



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

JUL 11 2006

Mr. Joseph Lowery
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P.O. Box 1663 MS A194
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Ref. No. 06-0135

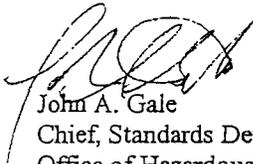
Dear Mr. Lowery:

This responds to your May 17, 2006 letter requesting clarification on the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to transportation of hazardous materials by public highway. Specifically, you ask if the April 23, 1991 letter of interpretation from Ms. Judith S. Kaleta, Esq., Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, on the applicability of the HMR to transportation of hazardous materials via public highway is valid.

The answer is yes. The HMR do not apply to rail or motor vehicle movements of a hazardous material exclusively within a contiguous facility boundary where public access is restricted unless the movement is on or crosses a public road or is on track that is part of the general railroad system of transportation. However, if access to the public road is restricted by signals, gates, lights, or similar controls, the movement is not subject to the HMR. (see §171.1(d)(4)).

I hope this answers your inquiry.

Sincerely,



John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



060135



Packaging and Transportation

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Date: May 17, 2006
Refer To: P&T:06-039

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
400 7th Street S.W.
Washington, D.C. 20590-0001

Dear Mr. Mazzullo:

The purpose of this correspondence is to verify that the formal Department of Transportation (DOT) Interpretation of Definition of Public Highway is still valid. This interpretation was requested in a letter dated March 25, 1991 from Ms. Susan H. Denny, Director, Transportation Management Program, Department of Energy to Judith S. Kaleta, Esq., Chief Counsel, Research and Special Programs Administration, U. S. Department of Transportation, and the response from Kaleta to Denny, dated April 23, 1991(attached).

The above mentioned correspondence was generated to obtain clarification of when roads are subject to the provisions of the Hazardous Material regulations. The response to the request, from Kaleta to Denny states in part:

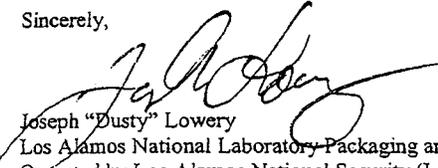
“DOE’s contractors, however, must comply with the HMR even when the transportation is in a Government vehicle – unless the transportation is not in commerce (a prerequisite to the applicability of the HMTA and the HMR).

Transportation on (across or along) roads outside of Government properties generally is transportation in commerce. Transportation on Government properties requires close analysis to determine whether it is in commerce. If a road is used by members of the general public (including dependents of Government employees) without their having to gain access through a controlled access point, transportation on (across or along) that road is in commerce. On the other hand, if access to a road is controlled at all times through the use of gates and guards, transportation on that road is not in commerce.

One other means of preventing hazardous materials transportation on Government property from being in commerce is to temporarily block access to the section of the road being crossed or used for that transportation. The road would have to be blocked by persons having the legal authority to do so, and public access to the involved section of road would have to be effectively precluded.”

Given the vintage of this correspondence, the DOT is requested to verify that its conclusions are still valid. Please feel free to call my office should you need any additional information.

Sincerely,



Joseph “Dusty” Lowery
Los Alamos National Laboratory, Packaging and Transportation
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