



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

1200 New Jersey Avenue, SE
Washington, DC 20590

December 22, 2022

Mr. Mike Stephens
Linde Gas & Equipment Inc.
217 Loren St.
Washington, IL 61571

Reference No. 22-0037

Dear Mr. Stephens:

This letter is in response to your April 15, 2022, email and subsequent telephone conversation with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to two scenarios pertaining to a shipper's certification on a shipping paper. In both scenarios, you state that you have domestic customers to whom you ship cylinders containing hazardous materials via a common carrier. In most cases, you state that your customers are not trained in accordance with the training requirements specified in § 172.704. In such instances, the common carrier delivers the filled cylinders to your customers, and you work with your customers on the cylinder return process. You state that you offer this service when your customers are unable to perform shipper functions in accordance with the HMR. Finally, you include an example of a document that specifies instructions on package preparation that you provide to your untrained customers, and you describe two scenarios as follows:

Scenario #1:

You state that your company prepares a bill of lading in accordance with the HMR from a remote location, after you have confirmed through photographic evidence—provided by your customer—that the return package has been prepared in accordance with the HMR. An employee of your company certifies that the material offered for transportation complies with the HMR by signing the “shipper's certification” on the bill of lading as specified by § 172.204(d)(1). Your company subsequently provides the bill of lading to the carrier, or to your customer for forwarding to the carrier. Based on this scenario, you ask whether your company can—acting as the “shipper's agent”—prepare and sign the bill of lading and certify that the shipment complies with the HMR although your company is not physically located at the site of the return shipment.

Scenario #2:

You state that your company acts as the carrier. When your driver arrives at your customer's location, the driver confirms that the shipment meets all the requirements of the HMR. The driver then creates a bill of lading and signs the "shipper's certification" on the bill of lading before loading and transporting the return cylinders. Based on this scenario, you ask whether your company can—acting as the "shipper's agent"—prepare and sign the bill of lading and certify that the shipment is in compliance with the HMR.

Under both scenarios, the answer to your question is yes. Under the provisions of § 172.204(d)(1), a shipper's certification "must be legibly signed by a principal, officer, partner, or employee of the shipper or his agent." At the direction of your customers or through contractual arrangement, a third party may perform the functions of an offeror—such as signing the certification statement on a shipping paper to certify that hazardous materials are being offered for transportation in compliance with the HMR. The person signing the shipper's certification, whether they be third-party or otherwise, must be properly trained in accordance with §§ 172.700 through 172.704 of the HMR. In addition, the person signing the shipper's certification is certifying that the consignment is properly classified, described, packaged, marked, labeled, and in proper condition for transportation according to the applicable regulations of the Department of Transportation regardless of whom has performed these pre-transportation functions. Any person performing functions of an offeror is responsible for performing those functions in accordance with the HMR.

Please note that in both scenarios, because your company is acting as an agent of your customer, either your company or your customer may be held responsible for non-compliance with the HMR. The degree of regulatory liability is usually determined on a case-by-case basis and is dependent on the facts of the specific situation.

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

Sincerely,



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

Wolcott

From: [INFOCNTR \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#)
Cc: [Hazmat Interps](#)
Subject: FW: Interpretation request Shippers Agent Linde Gas and Equipment
Date: Monday, May 2, 2022 2:58:43 PM
Attachments: [172.204 Shippers Certification Shippers Agent.docx](#)
[Air Gas Shipper Certification interpretation 040021.pdf](#)
[Customer Cylinder return Procedure.docx](#)

22-0037

Hello Alice,

Please see the below and attached interpretation request.

Should you have any questions, do not hesitate to reach out.

Regards,

-Breanna

From: LG US DISTRIBUTION COMPLIANCE <LG.US.DISTRIBUTION.COMPLIANCE@linde.com>
Sent: Friday, April 15, 2022 12:01 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Cc: Mike R Stephens <mike.r.stephens@linde.com>
Subject: Interpretation request Shippers Agent Linde Gas and Equipment

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Standards and Rulemaking Division,
Pipeline and Hazardous Materials Safety Administration, Attn: PHH-10,
U.S. Department of Transportation,
East Building,
1200 New Jersey Avenue, SE.,
Washington, DC 20590-0001.

Re: Request for Interpretation

Dear Sir or Madame:

In accordance with 49 CFR § 105.20, this letter is being submitted to PHMSA to request an interpretation of the Hazard Materials Transportation Regulations.

Linde Gas and Equipment Inc (LGE) requests PHMSA to provide an interpretation on

whether a Linde Gas and Equipment Employee acting as the “Shippers Agent” for our customers when shipping our cylinders back to our location.

We have many domestic customers that we ship cylinders that contains hazardous material by common carrier. We use common carriers to deliver the products and then work with the customers on the cylinder return process. In most situations, customers are not trained in Subpart H 49 CFR § 172.704 Hazardous Material Training where LGE employees performing the “Shippers” function are extensively trained in the Subpart H Hazardous Materials regulations

When these customers do not have the size or capability to perform shipping functions for Hazmat, we have offered the cylinder return service. The attached Word document specifies the instructions to the customer on the package preparation and details. We require photographic evidence that the package is in a shippable condition. If we confirm this, we prepare the BOL in accordance with the regulations.

We, Linde Gas and Equipment INC, take the position as the shipper, ask for pictures that verify the labeling, DOT markings and Cylinder condition so we can CERTIFY that the cylinder shipment meets the Shippers Certification.

After the Bill of Lading is completed, an employee of Linde Gas and Equipment (LGE) will sign the BOL Shippers certification statement verifying that the cylinder shipment meets the certification statement as written in 49 CFR § 172.204.

49 CFR § 172.204 Shipper’s certification

(a) General. Except as provided in paragraphs (b) and (c) of this section, each person who offers a hazardous material for transportation shall certify that the material is offered for transportation in accordance with this subchapter by printing (manually or mechanically) on the shipping paper containing the required shipping description the certification contained in paragraph (a)(1) of this section or the certification (declaration) containing the language contained in paragraph (a)(2) of this section.

49 CFR § 172.204 (d) Signature.

The certifications required by paragraph (a) or (c) of this section: [172.204(d)]
(1) Must be legibly signed by a principal, officer, partner, or employee of the shipper or his agent.

We have attached a relevant similar Interpretation issued to another company along the same request as “Shippers Agent” interpretation.

Following the process above, the question is,

Can LGE act as the “Shipper” agent, prepare the bill of lading, sign the BOL certifying the shipment is marked and labeled correctly even though we are not at the site?

If PHMSA has any questions related to this document, please contact:

Mike Stephens
Linde Gas & Equipment Inc
217 Loren St
Washington, IL 61571
Phone 314-568-6764
e-mail: LG.US.Distribution.Compliance@Linde.com

The information contained in this email and any attachments may be confidential and is provided solely for the use of the intended recipient(s). If you are not the intended recipient, you are hereby notified that any disclosure, distribution, or use of this e-mail, its attachments or any information contained therein is unauthorized and prohibited. If you have received this in error, please contact the sender immediately and delete this e-mail and any attachments. No responsibility is accepted for any virus or defect that might arise from opening this e-mail or attachments, whether or not it has been checked by anti-virus software.

Please find the data protection notices of EU based Linde Group companies on this website:
dataprotection.linde.com

Reverse Logistics

As special needs arise to help our customers return empty cylinders to the fill or stocking location we may be called on to create the necessary paperwork and the handling of setting up the proper common carrier to transport cylinder gas products back to the stocking/filling location.

The following guidelines should allow for a proper documentation and smooth transition.

- 1) Request pictures from the customer of the cylinders to be returned.
 - A) Verify proper labels attached. These should include the shoulder labels that show they are PDI cylinders along with proper DOT labels.
 - B) Verify the DOT shipping description is visible and legible for each cylinder.
 - C) Verify that the serial number of the cylinder is legible.
- 2) Verify the cylinders shall be secured to a pallet with all DOT labels visible and legible. Once securement is verified complete the next step.

NOTE: If Product labels including all DOT information is not visible this shipment will be considered an overpack and additional marking and labeling will be required.
- 3) Create a generic Straight BOL for the shipper to utilize. It should have all the required information filled in including the serial numbers of the cylinders in the shipment, then sign the BOL at the shippers certification.
- 4) The shipper will be the customer where the cylinders are being picked up from.
- 5) We can provide FREIGHT PREPAID services for the customer. This means that the customer is responsible for the charges.
- 6) Contact the Carrier the customer specifies and schedule the pickup from the customer location.

NOTE: Verify they can transport hazardous materials
- 7) If we provide a FREIGHT COLLECT shipment a handling fee will be charged for generating the paperwork and paying the freight bill upon receipt. Prior agreement with customer should indicate that we are allowed to bill the freight charges back.
- 8) The cylinders should be shipped by the best method using the Connectship tool.

If any questions arise, please see your supervisor for clarification.



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

APR 19 2004

Mr. Richard J. Lloyd
Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501

Ref. No.:04-0021

Dear Mr. Lloyd:

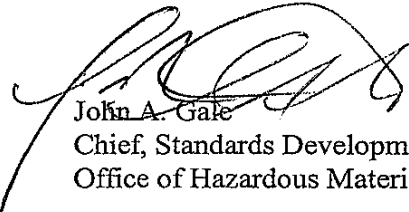
This responds to your letter of February 11, 2004, and your follow-up letter of March 30, 2004, regarding the shippers's certification prescribed in 49 CFR 172.204 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you asked whether, on your company's behalf, a third-party carrier could perform the shipper's certification function on the shipping paper for the pick-up and transportation of hazardous materials containers being returned to your company's plant.

You have customers whose primary business does not involve hazardous materials and, consequently, they will not issue or prepare shipping papers for the return shipment of empty containers with a residue of a hazardous material. Your company would supply the third-party carrier you use for pick-up with an unsigned shipping paper. Once the empty containers with residue are inspected by the driver and found to be in compliance, the carrier would sign the shipping paper certifying the material is offered for transportation in compliance with the HMR. You asked for confirmation that your understanding is correct that a third-party carrier may perform the shipper's certification function.

Your understanding is correct. At your company's direction or through contractual arrangement, a third-party carrier may perform the functions of the offeror (shipper), such as signing the certification statement on a shipping paper to certify that an empty container with the residue of a hazardous material is being offered for transportation in accordance with the HMR. Under the HMR, any person performing functions of an offeror must take responsibility for performing those functions in compliance with the applicable rules.

I hope this satisfy your inquiry. If we can be of further assistance, please contact us.

Sincerely,


John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



040021

§ 172.204 (a)



Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501
Tel 610 481-4911

Engram
§172.204 (a)
Shipping Papers
04-0021

11 February 2004

Mr. Edward Mazzullo
U. S. Department of Transportation
Research and Special Programs Administration
Office of Hazardous Materials Standards DHM - 10
400 Seventh Street, S. W.
Washington, D. C. 20590

Dear Mr. Mazzullo:

Re: Interpretation 49 CFR 172.204 (a) Shipper's Certification

Recently, we called the Hazardous Materials Information Center for an interpretation of the Shipper's Certification requirements specified in 49 CFR 172.204 (a). Specifically, we asked if our company could authorize a third-party carrier to perform the shipper's certification offer's function on our behalf for the pickup of hazardous materials containers being returned to our plant. The Information Center representative advised us that a third-party carrier could sign the shipper's certification provided the person was properly trained in the Hazardous Materials Regulations.

We have some customers whose primary business does not involve hazardous materials and, consequently, will not issue shipping papers for the return shipment of empty containers with residue material remaining in the container. Our nearest plant may be located a significant distance from the customer and it is not practical to send a person from our plant to the customer's facility to sign the shipper's certification for the return shipment of the residue containers. Instead, we propose to provide the third-party carrier that we use for the pickup with a properly prepared unsigned shipping paper. The carrier would sign the shipping paper certifying the material is offered for transportation in accordance with the Hazardous Materials Regulations once the return shipment is inspected by the driver and found to be in compliance.

Please confirm that our understanding of your interpretation of the Shipper's Certification requirements is correct allowing us to use a third-party carrier for the certification function.

Sincerely,

R. J. Lloyd
Richard J. Lloyd
Manager Regulatory Compliance

Standards and Rulemaking Division,
Pipeline and Hazardous Materials Safety Administration, Attn: PHH-10,
U.S. Department of Transportation,
East Building,
1200 New Jersey Avenue, SE.,
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When these customers do not have the size or capability to perform shipping functions for Hazmat, we have offered the cylinder return service. The attached Word document specifies the instructions to the customer on the package preparation and details. We require photographic evidence that the package is in a shippable condition. If we confirm this, we prepare the BOL such as the attached PDF document.

We, Linde Gas and Equipment INC, take the position as the shipper, ask for pictures that verify the labeling, DOT markings and Cylinder condition so we can CERTIFY that the cylinder shipment meets the Shippers Certification.

After the Bill of Lading is completed, an employee of Linde Gas and Equipment (LGE) will sign the BOL Shippers certification statement verifying that the cylinder shipment meets the certification statement as written in 49 CFR § 172.204.

49 CFR § 172.204 Shipper's certification (a) General.

Except as provided in paragraphs (b) and (c) of this section, each person who offers a hazardous material for transportation shall certify that the material is offered for transportation in accordance with this subchapter by printing (manually or mechanically) on the shipping paper containing the required shipping description the certification contained in paragraph (a)(1) of this section or the certification (declaration) containing the language contained in paragraph (a)(2) of this section.

49 CFR § 172.204 (d) Signature.

The certifications required by paragraph (a) or (c) of this section: [172.204(d)] (1) Must be legibly signed by a principal, officer, partner, or employee of the shipper or his agent.

Following the process above, the question is,

Can LGE act as the "Shipper" agent, prepare the bill of lading, sign the BOL certifying the shipment is marked and labeled correctly even though we are not at the site?

If PHMSA has any questions related to this document, please contact:

Mike Stephens
Linde Gas & Equipment Inc
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Washington, IL 61571
Phone 314-568-6764
e-mail: LG.US.Distribution.Compliance@Linde.com