



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

JAN 05 2015

Mr. John Fox
NitroxFox LLC
PO Box 32091
Sarasota, FL 34239

Ref. No.: 14-0064

Dear Mr. Fox:

This is in response to your emails dated March 29, 2014, requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) relating to the applicability of the HMR to the filling of SCUBA cylinders at a self-service filling station. You propose a self-service filling station to enable your customers to fill their own SCUBA cylinders any time of day, and ask if such an arrangement would be in compliance with the requirements of the HMR.

Section 171.1(b) and (c) provides that requirements of the HMR apply to each person who offers a hazardous material for transportation in commerce and the transportation of a hazardous material in commerce. The transportation of a hazardous material by a private individual for non-commercial personal use is not considered transportation in commerce. Therefore the requirements of the HMR are not applicable to fillers (offerors) or private individuals for the use, recharging, or transportation of SCUBA cylinders by private individuals for personal use.

However, if a person were to fill a cylinder at the self-serve facility that is intended to be used in conjunction with a business, both the facility and the business would be subject to the HMR. In this situation the self-serve facility would have to have a mechanism in place to ensure compliance with all applicable requirements of the HMR.

Further, in accordance with § 180.3(a), a cylinder marked to certify that it conforms to the requirements of the HMR 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 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 self-service filling station would have to provide a mechanism for ensuring a cylinder is in compliance with § 180.3(a). The filling of a cylinder by an untrained person may result in the cylinder being filled beyond its marked service pressure or being filled after the cylinder becomes due for requalification and would violate the HMR.

Even though the requirements of the HMR do not apply to the transportation of hazardous materials by private individuals for their personal use, it is reasonable to assume that some patrons would have a commercial purpose, thereby triggering the applicability of the HMR. When a cylinder is subject to the HMR, requirements for filling, testing, shipping papers, markings, labels, and other areas may apply. Additionally, even when the HMR does not apply Occupational Safety and Health Administration (OSHA) and state and local requirements may apply.

For these reasons, PHMSA counsels against the proposed self-service filling station.

You also ask if these cylinders may be filled when they are on a vehicle. The HMR does not address whether a cylinder can be filled while it is on a vehicle or if it must be removed from the vehicle for filling.

I trust this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shane C. Kelley for".

Shane C. Kelley
Acting International Standards Coordinator
Standards and Rulemaking Division

Babich
3173.301

Drakeford, Carolyn (PHMSA)

From: Benedict, Robert (PHMSA)
Sent: Saturday, March 29, 2014 4:47 PM
To: Drakeford, Carolyn (PHMSA)
Subject: Fw: Self Serve Gas Filling station

Cylinders
14-0064

Please assign as a request for interp.

From: John Fox [<mailto:nitroxfox1@comcast.net>]
Sent: Saturday, March 29, 2014 02:28 PM
To: Benedict, Robert (PHMSA)
Subject: Self Serve Gas Filling station

Rob,

I would like to set up a self-serve gas blending station for my customers. We fill gas bottles for scuba diving. They range in working pressures from around 1800 psi -4500 psi. They will be both steel and aluminum cylinders. Can I do this and abide by current DOT regulations? I want my customers to be able to fill their own cylinders at their leisure at any time of day as I am not open 24 hours per day. They will contain air, nitrox up to 100% O2 content and mixtures with helium depending on the application and dive profile. Are there training requirements for anyone who fills a cylinder or can I set up a pay per use station and let anyone fill cylinders? We will not be auditing the fills so it will be by an honor system as to how full(psi) and what the percentage(O2,HE) the mixtures are. If I do this, what must I do to comply with the current requirements? Do the cylinders and valves need to meet a certain standard of cleanliness and inspection? How many scuba cylinders can an individual transport and not have to abide by DOT regulations, if any? This will be a fill station open to the general public if allowed.

Thanks,

John Fox
NitroxFox LLC
PO Box 32091
Sarasota, Fl, 34239

Drakeford, Carolyn (PHMSA)

From: Benedict, Robert (PHMSA)
Sent: Saturday, March 29, 2014 4:48 PM
To: Drakeford, Carolyn (PHMSA)
Subject: Fw: Self Serve Gas Filling station

This goes along with the other email.

From: John Fox [<mailto:nitroxfox1@comcast.net>]
Sent: Saturday, March 29, 2014 02:42 PM
To: Benedict, Robert (PHMSA)
Subject: FW: Self Serve Gas Filling station

Rob,

Sorry,

One more question. Can these cylinders be filled in the vehicles or not? I know some customers have many cylinders and it would be inconvenient for them to remove all of them from their vehicles at each fill. I may be able to set up a spool so I can run 1 line to the vehicles and make it easier to fill the cylinders. Aside from training requirements, are there other requirements to abide by DOT regulations for fillers and blenders in my particular situation?

Thanks again,

John

From: John Fox [<mailto:nitroxfox1@comcast.net>]
Sent: Saturday, March 29, 2014 2:28 PM
To: 'robert.benedict@dot.gov'
Subject: Self Serve Gas Filling station

Rob,

I would like to set up a self-serve gas blending station for my customers. We fill gas bottles for scuba diving. They range in working pressures from around 1800 psi -4500 psi. They will be both steel and aluminum cylinders. Can I do this and abide by current DOT regulations? I want my customers to be able to fill their own cylinders at their leisure at any time of day as I am not open 24 hours per day. They will contain air, nitrox up to 100% O2 content and mixtures with helium depending on the application and dive profile. Are there training requirements for anyone who fills a cylinder or can I set up a pay per use station and let anyone fill cylinders? We will not be auditing the fills so it will be by an honor system as to how full(psi) and what the percentage(O2,HE) the mixtures are. If I do this, what must I do to comply with the current requirements? Do the cylinders and valves need to meet a certain standard of cleanliness and inspection? How many scuba cylinders can an individual transport and not have to abide by DOT regulations, if any? This will be a fill station open to the general public if allowed.

Thanks,

John Fox
NitroxFox LLC
PO Box 32091
Sarasota, Fl, 34239

Drakeford, Carolyn (PHMSA)

From: Benedict, Robert (PHMSA)
Sent: Sunday, March 30, 2014 2:53 PM
To: Drakeford, Carolyn (PHMSA)
Subject: Fw: Self Serve Gas Filling station

Carolyn include this with the other two emails.

From: John Fox [<mailto:nitroxfox1@comcast.net>]
Sent: Sunday, March 30, 2014 02:48 PM
To: Benedict, Robert (PHMSA)
Subject: RE: Self Serve Gas Filling station

This also begs another question. What does the DOT consider "transportation in commerce"? I would be engaged in the exchange of goods and services for a consideration, which could be defined as "commerce" by some, but what applies to those customers who use the goods for work purposes and those that use and transport for recreation? Is there a distinction if the goods are transported via road, rail, water, etc in the USA if we are engaged in commerce but the goods are used for work or pleasure? I often hear that the DOT has no jurisdiction because the goods are used recreationally. What is the difference between recreational and commercial use? Are there limits(dollar amounts, weight, vehicle,passengers...) for which one can transport solely for recreational purposes before they are obligated to abide by commercial standards?

Thanks,

John

From: robert.benedict@dot.gov [<mailto:robert.benedict@dot.gov>]
Sent: Saturday, March 29, 2014 4:47 PM
To: nitroxfox1@comcast.net
Subject: Re: Self Serve Gas Filling station

John,

This is a rather a detailed inquiry so I am going to process this as a formal request for interpretation. One of our regulations specialist will be assigned the inquiry, research your questions under our current requirements and we will issue a written interpretation answering your questions.

Thanks

Rob

From: John Fox [<mailto:nitroxfox1@comcast.net>]
Sent: Saturday, March 29, 2014 02:28 PM
To: Benedict, Robert (PHMSA)
Subject: Self Serve Gas Filling station

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