

Rdg File

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Int. No. 87-2-RSPA

INTERPRETATION

SOURCE: Mark Swartz, Esq.
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FACTS: Section 173.301 prescribes the general requirements for shipping compressed gas cylinders. Paragraph (b) of § 173.301 states: "A container charged with a compressed gas must not be shipped unless it was charged by or with the consent of the owner of the container." Mr. Swartz has two questions: 1) Is the consent of the owner necessary if the cylinder is not offered and accepted for transportation (i.e., shipped). 2) Is there any specific required method (i.e., written proof) to establish the ownership of a cylinder.

INTERPRETATION: Under § 173.301(b), there is no prohibition against charging a cylinder without the consent of the owner of the cylinder, provided the charged cylinder is not offered for transportation in commerce. Therefore, if a person who offers a cylinder for transportation is also the person who charged it, the question of whether that person may be held accountable in a particular case depends on whether he obtained the permission of the cylinder owner to charge the cylinder. If, for example, the refiller who offered the container for transportation received it from the owner, then permission to fill the container can be inferred under § 173.301(b). However, the refiller may be held accountable under § 173.301(b) if he offers a container for transportation that he received from a person who he "knows" is not the owner of the cylinder. Applying the definition of "knowledge" in 49 CFR § 107.299, a person has the requisite knowledge when he actually knows or should have known that an individual does not own a container. Written proof of ownership is not required. To insulate oneself from liability under § 173.301(b), the person who offers the cylinder for transportation should have sufficient "objective" facts to establish that a particular person owned the container.

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ISSUED: MAR - 2 1957

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C. Maguire - DMM-11 - Rm 8102
JAA - ABC - 260 Rm 9.7(B)
FHWA ACC - do Rm 4224
CG - CLM - Rm 3400
JRA - RCC - 30 Rm 821*

Interpretation 87-2-RSPA: ABSTRACT

Under § 173.301(b), it is acceptable to refill a container without the consent of the owner, provided the refilled container is not offered and accepted for transportation in commerce. However, if the refiller also ships the container liability under § 173.301(b) may occur. If the transporting refiller received the container from an individual representing himself as the owner and the refiller has "knowledge" (as defined in 49 CFR § 107.299) such individual is the owner of the container, then permission to fill the container is granted under § 173.301(b). Yet, the individual who refills and offers the container for transportation may be held accountable under § 173.301(d) if the container was transferred by a person who he "knows" is not the owner of the container. Written proof of ownership is not required.

Interpretation 87-2-RSPA: SECTIONS AFFECTED

49 CFR 107.299

49 CFR 173.301

49 CFR 173.301(b)

Interpretation 87-2-RSPA:KEY WORDS

Charging

Compressed Gas

Cylinders

Owner's Consent

Knowledge

Refilling