

Training Employees To Handle Hazmat

By Rick Van Arnam

In the wake of the events of September 11, 2001, the threat to the transport of hazardous materials ("hazmat") has become a high level concern to both government and industry. Hazmat is regulated by the U.S. Department of Transportation's ("DOT") Office of Hazardous Materials Safety ("OHMS"), which recognizes that approximately 800,000 shipments of hazmat is transported by motor carriage, rail, air or vessel in the United States daily. The range of goods designated hazmat runs from the obvious, such as flammable products, poison gases, explosive devices and radioactive materials, to more mundane articles such as cigarette lighters and lithium batteries.

As with other agency-industry initiatives designed to protect the supply chain, OHMS and the industries regulated by it are working to implement enhanced security initiatives to reduce the threat posed by terrorists to the transport of hazmat. OHMS is currently engaged in extensive outreach to the regulated industries regarding security initiatives. At the same time, affected companies are voluntarily implementing policies and procedures to develop security plans and to increase the expertise and knowledge of these issues among employees working with hazmat.

That being said, the DOT reports on its website that "[m]ore than one-third of the Department's enforcement actions pertaining to violations of the hazardous materials transportation regulations involve the failure of hazmat employers to provide training or maintain the test records." *Is Training Critical to Your Business?*, <http://hazmat.dot.gov/hmnews.htm>. Thus, despite the willingness of industry to embrace voluntary security measures, many simply fail to meet the statutory and regulatory requirements in place on the initial rung of the security ladder – educating employees directly involved in the movement of hazmat.

A. Training Is Required By Law

The basic statute regulating the transportation of hazmat in the United States is 49 U.S.C. § 5101 *et seq.* This law requires the training of all hazmat employees for the purpose of increasing a hazmat employee's safety awareness and is intended to be an essential element in reducing hazmat incidents. 49 U.S.C.

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§5107. The hazmat regulations include training requirements set out in several sections of Title 49, Code of Federal Regulations (CFR). These regulations include general requirement for training, § 173.1; specific training requirements, § 172.704, hazmat training required for air, § 175.20, for vessel, § 176.13, for highway, §§ 177.800, 177.816.

Hazmat training must be provided by hazmat employers for every hazmat employee whose activities directly affect hazmat transportation safety. Basically, any employee who works in a shipping, receiving, or material handling area or who may be involved in preparing or transporting hazardous materials is required to have hazmat training. Violations of any hazardous materials regulations including training may be subject to a civil penalty of up to \$26,500 for each violation and, in appropriate cases, a criminal penalty of up to \$500,000 and/or imprisonment of up to 5 years. *See* 49 U.S.C. §§ 5123, 5124; 49 CFR § 107.329 and § 107.333.

A hazmat employer is defined in 19 CFR § 171.8 as a person who uses one or more of its employees in connection with: transporting hazmat in commerce; causing hazmat to be transported or shipped in commerce; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying packagings as qualified for use in the transportation of hazmat. Specifically, an employee is defined in 19 CFR § 171.8 as a person who is employed by an employer and directly affects transportation safety including: an owner-operator of a motor vehicle which transports; a person (including a self-employed person) who loads, unloads, handles, tests, reconditions, repairs, modifies, marks, or otherwise represents packagings as qualified for use in the transportation of hazmat; prepares hazmat for transportation; is responsible for safety of transporting hazmat; or operates a vehicle used to transport hazmat. Even a person who types a hazardous materials shipping description or otherwise is involved in preparing shipping documents must receive the training.

Training must be a systematic program that ensures that a hazmat employee has

knowledge of hazardous materials and the hazardous materials regulations, and can perform assigned hazmat functions properly. The training must adopt a consistent approach, be documented, and involve testing. Except for certain FAA required training, the DOT does not review or certify training programs for pre-approval purposes. The employer must determine a trainer's qualifications based on its need. A company may conduct internal training and testing; however a hazmat employer also has the option to designate an outside source to train, test, and certify on its behalf. Training requirements, frequency, appropriate record-keeping, and sources for training material are outlined below.

B. Training Requirements

Pursuant to 29 CFR § 172.704(a) each hazmat employer must:

- train and test,
- certify, and
- develop and retain records of current training (inclusive of the preceding three years) for each hazmat employee during his period of employment and 90 days thereafter.

Hazmat training must include:

- general awareness/familiarization,
- function-specific training that relates directly to the function that each employee is to perform,
- safety, and
- driver training, for each hazmat employee who will operate a motor vehicle.

Any test that ensures that the employee can perform the assigned duties in compliance with the regulation is acceptable. Training and testing may be accomplished in a variety of ways: performance, written, verbal, or a combination of these. There is no requirement that the employee "pass" a test; however, an employee may only be certified in areas in which he/she can successfully perform their hazmat duties. It should be noted that training should be conducted by employers to comply with the hazard communication programs required by the Occupational Safety and Health Administration of the Department of Labor (29 CFR 1910.120 or 1910.1200) or the Environmental Protection Agency (40 CFR 311.1). To the extent that training addresses the training required by 49 CFR 171.704(a), it may be used to satisfy the training requirements in paragraph (a) of that section in order to avoid unnecessary duplication of training. *See*, 49 CFR 172.704(b).

C. Frequency Of Training

The regulations specify at 49 CFR 172.704(c) when training must be conducted:

i. Initial Training

A new employee, or an employee who changes job functions, may perform hazmat job functions before completing training, provided the employee does so under the direct supervision of a properly trained and knowledgeable hazmat employee and the hazmat training is completed within 90 days of employment or change in job function.

ii. Ongoing Training Requirements

Recurrent training is required at least

once every three years. The three year period begins on the actual date of training.

iii. Training From Previous Employment

It should be noted that training from a previous employer or source may be used to satisfy the requirements for a hazmat employee, provided a current record of training is obtained from the previous employer or source.

D. Training Record-keeping Requirements

The hazmat employer should keep hazmat training records for each hazmat employee as defined above which include:

- hazmat employee's name;
- completion date of most recent training;
- training materials (copy, description, or location);
- name and address of hazmat trainer; and
- certification that the hazmat employee has been trained and tested.

E. Hazmat Transportation Training Materials

The company should have a person(s) designated as the hazmat instructor to conduct regular training sessions, unless the company is utilizing its option to obtain outside hazmat training from a third-party service provider. The appropriate classroom training modules and instructor and student manuals for each module may be downloaded free of charge at <http://hazmat.dot.gov/pub-train/mod.htm>.

Conclusion

Training of employees involved with hazmat is required under law. Thus, such training, as well as internal review of hazmat handling procedures, is required as a preventative measure, and not something to implement after an accident or incident has occurred. The regulated industry should use such training not just to comply with the law but as a means of increasing the overall understanding among its employees of the importance of security along the hazmat supply chain. Because the employees involved in moving hazmat come from many departments within a typical company, one size training will not fit all. Also, training can vary depending on the type of hazmat being moved, again requiring a company to consider the types of hazmat activities it is engaged in.

The cost of ensuring hazmat security lies with those companies involved with the merchandise, so it is these companies that need to make sure that their internal training and procedures meet the required standards if challenged. As mentioned above, the cost of ignoring these obligations could include civil and criminal penalties, negative press and interruptions in shipping and delivery cycles. In light of this potential exposure, regulated industries would benefit from investing time, money, and resources toward achieving hazmat compliance and ensuring that the required training is conducted.