



## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2021-0109; Notice No. 2023-16]

#### Hazardous Materials: Frequently Asked Questions—Training Requirements

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

**ACTION:** Notice.

**SUMMARY:** On March 22, 2022, PHMSA announced an initiative to convert historical letters of interpretation (LOI) applicable to the Hazardous Materials Regulations (HMR) that have been issued to specific stakeholders into broadly applicable frequently asked questions (FAQ). On December 9, 2022, PHMSA published the first set of FAQ regarding applicability of the HMR. On August 18, 2023, PHMSA published the second set of FAQ regarding incident reporting. Today's notice contains the third set of FAQ regarding training requirements.

**DATES:** Interested persons are invited to submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by the Docket Number PHMSA-2021-0109 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue SE, Washington, D.C. 20590.

- Hand Delivery: Docket Management System; Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

*Instructions:* All submissions must include the agency name and Docket Number (PHMSA-2021-0109) for this notice. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

*Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see ADDRESSES).

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

*Confidential Business Information (CBI):* CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as “CBI.” Please mark each page of your submission containing CBI as “PROPIN.” Submissions containing CBI should be sent to 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, D.C. 20590-0001. Any commentary that PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this notice.

**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, D.C. 20590-0001.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On March 22, 2022, PHMSA<sup>1</sup> announced an initiative<sup>2</sup> to convert historical LOI applicable to the HMR<sup>3</sup> that have been issued to specific stakeholders into broadly applicable FAQ to facilitate better public understanding and awareness of the HMR. In that initial set of FAQ, 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, FAQ are intended as an aid to the regulated community to better understand how to comply with the regulations. An individual who is able to demonstrate that it is acting in accordance with the FAQ, however, is likely to be able to demonstrate compliance with the relevant regulations. If an individual chooses not to follow the FAQ, the individual must be able to demonstrate that its conduct is in accordance with the regulations.

### **II. Purpose of the FAQ Initiative**

This initiative provides additional value to PHMSA's Online Code of Federal Regulations (oCFR) tool.<sup>4</sup> The oCFR tool is an interactive web-based application that allows

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<sup>1</sup> Hazardous Materials: Frequently Asked Questions-Applicability of the Hazardous Material Regulations. 87 FR 16308 (March 22, 2022), available at: <https://www.regulations.gov/document/PHMSA-2021-0109-0001>.

<sup>2</sup> Hazardous Materials: Frequently Asked Questions-Applicability of the Hazardous Material Regulations (Dec. 9, 2022), available at: <https://www.regulations.gov/document/PHMSA-2021-0109-0013>; Hazardous Materials: Frequently Asked Questions-Incident Reporting. 88 FR 56702 (August 18, 2023), available at: <https://www.regulations.gov/document/PHMSA-2021-0109-0014>.

<sup>3</sup> 49 CFR parts 171-180.

<sup>4</sup> PHMSA's Online CFR (oCFR), available at: <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/phmsas-online-cfr-ocfr>.

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 also allow 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 "Frequently Asked Questions: Hazmat Training Requirements," PHMSA is publishing its third set of FAQ developed under this initiative.

### **III. Frequently Asked Questions**

#### **Hazardous Materials (hazmat) Training Requirements**

The requirements for hazmat training are outlined under Subpart H to Part 172 of the HMR—specifically, §§ 172.700 through 172.704.<sup>5</sup> Therefore, as noted above, to facilitate better public understanding and awareness of the HMR, the FAQ pertaining to hazmat training are as follows:

#### **1. Question: What are the hazardous materials training requirements?**

**Answer:** A hazmat employee, defined under § 171.8, is subject to training under § 172.700. Each hazmat employer must train and test their hazmat employees, certify their training, and develop and retain records of current training. The HMR requires a systematic training program that ensures a hazmat employee has familiarity with the general provisions of the HMR; is able to recognize and identify hazardous materials; has knowledge of specific requirements of the HMR applicable to functions performed by the employee; and has knowledge of emergency response information, self-protection measures, and accident prevention methods and procedures.

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<sup>5</sup> <https://www.ecfr.gov/current/title-49/part-172/subpart-H>.

**2. Question: What is required as part of a complete hazmat training program?**

**Answer:** Section 172.704 requires that hazmat training include:

- general awareness/familiarization training;
- function-specific training;
- safety training;
- security awareness training; and
- in-depth security training if a security plan is required.

Additionally, § 172.700 requires hazmat employees receive modal-specific training for the individual modes of transportation the employee operates.

This training can be performed by the hazmat employer, by the hazmat employee, or by a contracted training service so long as all the training requirements in Subpart H to Part 172 are met.

**3. Question: Who is considered a “hazmat employee?”**

**Answer:** A hazmat employee is defined in § 171.8 as any person who—in the course of employment—directly affects hazmat transportation safety and includes, but is not limited to, loading, unloading, or handling hazmat; inspecting hazmat packaging; preparing hazmat shipments; operating vehicles used to transport hazmat; and anyone responsible for hazmat transportation safety.

**4. Question: Who is considered a “hazmat employer?”**

**Answer:** A hazmat employer is defined in § 171.8 as a person who uses one or more of its hazmat employees to transport hazmat in commerce; to cause hazmat to be transported in commerce; or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, tests, or repairs containers, drums, or packagings as qualified for use in the transportation of hazardous materials.

**5. Question: Do the HMR allow a hazmat employee to self-train?**

**Answer:** Yes. Hazmat employees may self-train, provided the general awareness/familiarization training, function-specific training, safety training, security awareness training, in-depth security training, testing, recordkeeping, and certification requirements specified in § 172.704 are met.

**6. Question: What training materials and resources are available from PHMSA?**

**Answer:** PHMSA's Outreach and Training Branch offers training publications, videos, and brochures, which can be found at: <https://www.phmsa.dot.gov/training/hazmat/hazardous-materials-outreach-engagement>.

**7. Question: Is a hazmat trainer required to have a certification or minimum level of training?**

**Answer:** No. PHMSA does not specify or require minimum qualifications for hazmat trainers. A trainer needs to be able to convey the training requirements under § 172.704.

**8. Question: What documentation or recordkeeping is required for hazardous materials training?**

**Answer:** Hazmat employers must keep training records for each hazmat employee in accordance with § 172.704(d). Compliance with recordkeeping requirements can be achieved in many ways (e.g., certificate, electronic, or even written paperwork) and could involve partnerships with any organization offering training that meets the needs of the hazmat employer.

The training records must include the following information:

- the hazmat employee's name;
- date of the most recently completed training;
- information about the training materials;
- name and address of the trainer; and
- a certification that the hazmat employee has been trained and tested in accordance with the HMR.

Regardless of who performs the training or generates the records, the hazmat employer is ultimately responsible for compliance with the recordkeeping requirements of § 172.704(d).

**9. Question: Is testing of hazmat employees—for example, a test or exam—required as part of a training program?**

**Answer:** Yes. While the HMR do not prescribe detailed test procedures for hazmat employees, some type of test or exam is required. The purpose of testing is to ensure that each hazmat employee has been trained on appropriate areas of responsibility and can perform their assigned duties in compliance with the HMR. (See § 172.702; see also § 172.704.) Any method of testing that achieves this purpose is acceptable. No specific testing document is required.

Although the requirements in § 172.702(d) do not state that a hazmat employee must “pass” a test, a hazmat employee must be trained in accordance with the applicable HMR and may only be certified in those areas in which the hazmat employee can successfully perform their assigned duties. Employees may be tested on the training requirements specified in § 172.704 by any appropriate means.

**10. Question: May an employee successfully take a test and have the hazmat training or recurrent training requirement waived?**

**Answer:** No. An employee may not take and pass an exam, and then have the hazmat training or the recurrent training requirement waived. Hazmat training and recurrent training must cover the primary areas as specified under the training requirements in § 172.704, i.e., general awareness/familiarization training, function-specific training, safety training, security awareness training, and in-depth security training (if applicable).

**11. Question: How often must a hazmat employee be trained?**

**Answer:** In accordance with § 172.704(c)(2), a hazmat employee must receive the required training at least once every three years.

**12. Question: If an employee’s job function changes, and new hazmat functions are performed or PHMSA regulations are amended, is further training required?**

**Answer:** Yes. A hazmat employer must ensure that each hazmat employee is thoroughly instructed in the requirements that apply to functions performed by that employee. (See § 172.702(b).) Section 172.704(c)(1) requires that a new hazmat employee or a hazmat employee who changes job functions must complete their hazmat training within 90 days after employment or job function change. However, they may perform the job functions prior to the completion of training under the direct supervision of a properly trained and knowledgeable hazmat employee. When PHMSA adopts a new regulation or changes an existing regulation that relates to a function performed by a hazmat employee, the hazmat employee must be instructed in the new or revised function-specific requirements as soon as necessary based on the new requirement's compliance timeline without regard to the three-year training cycle.

**13. Question: How does a hazmat employer determine what function-specific training is required under § 172.704?**

**Answer:** Function-specific training is specific to the function(s) for which the hazmat employee is responsible. The hazmat employer must determine what tasks the hazmat employee is responsible for that are directly regulated under the HMR, and then provide the necessary training in accordance with Subpart H to Part 172.

**14. Question: Is online, computer-based, and virtual training authorized under the HMR?**

**Answer:** Yes. A hazmat employer may use any type of training method, including forms of digital training (e.g., online, computer-based, and virtual training programs), that ensures each hazmat employee receives general awareness/familiarization training, function-specific training, safety training, security awareness training, and in-depth security training. (See § 172.704; see also § 172.702.) The hazmat employer must also ensure that testing, recordkeeping, and certification requirements as specified in § 172.704 are met.

**15. Question: Can previously completed Occupational Safety and Health**

**Administration (OSHA), U.S. Environmental Protection Agency (EPA), or other required safety training substitute for hazmat training?**

**Answer:** Training conducted to comply with the hazard communication programs required by OSHA, EPA, or training programs required by other federal or international agencies may be used to satisfy portions of the training requirements set forth in Subpart H to Part 172.

**16. Question: What are the penalties for violation of the requirements of the HMR, such as training?**

**Answer:** A hazmat employer must ensure that each of its hazmat employees is trained in accordance with the requirements prescribed under Subpart H to Part 172. (See § 172.702.) A person who knowingly violates a requirement of the HMR or the Federal Hazmat Transportation Law, 49 U.S.C. 5101 *et seq.*, may be liable for a civil penalty of not more than \$ 99,756<sup>6</sup>. For a violation that results in death, serious illness, severe injury, or substantial property destruction, the maximum penalty is increased to \$ 232,762.<sup>6</sup> For violations related to training, there is a minimum penalty of \$ 601. (See § 107.329.) Maximum and minimum penalty limitations are updated annually to adjust for inflation.

**17. Question: Who is responsible for the required hazmat training of a subcontractor's employees?**

**Answer:** Under § 171.8, a subcontractor's hazmat employee is a hazmat employee. In accordance with § 172.702(a), the subcontractor, as the hazmat employer for its hazmat employees, is responsible for ensuring that each of its hazmat employees are trained in accordance with Subpart H to Part 172. However, § 172.702(c) provides flexibility on who can provide the training. The training may be provided by the hazmat employer or by some other public or private source.

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<sup>6</sup> As of December 28, 2023, <https://www.federalregister.gov/documents/2023/12/28/2023-28066/revisions-to-civil-penalty-amounts-2024>. Annual updates to civil penalty amounts are codified at § 107.329.

**18. Question: Is a person located outside the United States who offers a shipment from a foreign location for transportation in the United States—in accordance with an international standard recognized by the HMR—subject to the training requirements in Subpart H to Part 172?**

**Answer:** Yes. § 171.22 prescribes additional requirements for the use of international standards for shipments offered for transportation or transported in the United States and includes shipments originating in a foreign location and transported to the United States. Under § 171.22(g)(2), the training requirements in Subpart H to Part 172, including function specific training, must be satisfied. Training conducted, in accordance with § 171.22, to comply with the international standards may be used to satisfy the training requirements set forth in § 172.704, to the extent that such training addresses the training components specified in § 172.704(a). It is not necessary to duplicate training. However, the hazmat employer must provide additional training to employees performing covered functions for any training components required by the HMR that were not previously addressed.

**19. Question: Is a driver required to have hazmat training in accordance with Subpart H to Part 172 if the driver has a hazmat endorsement on a CDL?**

**Answer:** Yes. In accordance with § 177.800(c), each driver who is a hazmat employee is subject to the training requirements in Subpart H to Part 172, and the driver training requirements in § 177.816, regardless of whether a hazmat endorsement is required. However, the training required to obtain a hazmat endorsement may be used to satisfy some of the training requirements of the HMR to the extent that such training addresses the training components of § 172.704. (See § 177.816(c).)

#### **IV. Future FAQ Topics**

With the completion of this set of FAQ specific to training requirements, PHMSA will begin consideration for its next set of FAQ based on public input received. As such, PHMSA will continue concurrent work on future FAQ notices and subsequent topics may include FAQ

pertaining to classification, hazard communication, hazardous substances, hazardous wastes, modal-specific requirements, or packaging.

Issued in Washington, DC on March 7, 2024, under authority delegated in 49 CFR 1.97.

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Pipeline and Hazardous Materials Safety Administration.*

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