



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

JUL 16 2015

Rick Heylmun
Professional Emergency Resource Services (PERS)
P.O. Box 1560
Ogden, UT 84402-1560

Ref. No. 15-0071

Dear Mr. Heylmun:

This responds to your April 7, 2015 e-mail requesting clarification on the training and recordkeeping requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your request, you stated that your company provides online hazmat employee training courses to assist hazmat employers in complying with Part 172, Subpart H. In addition, you provided a copy of the certificate that your company gives to hazmat employees who have completed the aforementioned training course. Your questions have been paraphrased and answered as follows.

Q1. For the purpose of recordkeeping, does your company's certificate provide the required documentation for having completed your company's online training course?

A1. Under the HMR, there is no "required documentation" for having completed an online training course. Section 172.704(d) requires that each hazmat employer (as defined in § 171.8) create and retain a record certifying the current training of each hazmat employee (also defined in § 171.8). No specific format is specified for the documentation of this certification. Thus, compliance with recordkeeping requirements may be achieved in many ways (e.g., certificate, computer, filed index cards) and could involve partnerships with any organization offering training meeting the needs of the hazmat employer, but responsibility for compliance with the recordkeeping requirements of 172.704(d) remains with the hazmat employer.

Accordingly, your company's certificate could be used by a hazmat employer as part of a hazmat employee's training record, but the hazmat employer has to certify that the hazmat employee has been trained in accordance with all applicable elements of Subpart H—Training. Unless otherwise specified in § 172.704(a), a hazmat employee's training must include: (1) general awareness/familiarization training; (2) function-specific training; (3) safety training; (4) security awareness training; and (5) in-depth security training. Your company's online training course appears to address

some of these training elements, but it may not address all of types of training required of the hazmat employee under § 172.704(a). As you have noted in your request, "Additional records may be maintained as appropriate by the hazmat employer in order to verify that other training has been provided as required by PHMSA."

Q2. Is it appropriate for a field investigator to subpoena or to otherwise request access to the training material used in your company's online training course?

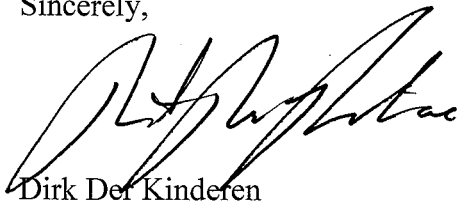
A2. For purposes of conducting investigative duties, a Department of Transportation official or an entity explicitly granted authority to enforce the HMR may request a copy of an employee's record of current training (see the introductory text in § 172.704(d)). The record of current training must include a description, copy, or the location of the training materials used to meet the requirements of § 172.704(a). Your company's certificate of training provides a "description" of the training provided by your company, but, as noted in the answer to the first question, it is not necessarily a description of all the training required of the hazmat employee under § 172.704(a).

Moreover, the Secretary of Transportation has delegated to the Pipeline and Hazardous Materials Safety Administration (PHMSA) the authority to perform inspections as part of enforcement actions to verify compliance with the Federal hazardous materials transportation law (see 49 USC §§ 5101-5127) and the HMR. If an individual or entity denies access or imposes conditions or limitations on an inspection, PHMSA may issue a subpoena (which may be enforced in Federal court) for documents or other evidence (see 49 CFR § 107.305(b)(4)).

Therefore, in your scenario, the certificate provided by your company might have provided a description of the training materials used as part of the hazmat employer's efforts to satisfy § 172.704(a) and § 172.704(d); but, as part of an enforcement action, PHMSA may require additional information such as access to the actual training materials. In such an instance, subpoena power may be used to obtain the information if necessary.

I hope this answers your inquiry. If you need additional assistance, please contact this Office again.

Sincerely,



Dirk Der Kinderen
Acting Chief, Standards Development Branch
Standards and Rulemaking Division