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Transportation/Hazardous Materials Pipeline and Hazardous Materials Safety Administration Interpretive Letter Addressing Stationary Container Issue

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The Pipeline and Hazardous Materials Safety Administration ("PHMSA") addressed in an August 28th letter the application of the Hazardous Materials Regulations ("HMR") applicable to the maintenance of Department of Transportation ("DOT") specification cylinders and tanks stored for use On Site (i.e., stationary containers).

PHMSA was responding to a January 17th query from the Denver Fire Department ("DFD").

DFD outlined a scenario in which cylinders and tanks are not placed into transportation in commerce and periodically refilled onsite. Its understanding was stated to be that the refilling of DOT specification marked cylinders and tanks places them "in commerce" making them subject to the HMR.

PHMSA in its August 28th response stated that such an understanding was not correct. The refilling of a DOT specification marked cylinder or tank used as a stationary container does not place the container "in commerce" for the purposes of the HMR.

The HMR is stated to apply to persons who offer hazardous material for transportation or transport hazardous material in commerce and who perform or are responsible for performing a pre-transportation function. A pre-transportation function such as filling is noted to be performed in advance to prepare hazardous materials for transportation. As a result, PHMSA states that refilling a container intended to remain onsite (i.e., not be transported) would not be considered performance of a pre-transportation function.

Additional questions are addressed in PHMSA's August 28th response involving:

- Whether a stationary set of DOT specification cylinders stored on site and periodically refilled by a third party are subject to the HMR.
- Whether maximum filling requirements listed in 49 C.F.R. § 173.304a(a)(2) are applicable to stationary cylinder systems installed in a building and refilled by a third party.
- Whether the recertification (i.e., the requalification) requirements in 49 C.F.R. Part 180 are applicable to stationary cylinder systems installed in a building and refilled by a third party.

A copy of the PHMSA letter can be downloaded [here](#).

