



## **NOTICE OF REINSTATEMENT OF ENFORCEMENT DISCRETION REGARDING CYLINDERS THAT HAVE EXCEEDED THEIR PERIODIC REQUALIFICATION TEST DATE**

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) is providing notice that it will not take enforcement action against any person who fills a DOT-specification cylinder used to transport Division 2.2 non-flammable gas provided the cylinder meets all requirements of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) except that the cylinder is overdue for periodic requalification by no more than 12 months through January 15, 2022. On April 6, 2020, the PHMSA issued a notice that it would offer similar relief.<sup>1</sup> The April notice was in response to unprecedented changes in business practices related to the Coronavirus Disease 2019 (COVID-19) public health emergency and was intended to minimize disruptions in the supply chain, especially those related to providing medical gases to the health care industry. On July 2, 2020, PHMSA extended the notice of enforcement discretion through October 31, 2020. On December 30, 2020, PHMSA issued a similar notice of enforcement discretion that applied to cylinders containing certain medical gases; that notice expired on June 20, 2021.

PHMSA understands that members of the medical and industrial gas industry have continued to experience difficulty in obtaining cylinders due to the ongoing COVID-19 public health emergency. Those difficulties have been exacerbated by the prevalence of the Delta strain of the COVID-19 virus and recent disruptions resulting from Hurricane Ida, both of which have led to an increased demand for certain gases and a disruption in the normal business model for cylinder exchanges. This has made it difficult to obtain cylinders that can be filled in accordance with the requalification provisions specified in 49 CFR 173.301(a)(6) and 180.209.

Therefore, PHMSA will not take enforcement action against any person who fills a DOT-specification cylinder used to transport Division 2.2 non-flammable gas provided the cylinder meets all requirements of the HMR except that the cylinder is overdue for periodic requalification by no more than 12 months, in accordance with the April 6, 2020, notice of enforcement discretion. This enforcement discretion will be exercised by the Federal Motor Carrier Safety Administration and PHMSA. This relief applies only to transportation by motor vehicle, and does not extend to transport by air, vessel, or railroad. Prior to filling and offering for transportation, all cylinders must be inspected in accordance with the applicable Compressed Gas Association Pamphlet and DOT requirements. Any cylinder that does not pass the prefill inspection criteria must not be filled.

This document is a temporary notice of enforcement discretion. Regulated entities may rely on this notice as a temporary safeguard from Departmental enforcement as described herein. To the extent this notice includes guidance on how regulated entities may comply with existing regulations, it does not have the force and effect of law and is not meant to bind the

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<sup>1</sup> See the April 6, 2020, enforcement discretion at: <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-04/PHMSA%20Cylinder%20Enforcement%20Discretion%20Notice.pdf>

regulated entities in any way. This notice of reinstatement of enforcement discretion is effective through January 15, 2022.

Issued September 13, 2021, in Washington D.C.



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for Hazardous Materials Safety