



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

JAN 28 2011

Mr. Mark Mertes  
Kelly Aerospace  
3414 West 29<sup>th</sup> Street South  
Wichita, KS 67217

Reference No. 09-0264

Dear Mr. Mertes:

This is in response to your e-mail and telephone conversations with members of my staff concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to cylinders containing "UN 1072, Oxygen, compressed, 2.2 (non-flammable), 5.1 (oxidizer)" residue. Specifically, you ask whether the HMR apply to the transportation of a Division 2.2 and 5.1 gas having a pressure in a container below 200 kPa (29.0 psig/43.8 psia). We apologize for the delay in responding and any inconvenience this may have caused.

PHMSA revised the definition in § 173.115(b)(1) for a Division 2.2 gas in final rules issued on January 14, 2009 and January 4, 2010. Section 173.115(b) states a Division 2.2 gas is a non-flammable, non-poisonous compressed gas that includes compressed gas, liquefied gas, pressurized cryogenic gas, compressed gas in solution, asphyxiant gas, and oxidizing gas. Therefore, as amended, a Division 2.2 gas, including one with an oxidizer subsidiary hazard, is one that exerts a gauge pressure on a packaging of at least 200 kPa at 20 °C (68 °F). In accordance with the revised definition, after January 1, 2010, a cylinder of oxygen gas that exerts a gauge pressure less than 200 kPa at 20 °C is not subject to the HMR. See Docket Nos. PHMSA-2007-0065 (HM-224D) and PHMSA-2008-0005 (HM-215J) (74 FR 2200 and 75 FR 63).

You also note that the definition in § 173.29(b)(2)(iv)(B) for an empty container of Division 2.2 gas was not revised to reflect the new lower limit of 200 kPa at 20 °C in § 173.115(b)(1), and ask if this is an error. It is. We thank you for bringing this matter to our attention and again apologize for any inconvenience this may have caused. We made this correction in the January 4, 2010 final rule we discussed in the previous paragraph.

I hope this satisfies your request.

Sincerely,

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

10/10/09

**Drakeford, Carolyn (PHMSA)**

**From:** Edmonson, Eileen (PHMSA)  
**Sent:** Monday, November 09, 2009 4:11 PM  
**To:** Drakeford, Carolyn (PHMSA)  
**Subject:** FW: 49CFR 173.29 & 173.115

Edmonson  
\$173.29  
\$173.115  
Empty 09-0264

Carolyn - Can you log this letter in to me please? I've already answered his question by telephone.

Thanks,

Eileen

-----Original Message-----

From: Mark Mertes [mailto:mmertes@kellyaerospace.com]  
Sent: Monday, November 09, 2009 4:09 PM  
To: Edmonson, Eileen (PHMSA)  
Subject: RE: 49CFR 173.29 & 173.115

Our Mailing Address is: 3414 West 29th Street South, Wichita, Kansas 67217, (Attn; Mark Mertes)

-----Original Message-----

From: eileen.edmonson@dot.gov [mailto:eileen.edmonson@dot.gov]  
Sent: Monday, November 09, 2009 2:57 PM  
To: Mark Mertes  
Subject: RE: 49CFR 173.29 & 173.115

Hello Mark -

To aid us with preparing our response, can you provide us with your mailing address please?

Thanks,

Eileen Edmonson  
USDOT/PHMSA  
1-800-467-4922  
e-mail: eileen.edmonson@dot.gov

-----Original Message-----

From: Mark Mertes [mailto:mmertes@kellyaerospace.com]  
Sent: Monday, November 09, 2009 2:53 PM  
To: Edmonson, Eileen (PHMSA)  
Subject: Re: 49CFR 173.29 & 173.115

Eileen; Thank You So Much For Your Help With the Regulations regarding the Pressure In the Oxygen Cylinders, and the Discrepancy Between the Two Definitions. Is There Any Way you Could Put Something Perhaps on D.O.T. Letterhead That Describes In What We May Consider to be "Lay-Mens" Terms, At What Pressure of The Oxygen Cylinders Contents Can Be Shipped Non-Hazardous. As Per The Document Previously faxed 9/16/97, ( Your Ref. # 97-014191697) Any Help With this Would Be Truly Appreciated! Best Regards, Mark

Thank You and Have a Great Day, Mark Mertes