



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

August 28, 2023

Chris Bartlett
Attn: Cpt. Battenhouse
Denver Fire Department,
745 W. Colfax Ave
Denver, CO 80204

Reference No. 23-0003

Dear Mr. Bartlett:

This letter is in response to your January 17, 2023, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the maintenance of Department of Transportation (DOT) specification cylinders and tanks stored for use on site (*i.e.*, stationary containers). You state that the cylinders and tanks are not placed into transportation in commerce and are periodically refilled onsite. It is your understanding that the refilling of DOT specification marked cylinders and tanks places them “in commerce” making them subject to the HMR.

Your understanding is not correct. The refilling of a DOT specification marked cylinder or tank used as a stationary container does not place the container “in commerce” for purposes of the HMR. The HMR applies to persons who offer hazardous material for transportation or transport hazardous material in commerce and who perform or are responsible for performing a pre-transportation function. Pre-transportation functions, such as filling, are performed in advance to prepare hazardous materials for transportation. Refilling a container intended to remain onsite (*i.e.*, not be transported) would not be considered performance of a pre-transportation function.

We have further paraphrased and answered your specific questions as follows:

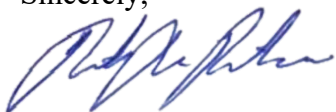
- Q1. You ask whether a stationary set of DOT specification cylinders that are stored onsite and periodically refilled by a third party are subject to the HMR.
- A1. The answer is it depends. The use of the cylinders is not subject to the HMR. However, if the cylinders are represented as meeting the requirements of the HMR, they are subject to certain requirements of the HMR. In accordance with § 171.2(g), representing a packaging (*i.e.*, a container) as meeting the requirements of the HMR governing its use in transportation is prohibited unless it meets applicable requirements whether or not the container is used or is to be used for the transportation of a hazardous material.

Therefore, if the container is not maintained or qualified for use in transportation, the DOT specification marking must be covered or obliterated.

- Q2. You ask whether the maximum filling requirements listed in § 173.304a(a)(2) are applicable to stationary cylinder systems installed in a building and refilled by a third party.
- A2. The answer is no. Cylinders that are filled and used at a private work-site and not offered for transportation in commerce are not directly regulated under the HMR, but in fact come under the jurisdiction of Occupation Safety and Health Administration (OSHA) Standards. It should be noted that based on 29 CFR § 1910.101, if the owner of the cylinder wishes to fill and continue to use the DOT specification cylinder but does not wish to requalify the cylinder as a DOT specification cylinder, they must cover or obliterate any DOT specification markings even when used entirely on private property.
- Q3. You ask whether the recertification (*i.e.*, the requalification) requirements in 49 CFR Part 180 are applicable to stationary cylinder systems installed in a building and refilled by a third party.
- A3. The answer is yes, if the cylinders are represented as meeting the requirements of the HMR. Section 180.3(a) states no person may represent a packaging, such as a cylinder, as meeting the requirements of Part 180 whether or not it is intended to be used for the transportation of a hazardous material. If the owner of the DOT specification cylinder wishes to continue to use the cylinder but does not wish to re-qualify the cylinder as a DOT specification cylinder, the owner must cover or obliterate any DOT specification markings.

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

Sincerely,



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

From: [INFOCNTR \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#); [Hazmat Interps](#)
Subject: FW: Formal Letter of Interpretation Request
Date: Wednesday, January 18, 2023 9:43:41 AM

Dear Alice and team,
Please see the LOI request below. The actual question is in the first email in this string, and then the inquisitor added their mailing address in the next. Please let us know if anything else is needed.
Thanks!
-Rachel (HMIC)

From: Bartlett, Chris - DFD Fire Protection Engineer <Chris.Bartlett@denvergov.org>
Sent: Wednesday, January 18, 2023 9:31 AM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Cc: Battenhouse, Timothy - DFD SF1008 Captain <Timothy.Battenhouse@denvergov.org>
Subject: RE: Formal Letter of Interpretation Request

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.

Rachel,

The physical address is:

Denver Fire Department, Attn: Cpt. Battenhouse
745 W. Colfax Ave, Denver, 80204



Chris Bartlett, PE, FPE | Fire Protection Engineer
Fire Dept / Fire Prevention Div | City and County of Denver
p: 720.614.9434 chris.bartlett@denvergov.org

INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Sent: Tuesday, January 17, 2023 12:15 PM
To: Bartlett, Chris - DFD Fire Protection Engineer <Chris.Bartlett@denvergov.org>; INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Cc: Lukus, Brian M. - DFD Fire Protection Engineer <Brian.Lukus@denvergov.org>; Lanz, James D. - DFD CE2340 Engineer-Architect Specialist <James.Lanz@denvergov.org>
Subject: [EXTERNAL] RE: Formal Letter of Interpretation Request

Dear Chris,

We have received your request for a written letter of interpretation regarding the hazardous materials regulations (49 CFR Parts 171-180). The hazardous materials regulations are available at

the following URL:

<https://www.phmsa.dot.gov/phmsa-regulations>

However, before we can submit your request for processing, please respond to this email with:

- Physical Mailing Address

Sincerely,

Rachel, Hazardous Materials Specialist

An e-mail response from this office is considered informal guidance. Formal guidance may be requested in accordance with 49 CFR 105.20. <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/hazardous-materials-information-center>

From: Bartlett, Chris - DFD Fire Protection Engineer <Chris.Bartlett@denvergov.org>

Sent: Tuesday, January 17, 2023 11:32 AM

To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>

Cc: Lukus, Brian M. - DFD Fire Protection Engineer <Brian.Lukus@denvergov.org>; Lanz, James D. - DFD CE2340 Engineer-Architect Specialist <James.Lanz@denvergov.org>

Subject: Formal Letter of Interpretation Request

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Pipeline and Hazardous Materials Safety Administration
Office of Standards and Rulemaking PHH10
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

To Whom it May Concern,

We would like an interpretation of 49 CFR parts 100 through 185 and specifically if these regulations are in force for all *stationary* DOT specification cylinders and tanks if they are refilled by a gas supplier without being physically transported from their point of use. Can you confirm that the act of refilling DOT labeled cylinders and tanks places them *in commerce* as such subject to the above regulations.

Specifically: PHMSA Interpretation Response 10-0207 [Interpretation Response | PHMSA \(dot.gov\)](#)

requires DOT marked cylinders to be maintained in accordance with the HMR when offered for use *in commerce*. If a stationary set of DOT marked cylinders is being stored on-site and periodically refilled by a third party gas supplier are these cylinders subject to the HMR? Are the following sections applicable to such stationary cylinder systems installed in a building being refilled by a third party gas supplier:

- The maximum fill requirements listed in 49 CFR part 173.304a (a) (2) – Table 1 to Paragraph (a)(2)
- The recertification requirements of 49 CFR Part 180.



Chris Bartlett, PE | Fire Protection Engineer
Fire Dept / Fire Prevention Div | City and County of Denver
p: 720.614.9434 chris.bartlett@denvergov.org