



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Ave, SE
Washington, D.C. 20590

DEC 28 2010

Mr. Ralph Diaz
Air Liquide America Specialty Gases LLC
2700 Post Oak Blvd., Suite 1800
Houston, TX 77056

Reference No.: 10-0183

Dear Mr. Diaz:

This is in response to your letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the filling of non-DOT, non-UN/ISO compressed gas cylinders for export. Specifically, you ask for verification that the requirement found in § 171.23(a)(4)(ii) specifying that non-DOT, non-UN/ISO compressed gas cylinders for export must be equipped with a pressure relief device (PRD) is the intention of the United States Department of Transportation and not an error.

On August 8, 2002, the Research and Special Programs Administration (the predecessor organization to the Pipeline and Hazardous Materials Safety Administration (PHMSA)) issued a final rule under Docket No. HM-220D [67 FR 51625] to amend various requirements related to the maintenance, requalification, use, and repair of DOT specification cylinders. As part of this rulemaking, § 173.301(l) was added and specified the "requirements for filling foreign cylinders for export." As you noted in your incoming letter, as recently as 2003-2004, § 173.301(l) allowed "A cylinder not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter, or a cylinder manufactured to other than a DOT specification or exemption, may be filled with a gas in the United States and offered for transportation and transported for export" under certain conditions, none of which required the cylinder to be equipped with a PRD. On May 3, 2007, PHMSA published a final rule under Docket No. HM-215F [72 FR 25161] which revised and consolidated the requirements applicable to the use of the authorized international standards. As part of this rulemaking, PHMSA moved the cylinder import/export requirements from paragraphs (k) and (l) in § 173.301 to a new § 171.23. These sections were not intended to be modified, only moved from one location in the regulations to a new location. This issue will be addressed in a future rulemaking.

Thank you for identifying this need for clarification and bringing it to our attention.

Sincerely,

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



Benedict
§171.23
Applicability/Corrections
10-0183

2700 Post Oak Blvd.
Suite 1800
Houston, TX 77056

August 12, 2010

Mr. Charles Betts, Director
PHMSA Office of Hazardous Materials Standards
U.S. Department of Transportation
East Building, PHH-20
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

Dear Mr. Betts:

We bring to the attention of U.S. DOT, a requirement within the regulations that appears to be in error.

Title 49 CFR 171.23 pertains to “Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations”. As subparagraph 171.23(a)(4)(ii) **pertains to a pressure relief device requirement**, the regulation states, “Filling of cylinders for export or for use on board a vessel: A cylinder not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter, or a cylinder manufactured to other than a UN standard, DOT specification, exemption or special permit, may be filled with a gas in the United States and offered for transportation and transported for export or alternatively, for use on board a vessel, if the maximum filling density, service pressure, and **pressure relief device** for each cylinder conform to the requirements for the gas involved; . . .”.

Note that 171.23(a)(4)(ii) is a relatively new change to the previous regulation, 49 CFR 173.301(l)(2) which required (as recently as 2003 – 2004), that a non-DOT cylinder, as described above, could be filled for export provided “. . . the **maximum filling density and service pressure** for each cylinder conform to the requirements of this part for the gas involved.” There was no requirement for the non-DOT package to comply with pressure relief device requirements in the U.S. Note that the previous version in 49 CFR 173.301(l)(2) was in harmony with the policy overseas where a cylinder valve is not equipped with, and does not require, a pressure relief device except for certain products (i.e., liquefied gaseous products).

The compressed gas industry periodically encounters requests to fill non-DOT, non-UN/ISO compressed gas cylinders for export purposes only; however, because of the change to the regulations circa 2005, cylinders manufactured to other than a UN standard or DOT specification that are shipped as empty cylinders to the USA for the purpose of filling AND EXPORTING back to the customer overseas can no longer be filled and exported to customers globally.



2700 Post Oak Blvd.
Suite 1800
Houston, TX 77056

In our opinion, the change that was made to the regulations in 49 CFR 171.23(a)(4)(ii), that pertains to filling and exporting non-DOT or non-UN/ISO standard cylinders and mandates the use of a pressure relief device, was in error and not the intent of U.S. DOT.

Please respond to Air Liquide with any regulatory relief from, or a clarification or explanation for, 49 CFR 171.23(a)(4)(ii).

Sincerely,

A handwritten signature in black ink, appearing to read 'Ralph Diaz'.

Ralph Diaz
Air Liquide America Specialty Gases LLC
2700 Post Oak Blvd, Suite 1800
Houston, TX 77056
(713) 499-6867