



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

1200 New Jersey Avenue, SE
Washington, DC 20590

April 3, 2023

Mr. Timothy Hewitt
Senior Radiation Protection Engineer
Pacific Gas & Electric
9 Miles NW
Avila Beach, CA 93424

Reference No. 22-0109

Dear Mr. Hewitt:

This letter is in response to your September 12, 2022, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to security plans. In your email, you state that your company is required to have a security plan as specified in § 172.800(b) of the HMR. You also state that § 172.704(c)(2) requires that a hazardous materials (hazmat) employee shall receive recurrent training at least once every three years. Lastly, you state that a hazmat employee must receive the in-depth security training required under § 172.704(a)(5) at least once every three years or—if the security plan for which training is required is revised during the three-year recurrent training cycle—within 90 days of implementation of the revised plan. Based on these statements, we have paraphrased your questions and answered them in the order you provided:

- Q1. You ask whether revisions to a security plan—such as correcting misspellings—would require the retraining of a hazmat employee within 90 days of such a revision in order for a hazmat employer to comply with § 172.704(a)(5) and (c)(2).
- A1. The answer is no. Editorial revisions to a security plan—including correcting misspellings—would not necessitate a hazmat employer to retrain a hazmat employee in order to comply with the recurrent training requirements specified in § 172.704(c)(2).
- Q2. You ask whether clarifications that do not change the intent or actions within a security plan would necessitate a hazmat employer to retrain a hazmat employee in order to comply with the recurrent training requirements specified in § 172.704(c)(2).
- A2. The answer is no. See answer A1.

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

Sincerely,

A handwritten signature in blue ink that reads "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

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

From: [INFOCNTR \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#); [Hazmat Interps](#)
Subject: FW: 172.704(c)(2) Interpretation Request
Date: Friday, October 21, 2022 4:21:42 PM
Attachments: [image002.png](#)

Hello Alice,

I'm forwarding this message on behalf of Timothy Hewitt, let me know if any additional info is required.

Thanks,
Michela, HMIC

From: Hewitt, Timothy <TNHW@pge.com>
Sent: Thursday, October 20, 2022 3:59 AM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: RE: 172.704(c)(2) Interpretation Request

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.

Timothy Hewitt
9 Miles NW Avila Beach
Avila Beach, CA 93424
(805) 545-3235

From: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Sent: Wednesday, October 19, 2022 9:25 AM
To: training (PHMSA) <training@dot.gov>; Hewitt, Timothy <TNHW@pge.com>
Subject: RE: 172.704(c)(2) Interpretation Request

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Dear Tim,

We have received your request for a written letter of interpretation regarding the hazardous materials regulations (49 CFR Parts 171-180). The hazardous materials regulations are available at the following URL:

<https://www.ecfr.gov/cgi-bin/text-idx?>

[SID=1d49a3b137cb1b6fc45251074e634b44&tpl=/ecfrbrowse/Title49/49tab_02.tpl](https://www.phmsa.dot.gov/standards-rulemaking/hazmat/hazardous-materials-information-center)

However, before we can submit your request for processing, please respond to this email with:

- Full Name
- Physical Mailing Address
- Telephone Number

Sincerely,

Michela, Hazardous Materials Specialist

An e-mail response from this office is considered informal guidance. Formal guidance may be requested in accordance with 49 CFR 105.20. <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/hazardous-materials-information-center>

From: training (PHMSA) <training@dot.gov>
Sent: Monday, September 12, 2022 3:54 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: FW: 172.704(c)(2) Interpretation Request

Hi Info Center,
Can you assist Tim and copy me? I'd like to know the answer.

Thanks,

Peter Heitzmann
Office of Outreach and Engagement
US Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Ave SE, Washington DC 20590
Office: 202.366.4425

[PHMSA Home](#) | [LinkedIn](#) | [Twitter](#) | [HAZMAT](#) | [OPS](#)



From: Hewitt, Timothy <TNHW@pge.com>
Sent: Monday, September 12, 2022 2:15 PM
To: training (PHMSA) <training@dot.gov>
Subject: 172.704(c)(2) Interpretation Request

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September 12, 2022

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

Dear PHMSA:

My employer is required to have a security plan per § 172.800. We also perform the required training contained in § 172.704. The question I have is regarding § 172.704(c)(2), which states the following:

Recurrent training. A hazmat employee must receive the training required by this subpart at least once every three years. For in-depth security training required under paragraph (a)(5) of this section, a hazmat employee must be trained at least once every three years or, if the security plan for which training is required is **revised** during the three-year recurrent training cycle, within 90 days of implementation of the revised plan.

What is the definition of “revised” in the context of this statement? Are any changes allowed to the security plan without performing retaining within 90 days? For example:

- May we change misspellings in our security plan?
- May we change wording for clarification or otherwise which do not change intent or actions?

Normally without additional context, we would just conservatively default to retaining for any revision. In this case, we seek clarification because our security plan also falls under 10CFR37 which in § 37.43(c)(3) states:

Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program.

The wording in this regulation allows changes without impact to occur without retraining. If similar intent exists in § 172.704(c)(2), we would like it to be known.

I reviewed applicable FAQs, MOUs, interpretation responses, and the Federal Register. The documentation found which touches on this subject does not provide a definite answer, but includes the following:

- Federal Register Volume 75, Number 45, dated March 9, 2010 provides an example of retraining only when there is an impact, yet it also provide a statement to retrain on a revision without including a statement of impact.
- Interpretation Response 11-0063 to Con-Way Freight states, “if major regulatory changes occur within this 3-year recurrent training period, hazmat employees must receive training on the new regulatory requirements within 90 days of their effective date.” It was noted that the statement, which is specific to regulations and not to security plans, includes the description of “major” regarding a change.

Regards,

Timothy Hewitt
Senior Radiation Protection Engineer
Pacific Gas & Electric

(805) 556-5034

Timothy.hewitt@pge.com