



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

AUG 15 2017

John Hardridge  
Instructor  
3908 Vista Drive  
Norman, OK 73071

Reference No. 17-0026

Dear Mr. Hardridge:

This letter is in response to your March 9, 2017, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to cargo tank requalification testing and marking. Specifically, you describe a scenario where a person voluntarily marks the retest date and the retest identification marking on a cargo tank in accordance with Part 180, Subpart E. You further note the cargo tank does not have a specification plate, special permit, or registration number.

We have paraphrased and answered your questions as follows:

- Q1. You ask whether the HMR permit a person to perform requalification tests and apply associated markings on a non-Department of Transportation (DOT) specification cargo tank when not required.
- A1. The answer is yes. Nothing in the HMR prohibits a cargo tank owner from voluntarily performing requalification tests on a non-DOT specification cargo tank. Typically, a non-DOT specification cargo tank is not subject to the periodic inspection or retest requirements of the HMR. However, the HMR include scenarios where a non-DOT specification cargo tank must undergo certain requalification testing and marking in Part 180, Subpart E. For example, § 173.315(m)(2) specifies conditions where non-DOT specification cargo tanks containing anhydrous ammonia require certain testing and must be marked in accordance with § 180.415.
- Q2. You ask whether a person who voluntarily tests and marks a non-DOT specification cargo tank in accordance with Part 180, Subpart E is subject to performing the applicable tests and applying the retest markings in accordance with the HMR.
- A2. The answer is yes. Under § 171.2(g), no person may represent, mark, or offer a packaging as meeting the requirements of the HMR unless the packaging is maintained, marked, and retested in accordance with the applicable requirements. Section 171.2(h)(3) specifies that test dates are subject to paragraph (g) when associated with the

“specification, registration, approval, retest, exemption, or special permit markings” that indicate HMR compliance. Therefore, if the “test date” and “retest” identification markings are both applied to the cargo tank, then the applicable HMR requirements for the test and marking must be followed.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

**Goodall, Shante CTR (PHMSA)**

Lehman  
171.2  
General Requirements  
17-0026

**From:** INFOCNTR (PHMSA)  
**Sent:** Thursday, March 09, 2017 2:46 PM  
**To:** Hazmat Interps  
**Subject:** FW: Request for interpretation on cargo tank testing of non-spec tanks

Hi Shante/Alice,

Please submit this as a letter of interpretation. Mr. Hardridge spoke with Eamonn.

Please let me know if you have any questions.

Thanks,  
Jordan

**From:** ohp31@yahoo.com [mailto:ohp31@yahoo.com]  
**Sent:** Thursday, March 09, 2017 1:19 PM  
**To:** INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>  
**Subject:** Request for interpretation on cargo tank testing of non-spec tanks

To whom it may concern,

There has been some controversy over enforcement of test date markings on a non-specification cargo tanks used to transport combustible liquids.

The first piece of information and question involved is as follows:

**Situation:** An owner of a non-specification cargo tank wishes to test and retest his cargo tank according to Part 180 Subpart D and mark the tank accordingly, even though not required.

**Question #1:** Is the person conducting the tests and marking the test and test dates on the non-spec tank in violation of Part CFR 49 Part 171.2(h)?

**Resulting Enforcement Actions:** I have seen some enforcement agencies taking enforcement actions on persons who have voluntarily performed tests and retests of non-spec cargo tanks and have marked said tanks with the test date markings in Part 180. These tests have been conducted to reassure the owners that the tanks involved are in good condition. The test and test date markings are shown as a convenient way to tell the owner when he should conduct the next test or tests. Basically, the owner is complying with the test and marking requirements in Part 180 even though not required. The enforcement agencies involved claim that this is a violation of 171.2(g) due to the next paragraph (h) stating that the prohibition of displaying markings includes: "test dates associated with the specification...."

**Involved Regulations:**

**171.2(g)** No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter governing its use in the transportation of a hazardous material in commerce unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of this subchapter.

**171.2(h)** The representations, markings, and certifications subject to the prohibitions of paragraph (g) of this section include:

- (1) Specification identifications that include the letters “ICC”, “DOT”, “CTC”, “MC”, or “UN”;
- (2) Exemption, special permit, approval, and registration numbers that include the letters “DOT”, “EX”, “M”, or “R”; and
- (3) Test dates associated with specification, registration, approval, retest, exemption, or special permit markings indicating compliance with a test or retest requirement of the HMR, or an exemption, special permit, approval, or registration issued under the HMR or under subchapter A of this chapter.

**Comments:** The way I have always understood Part 171.2(h) is that the only way to misrepresent a cargo tank as a specification tank, when it is not, is if a specification plate with a certification date is display on a non-spec tank or a tank that does not completely meet the requirements of the specification named on the plate.

The requirement in 171.2(h)(3) dealing with "Test dates associated with specification..." seems to only imply that it is prohibited to display retest dates on a specification cargo tank when the tests indicated by the marking have not been conducted or were conducted improperly. I do not see how markings of tests and tests dates could be interpreted as representing a non-specification tank as a specification tank when the tests were properly conducted according to Part 180, Subpart D, even though it is not required.

**If the action above is not a violation of Part 171.2,** then the second piece of information and question would be:

**Situation:** The owner of a non-spec tank chooses to test and mark said cargo tank as required for spec tanks in Part 180. Even though not required, the person follows the regulations as a convenient way to assure the tank is safe.

**Question #2:** If that person does not follow the retest and marking regulation exactly as written, is the person in violation for not testing and marking correctly?

If you should have questions or need clarifications regarding this request, please do not hesitate to contact me.

Respectfully,

John Hardridge, Independent Instructor for Hazardous Material Transportation Regulations  
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