



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2021-0109; Notice No. 2022-13]

Hazardous Materials: Frequently Asked Questions—Applicability of the Hazardous Material Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice; Response to comments and publication of finalized FAQ.

SUMMARY: On March 22, 2022, PHMSA announced an initiative to convert historical letters of interpretation (LOI) applicable to the Hazardous Materials Regulations that have been issued to specific stakeholders into broadly applicable frequently asked questions (FAQ). As such, PHMSA requested comment on the initiative and for input on the prioritization of future sets of FAQ. During the initial comment period, several commenters requested that PHMSA further clarify the future disposition of the LOI process and address commenters' initial concerns. In response to this feedback, PHMSA published a second notice on June 13, 2022, extending the comment period to July 22, 2022, and announcing that a webinar would be held on June 27, 2022. In this final notice, PHMSA is responding to comments received from stakeholders, summarizing the webinar event, finalizing the first set of FAQ, and announcing the topic for future FAQ.

FOR FURTHER INFORMATION CONTACT: Arthur Pollack, Standards and Rulemaking Division, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

The March 22, 2022,¹ notice announced an initiative to convert historical LOI applicable to the Hazardous Materials Regulations (HMR)² that have been issued to specific stakeholders into broadly applicable FAQ to facilitate better public understanding and awareness of the HMR. PHMSA also requested comment on the initiative and solicited input on the prioritization of future sets of FAQ. FAQ are not substantive rules, themselves, and do not create legally enforceable rights, assign duties, or impose new obligations not otherwise contained in the existing regulations and standards. Instead, the FAQ are intended as an aid to demonstrate compliance with the relevant regulations.

The comment period for the March 22, 2022, notice closed on May 23, 2022; however, on June 13, 2022, PHMSA published a second notice extending the comment period until July 22, 2022, and announcing a public webinar to clarify the FAQ initiative and address concerns expressed by commenters that PHMSA may eliminate the LOI process.

II. Purpose of the FAQ Initiative

This initiative will provide additional value to PHMSA's Online Code of Federal Regulations (oCFR) tool.³ The oCFR tool is an interactive web-based application that allows users to navigate with a single click between all content, including LOI, connected to an HMR citation. The oCFR tool includes the ability to sort, filter, and export search results. Upon completion of this initiative, PHMSA's Office of Hazardous Materials Safety (OHMS) will be able to achieve efficiencies for other more complex or novel requests for LOI and devote resources to other hazardous materials transportation safety projects. This initiative will allow

¹ Hazardous Materials: Frequently Asked Questions—Applicability of the Hazardous Material Regulations, 87 FR 16308 (March 22, 2022), available at, <https://www.federalregister.gov/documents/2022/03/22/2022-05958/hazardous-materials-frequently-asked-questions-applicability-of-the-hazardous-material-regulations>; PHMSA-2021-0109-0001.

² 49 CFR parts 171-180

³ The oCFR tool is available at. <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/phmsas-online-cfr-ocfr>.

resources to be made available for other improvement-related operations such as petitions for rulemakings, public outreach and engagement, and economically beneficial regulatory and policy improvements. In the section of this notice titled “V. Frequently Asked Questions: Applicability of Hazardous Materials Regulations to Persons and Functions,” PHMSA is finalizing the first set of FAQ developed under this initiative.

III. Response to Notice Comments

PHMSA received 10 sets of comments to the aforementioned FAQ notices from the following individuals and organizations:

Table 1: Commenter Docket Table	
Commenter	ID Number
International Longshoremen’s Association ~ United States Maritime Alliance Coastwide Joint Safety Committee	PHMSA-2021-0109-0002
Anonymous	PHMSA-2021-0109-0003
L’Gena Shaffer, Director, Regulatory Compliance, International Vessel Operators Dangerous Goods Association (IVODGA)	PHMSA-2021-0109-0004
L’Gena Shaffer, Director, Regulatory Compliance, Council on Safe Transportation of Hazardous Articles (COSTHA)	PHMSA-2021-0109-0005
Bruce Grimm	PHMSA-2021-0109-0006
Patty Long, President, Railway Supply Institute	PHMSA-2021-0109-0007
Paul Rankin, Chair, Interested Parties for Hazardous Materials Transportation	PHMSA-2021-0109-0008
Kathy Hahn	PHMSA-2021-0109-0010
Delmer F. Billings, Technical Director, Dangerous Goods Advisory Council (DGAC)	PHMSA-2021-0109-0011
Jennifer Fletcher, Senior Manager, Transportation Compliance, Veolia North America	PHMSA-2021-0109-0012

The comments received express general support for the FAQ initiative and several commenters included suggestions for future topic areas. Commenters also suggest strategies for selecting topics and specific FAQ. In addition, many of the commenters express a concern that PHMSA may eliminate the LOI process and rescind the existing LOI. As a result, PHMSA held a public webinar on June 27, 2022, to clarify the initiative’s intent and address commenters’ questions and concerns.

In its comment, the International Longshoremen’s Association expressed concern that “PHMSA should not be overly selective in its choices of which particular [LOI] rise to the level

of interest” for FAQ development. Although the process of FAQ development is subjective, PHMSA acknowledges the request for detailed and specific FAQ and intends to continue the process with an inclusive approach.

Two groups of commenters, IVODGA and COSTHA, submitted potential revisions to Questions 3, 4, and 8 of the initial set of FAQ. Specifically, IVODGA and COSTHA both suggest that Question 3 and Question 4 either be combined or reference each other, as both questions are related to private roads and may be less clear to a reader if the questions are not read together. Additionally, IVODGA and COSTHA both suggest an editorial revision to clarify Question 8’s answer pertaining to hazardous materials being transported for “personal use.” PHMSA agrees with both suggestions and is revising the FAQ in this notice to reflect these minor editorial changes to Questions 3, 4, and 8. Commenters also provide several suggestions for future topics including combustible liquids, lithium batteries, materials of trade, miscellaneous hazardous materials (i.e., Class 9) and placarding. PHMSA appreciates the suggestions and will consider them as it prioritizes its next set of FAQ.

IV. Webinar Summary

During the comment period, DGAC requested—on behalf of its members—that PHMSA host a webinar to present the objectives of the FAQ initiative and answer questions from concerned parties. The overarching concern expressed in comments to the March 22, 2022, notice and during the June 27, 2022, webinar was that PHMSA may eliminate the LOI process and rescind its existing LOI. During the public webinar, PHMSA clarified that the FAQ initiative compliments the LOI process and that PHMSA has no intention of discontinuing the process to request LOI, rescinding the nearly 7,000 LOI in its database, or limiting the scope of questions PHMSA will answer in the future. The recording of the June 27, 2022, webinar can be found at <https://www.youtube.com/watch?v=R1fCnNRK2d0>.

Based on comments and input PHMSA received, PHMSA is publishing the following series of FAQ in the **Federal Register** and on its website to facilitate better understanding of the HMR applicability requirements and avoid the need for responding to frequent and recurring questions already addressed in accordance with 49 CFR 105.20 (Guidance and Interpretations).

V. Frequently Asked Questions: Applicability of Hazardous Materials Regulations to Persons and Functions

Section 171.1 addresses the applicability of the HMR for the safe and secure transportation of hazardous materials in commerce.

- 1) **Question:** Is a federal, state, or local government agency subject to the HMR?

Answer: Pursuant to § 171.1(d)(5), a federal, state, or local government that transports hazardous materials for non-commercial governmental purposes using its own personnel is not engaged in transportation in commerce and, therefore, is not subject to the HMR. As specified in § 171.1, the HMR governs the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The term “in commerce” does not include a federal, state, or local government that transports hazardous materials for its own use, using its own personnel, and motor vehicles, aircraft, or vessel under its control.

- 2) **Question:** Are state universities subject to the HMR when transporting hazardous materials?

Answer: A state agency—such as a state university—that transports hazardous materials for its own non-commercial use, using its own personnel and vehicles, is not engaged in transportation in commerce and, therefore, is not subject to the HMR.

- 3) **Question:** Is a hazardous material transported on private roads subject to the HMR?

Answer: Section 171.1(d)(4) states that the transportation of hazardous materials entirely on private roads with restricted public access is not subject to the HMR. Please see Q4.

- 4) **Question:** Is a hazardous material subject to the HMR that only crosses a road with public access?

Answer: The transportation of hazardous materials that takes place by motor vehicle and within a contiguous plant boundary is not subject to the HMR. However, intra-plant transport that utilizes or crosses a public road is subject to the HMR during that portion of the transportation unless access to the public road is restricted by gates, traffic signals, guard stations, or similar controls, in accordance with § 171.1(d)(4). Please see Q3.

- 5) **Question:** Are hazardous materials installed or used in or on a motor vehicle (e.g., gasoline in the motor vehicle's fuel tank) subject to the HMR?

Answer: Hazardous materials that are installed or used in or on a motor vehicle such as the motor vehicle's fuel, suspension, or safety systems are not subject to the HMR. Fuel systems and safety equipment may be subject to the Federal Motor Carrier Safety Regulations (FMCSR) and National Highway Traffic Safety Administration (NHTSA) requirements.

- 6) **Question:** Is the filling of a package with a hazardous material subject to the HMR if it is not being offered for transportation in commerce?

Answer: The answer is no. However, if there is a chance of future transportation in commerce, the stakeholder should consider placing that hazardous material in packaging suitable for transportation of that material in commerce to minimize safety risks associated with its re-packaging.

- 7) **Question:** Are stationary (storage) tanks containing a hazardous material such as propane subject to the HMR?

Answer: The answer is no, unless the tank is transported in commerce containing a hazardous material or its residue or if it is represented and maintained as a DOT packaging usable for hazmat transportation.

- 8) **Question:** Are hazardous materials being transported for personal use subject to the HMR? For example, are pesticides that are transported from a store by individuals to treat their garden subject to the HMR?

Answer: The answer is no. Under part 171, the phrase "in commerce" means in furtherance of a commercial enterprise. Transportation in a private motor vehicle for personal use is not considered in furtherance of a commercial enterprise even when transported in a leased or rented vehicle.

- 9) **Question:** Are privately-owned Department of Transportation (DOT) cylinders used for SCUBA diving subject to the HMR even when not transported in commerce?

Answer: A SCUBA tank that is represented as conforming to HMR requirements— i.e., marked with a DOT specification marking—must be maintained by the owner of said SCUBA tank in accordance with the applicable specification requirements whether or not it is in transportation in commerce.

- 10) **Question:** Are government-owned hazardous materials transported for government purposes by contractor personnel subject to the HMR?

Answer: The answer is yes. As provided in § 171.1(d)(5), the HMR do not apply to transportation of a hazardous material in a motor vehicle, aircraft, or vessel operated by a federal, state, or local government employee solely for noncommercial federal, state, or local government purposes. However, contractor personnel are not considered government employees and the provisions of the HMR apply.

- 11) **Question:** Are gasoline cans transported by a landscaping company by motor vehicle subject to the HMR?

Answer: Commercial businesses—such as landscaping, swimming pool services, or construction companies—transporting hazardous materials are considered “in commerce” and subject to the HMR. However, when used in support of a business, the HMR provides an exception in § 173.6 for the transport of “materials of trade.”

- 12) **Question:** Are household hazardous wastes transported by a private person to a county drop-off facility subject to the HMR?

Answer: The answer is no, provided the household hazardous wastes are the individual's personal property and he or she is not engaged in a commercial activity, such as a landscaping company or carpentry service.

VI. Future FAQ Topics

With the completion of the first set of FAQ specific to HMR Applicability, PHMSA has begun compiling its next set of FAQ. As such, the next set of FAQ will pertain to LOIs addressing questions regarding the incident reporting requirements specified in §§ 171.15 and 171.16. In addition, PHMSA will continue concurrent work on future FAQ notices and, in response to the comments received, subsequent topics may include FAQ pertaining to batteries, classification, hazard communication, hazardous substances, hazardous wastes, modal-specific requirements, or packaging.

Signed in Washington, DC on December 6, 2022, under authority delegated in 49 CFR 1.97.

William A. Quade,
Deputy Associate Administrator of Hazardous Materials Safety,
Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2022-26808 Filed: 12/8/2022 8:45 am; Publication Date: 12/9/2022]