



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

JUL 11 2005

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

Mr. Steven Lindblom
Airspeed Press
79 Old Denny Hill Road
Warner NH 03278

Ref. No. 05-0060

Dear Mr. Lindblom:

This responds to your March 9, 2005 letter concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to DOT specification 3AA, 3AL or other SCUBA cylinders. Specifically, you ask whether the HMR apply to cylinders owned by individuals for personal use.

In accordance with Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), the HMR apply to the transportation of hazardous materials in commerce, including packaging intended for such transportation. Specifically with regard to cylinders used to transport hazardous materials in commerce, the HMR establish requirements for their design, manufacture, maintenance, and requalification. A cylinder manufactured in accordance with requirements established in the HMR must be marked to indicate that it conforms to all applicable HMR requirements. A cylinder marked to certify that it conforms to HMR requirements must be maintained in accordance with applicable specification requirements whether or not it is in transportation in commerce at any particular time. Thus, a DOT specification 3AA, 3AL, or other SCUBA cylinder that is marked to indicate conformance with applicable DOT requirements must be retested and otherwise maintained in accordance with the HMR whether or not it is being used to transport hazardous materials in commerce.

The HMR include specific requirements applicable to the preparation of hazardous materials for transportation in commerce; such requirements are "pre-transportation functions" (see §§ 171.1 and 171.8). For example, the person offering a hazardous material for transportation must class the hazardous material, select an authorized packaging, fill and close the packaging, describe the hazardous material on a shipping paper, and apply appropriate markings and labels to the package. A cylinder being prepared for transportation in commerce may not be filled to a pressure that exceeds its marked service pressure. You are correct that the HMR requirements applicable to pre-transportation functions do not apply to the transportation of a cylinder by a private individual for personal use. However, we strongly recommend against filling any cylinder beyond its marked service pressure in any circumstance, or any cylinder that is due for requalification according to the table in § 180.209 of the HMR.



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Your specific questions are paraphrased and answered below.

Q1. Do the HMR apply to a cylinder that is transported to and from a dive shop by a private individual for personal use? Do the HMR apply to a cylinder that is filled by a dive shop and rented to a customer who then transports it off the premises?

A1. The HMR generally apply to the transportation of hazardous materials in commerce. Transportation of hazardous materials by a private individual in a private motor vehicle for personal use is not commercial transportation. Note, however, that a cylinder that is marked to certify that it conforms to HMR requirements must be maintained in accordance with applicable specification requirements whether or not it is in transportation in commerce at any particular time.

Q2. Do the HMR apply to a cylinder that is shipped to a customer by UPS, FedEx, or other commercial carrier?

A2. Yes. A person, such as a dive shop, who offers a hazardous material for transportation in commerce or a person, such as a commercial carrier, who transports a hazardous material in commerce is subject to all applicable HMR requirements.

Q3. Do the HMR apply to a cylinder that is transported by a private individual in a private motor vehicle for personal use when transported on a public road or a Federal highway?

A3. See response A1 above.

Q4. Do the HMR apply to a cylinder that is carried by a private individual on a commercial bus or boat licensed to carry passengers?

A4. Yes. Passengers and crew members traveling on a commercial bus or vessel are "in commerce" and are fully subject to the HMR.

Q5. Do the HMR apply to a cylinder owned by a private individual who takes it on a vessel licensed to carry passengers and has the cylinder filled while on the vessel?

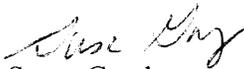
A5. Yes. See response A5 above.

Q6. Do the HMR apply to the transportation of an empty cylinder?

A6. A cylinder that had contained a non-flammable, non-poisonous gas that has been emptied so that the remaining gas in the cylinder exerts an absolute pressure of less than 280 kPa (40.6 psia) at 20 °C (68 °F) is not subject to the HMR. If offered in commerce, markings and labels must be removed, obliterated, or securely covered.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,



Susan Gorsky
Acting Director
Office of Hazardous Materials Standards

Webb
File: 171.2
Applicability
05-0060

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March 9, 2005

We are publishers of several books dealing with technical issues in diving. We get a lot of questions from readers, many of regarding scuba tanks, the same ones over and over, and thought we ought to check with you to be sure we are giving them the correct answers.

Our understanding is that the DOT regulations for 3AA, 3AL and other scuba tanks are legally applicable only to tanks used commercially, or as the CFRs put it, "entered in commerce", and that it is therefor neither against the law for a private owner to fill tanks which do not have a current hydro inspection or fill them higher than their rated service pressure, or, for that matter, for a scuba shop to the same, to privately owned tanks.

That's not to say it's a good idea, just that it is not illegal.

We run into a lot of confusion over what is meant by "entered into commerce", with some claiming that if the tank touches a commercial operation at any point it has been entered into commerce. Would you be able to clarify what it actually means?

Specifically, would a tank be "entered in commerce" if:

- 1) A diver transports it to and from a dive shop for a fill?
- 2) A dive shop fills and rents a tank belonging to the shop to a customer, who then transports it off the premises?
- 3) A dive shop fills a tank owned by the shop then ships it to a customer

via a public carrier like UPS?

4) A diver takes his privately owned tank, puts it in his car, and transports it on a public road?

5) A diver takes his privately owned tank, puts it in his car, and transports it on a federal highway?

6) A diver takes a privately owned tank and takes it with him on a commercial bus or boat licensed to carry passengers?

7) A diver takes his privately owned tank of a dive~~b~~ boat which is licensed to carry passengers and while on it has it filled by the dive boat people (so they are both filling and transporting the tank, though it is not their tank) ?

In examples 4-6, does it make a difference if the tank is full or empty?

Many thanks,



Steven Lindblom