



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

400 Seventh St., S.W.  
Washington, D.C. 20590

DEC 3 2003

Mr. Philip A. Squair  
Vice President, Regulatory and Technical Services  
National Propane Gas Association  
1150 17<sup>th</sup> Street, N.W., Suite 310  
Washington, DC 20036

Ref No.: 04-0133

Dear Mr. Squair:

This is in response to your letter concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to the on-site filling of forklift cylinders directly from bobtails. We apologize for the delay and hope it has not caused you any inconvenience. Specifically, you ask if the final rule published under HM-223 on October 30, 2003 prohibits on site filling of forklift cylinders from cargo tank motor vehicles. You further request clarification of the applicability of volumetric filling requirements of cylinders under § 173.304.

The HM-223 final rule clarifies the applicability of the HMR to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. The final rule is intended to codify in the HMR long-standing policies and interpretations concerning the applicability of the regulations to specific functions and operations. The HM-223 final rule becomes effective on June 1, 2005.

With regard to "unloading incidental to movement," the HM-223 final rule reiterates long-standing regulatory requirements and administrative interpretations concerning the applicability of the HMR to certain unloading operations. The HM-223 final rule does not prohibit any unloading operations that are currently permitted under the HMR. Thus, a cargo tank motor vehicle may be unloaded directly into a cylinder or other container provided the requirements applicable to the unloading operation are met (see, for example, §§ 177.834(i) and 177.840(l), (m), (n), (o), (p), (q), (r), and (s)).

With regard to the volumetric filling of cylinders, you are correct that cylinders that are filled and used at a work-site and not offered for transportation in commerce are not regulated under the HMR, but in fact come under the jurisdiction of Occupation Safety



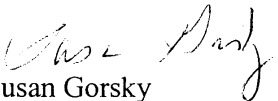
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and Health Administration (OSHA) Standards. If you have questions concerning cylinders used at the workplace you should contact OSHA.

I hope this satisfies your inquiry. If you have any further questions, please free to contact this office.

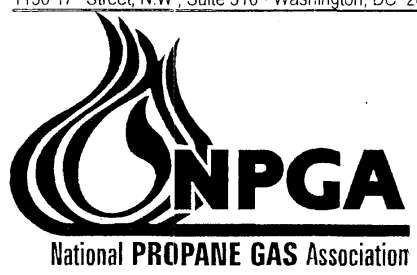
Sincerely,

  
Susan Gorsky  
Regulations Officer  
Office of Hazardous Materials Standards

Webb  
§171.1  
HM-223  
Applicability  
04-0133

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1150 17<sup>th</sup> Street, N.W., Suite 310 • Washington, DC 20036 • 202/466-7200 • Fax 202/466-7205



May 25, 2004

Ms. Susan Gorsky  
Sr. Transportation Specialist  
Research and Special programs Administration  
U.S. Department of Transportation  
Washington, D.C.

Dear Ms. Gorsky:

The National Propane Gas Association (NPGA) is the national trade association of the LP-gas (principally propane) industry with a membership of over 3,600 companies, including 39 affiliated state and regional associations representing members in all 50 states. Although the single largest group of NPGA members are retail marketers of propane gas, the membership includes propane producers, transporters and wholesalers, as well as manufacturers and distributors of associated equipment, containers and appliances. Propane gas is used in over 18 million installations nationwide for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks.

Recently, Federated Insurance Company distributed a letter to Virginia propane marketers stating that new DOT rules would prohibit on-site filling of forklift cylinders directly from bobtails after October 1, 2004. The letter does not specify which rules would make this so, but a subsequent communication from Federated highlights Part 171 as amended by HM-223 as the source document. NPGA believes that Federated's assertion is based upon DOT's coverage of "unloading incidental to movement of a hazardous material" taken in combination with the restriction on volumetric filling of cylinders less than 200 pounds. Further, NPGA believes this interpretation is incorrect.

HM-223 clarifies the applicability of the Hazardous Materials Regulations (HMR) to specific functions and activities, including loading and unloading operations and storage of hazardous materials during transportation. These regulations define “unloading incidental to movement” as follows:

“Removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel, or, for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazmat has been delivered to the consignee and prior to the delivering carrier’s departure from the consignee’s facility or premises or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazmat is being unloaded immediately after movement is completed is present during the unloading operation.”

NPGA understands this to refer to the various requirements that apply specifically to the unloading of a cargo tank motor vehicle, such as attendance, hose management, and off-truck remote shut-down devices. NPGA further understands that this does not refer to the filling of cylinders that are not intended to transport hazardous materials in commerce.

DOT prohibits volumetric filling of cylinders less than 200 pounds through the following provision:

173.304a(d)(4) Verification of content. A cylinder with a water capacity of 90.72 kg (200 lb) or more and for use with a liquefied petroleum gas with a specific gravity of 0.504 or greater at 16 [deg]C (60 [deg]F) may have the quantity of its contents determined by using a fixed length dip tube gauging device....

For an operation to be covered by the HMR, a cylinder needs to be both in transportation and in commerce. Prior to October 1, 2004, the HMR cover the safe transportation of hazmat in intrastate, interstate, and foreign commerce. Two interpretation letters have been issued to NPGA. As defined in a letter to NPGA on October 19, 1998, “in commerce” excludes from regulation the transportation of hazmat in a private vehicle where the material is for personal use. Previously, on December 31, 1996, DOT stated that “DOT specification cylinders are not required to comply with the HMR when used as permanently installed fuel containers and not used to transport cargo in commerce.”

Forklift cylinders, like permanently installed customer tanks, are not used to transport cargo in commerce, so should filling them should not be considered jurisdictional from an HMR standpoint. NPGA requests DOT clarify that filling forklift cylinders from bobtails is not an operation covered by the HMR.

Sincerely,

/s/

Philip A. Squair  
Vice President, Regulatory and Technical Services