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Transportation/Hazardous Materials: Pipeline and Hazardous Materials Safety Administration Interpretive Letter Addressing Shipper Certification Issue

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The United States Department of Transportation Pipeline and Hazardous Materials Safety Administration ("PHMSA") sent a December 22, 2022, interpretive letter to Linde Gas & Equipment Inc. ("Linde Gas") addressing the application of the Hazardous Materials Regulations ("HMR") to a shipper certification issue.

PHMSA was responding to an April 15, 2022, email and subsequent telephone conversation with Linde Gas.

Linde Gas' question involved two scenarios pertaining to a shipper's certification on shipping paper. Both scenarios involve domestic customers to which Linde Gas ships cylinders which contain hazardous materials via a common carrier. The customers are in some cases not trained in accordance with the HMR training requirements specified in § 172.704.

As a result, the common carrier is stated to deliver the filled cylinders to Linde Gas customers and work with them on the cylinder return process. This is a service offered by Linde Gas if the customer is unable to perform the shipper functions in accordance with the HMR.

Two scenarios are described by Linde Gas.

Scenario #1 provides:

Linde Gas prepares a bill of lading in accordance with the HMR from a remote location, after it confirms through photographic evidence—provided by the customer—that the return package has been prepared in accordance with the HMR. An employee of Linde Gas 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). Linde Gas subsequently provides the bill of lading to the carrier, or to its customer for forwarding to the carrier.

Linde Gas asks whether it can act as the "shipper's agent," which means preparing and signing the bill of lading and certifying that the shipment complies with the HMR even though it is not physically located at the site of the return shipment.

Scenario #2 provides:

Linde Gas acts as the carrier. When the driver arrives at the customer's location, it 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.

Linde Gas asks whether it can act as the "shipper's agent," prepare and sign the bill of lading and certify that the shipment is in compliance with the HMR.

PHMSA responds in the affirmative to both scenarios. It cites § 172.204(d)(1) indicating that the certification must be legibly signed by a principal, officer, partner, or employee of the shipper or his agent. It is also noted that at the direction of Linde Gas customers or through contractual arrangement, a third party may perform the functions of an offeror. This includes signing the certification statement on a shipping paper to certify the hazardous materials are being offered for transportation in compliance with the HMR. This may be a third party or otherwise as long as properly trained in accordance with §§ 172.700 through 172.704 of the HMR.

The person signing the certification is certifying that the consignment is properly classified, described, packaged, marked, labeled and in proper condition for transportation regardless of who has performed these pre-transportation functions. Whoever performs these functions is responsible for performing those functions in accordance with the HMR. It is further noted that in both scenarios Linde Gas would be acting as an agent of its customer and either it or the customer may be held responsible for noncompliance with the HMR.

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