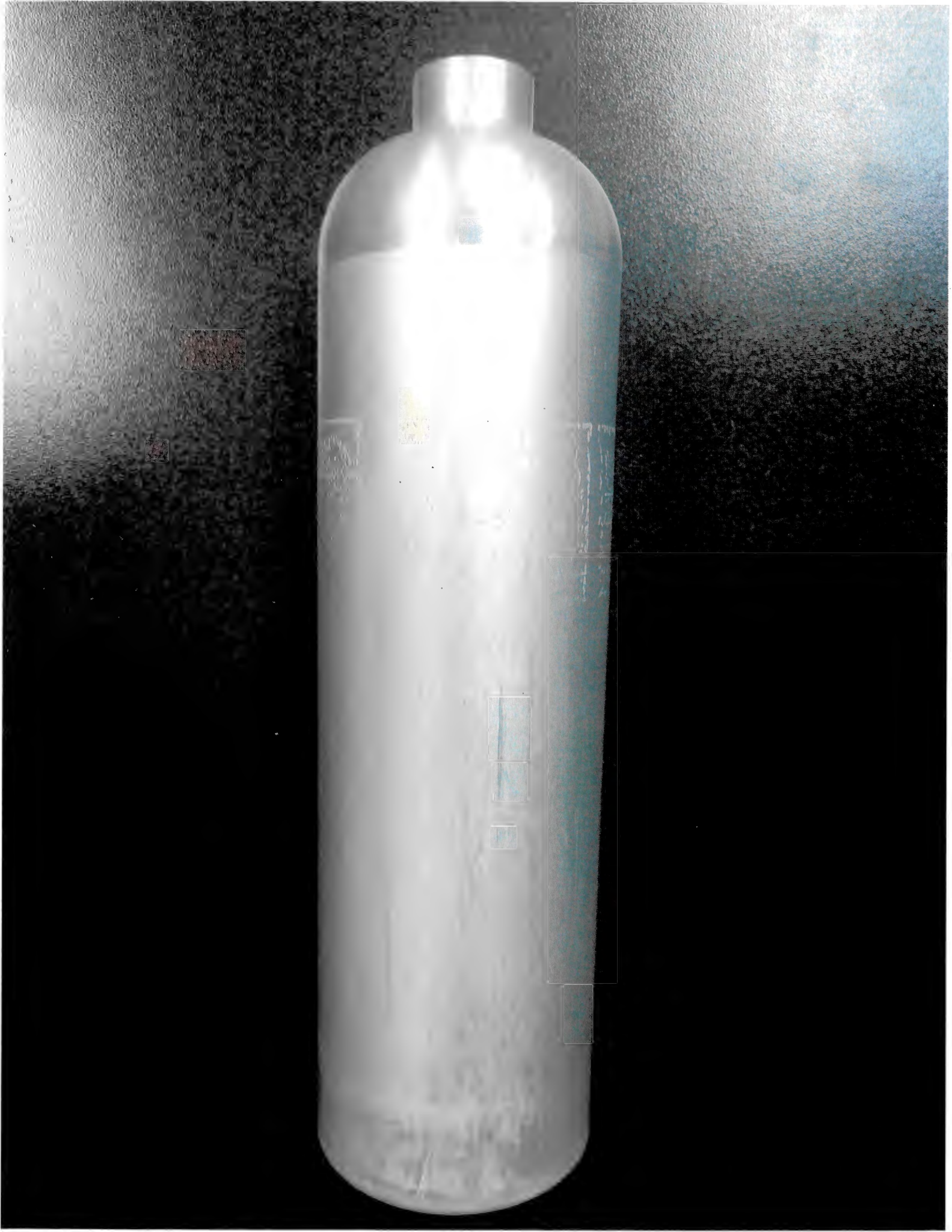
Can you please confirm this interpretation is correct?

Regards,

  
David Schmitz  
Program Director  
Gayston Corporation









DOT-39 WAC

500750

W4625

IC-39 WAC

34152

977

Handwritten mark