U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

FEB 28 2003

Ref. No.: 02-0055

Mr. Steven H. Wisness
Director, Office of Site Services
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

Dear Mr. Wisness:

This responds to your letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to security force personnel contracted by the Department of Energy (DOE) for the protection of Federal assets under DOE control. You state that, in performance of their duties, the security force personnel also provide law enforcement support to other local, state, and Federal agencies. You inquire whether the contractor would be subject to the HMR when transporting weapons and explosives in ready-to-fire mode in the performance of their duties. I apologize for the delay in responding and any inconvenience it may have caused.

The answer is yes. In general, any person who transports hazardous material in commerce or causes hazardous material to be transported in commerce is subject to the Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. §§ 5101-5127, and the HMR. 49 U.S.C. § 5103(b). Thus, a "person" who, under government contract, transports or causes a hazardous material to be transported in commerce is subject to the HMR; see § 171.1(b). The term "commerce" means transportation that is or affects interstate trade or traffic. 49 U.S.C. § 5102(1) Consequently, the HMR do not apply to transportation that is entirely on private property and neither follows nor crosses a public way. Property is regarded as private if public access is legally and actually restricted from the area where transportation occurs. Also transportation of a hazardous material for national security reasons under the conditions specified in § 173.7(b) is not subject to the HMR.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

Hattie L. Mitchell

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

020055

Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

02-OSS-0079

FEB 0 4 2002

Mr. Edward Mazzulo
Office of Materials Standards
Research and Special Programs Administration
U.S. Department of Transportation
400 Seventh Street, SW
Washington, D.C. 20590

Dear Mr. Mazzulo:

REQUEST FOR CLARIFICATION

The U.S. Department of Energy (DOE), Richland Operations Office (RL) is requesting a written clarification concerning the applicability of Subchapter C - Hazardous Materials Regulations to off-Hanford Site activities, as it relates to security forces contracted by RL for the protection of the Hanford Site, Federal Building, and other DOE holdings.

RL, through Fluor Hanford Inc., the primary management contractor for Project Hanford, has contracted Protection Technology Hanford (PTH) as a direct subcontractor since March 1, 1999. PTH is responsible for management, operation, and integration of all safeguards and security services of the Hanford Site, including the Hanford Patrol.

We previously contacted James Jones, Chief, Approvals Branch, concerning the use and responsibilities of Hanford Patrol. Mr. Jones was given a brief description of the site, area north of the WYE barricade (the controlled access area), public access areas of northern Richland, and the downtown area where the Federal Building is located. We explained that PTH is responsible for the Hanford Patrol. The Hanford Patrol has various site security responsibilities including physical protection of the Hanford Site, Federal Building, and other DOE properties and holdings. In addition, Hanford Patrol supports local, state, and federal agencies including the Federal Bureau of Investigation. These activities may require Hanford Patrol to respond outside the state of Washington.

We discussed with Mr. Jones the basis for the Hanford Patrol to be armed and carry ammunition and explosives in patrol/security vehicles in a ready mode without regard to Subchapter C - Hazardous Materials Regulations. Mr. Jones said that authority must come down through government channels, whether it is federal, state, or local government. Mr. Jones stated that deputizing of security personnel by county and local government was typical. The county or local government is then responsible for the security service, and can set the rules and revoke the authority, if necessary. In the case of DOE security forces such as the Hanford Patrol, Mr. Jones said that if a contractor was working under contract for DOE and the contract explicitly defined

the contractor's duties and responsibilities for security, the contractor, in this case PTH, would have proper authority. This would include movement of weapons, ammunition, and explosives in patrol vehicles, unpackaged and in the ready mode. It would also include the dog training activities and the use of explosives necessary for other patrol training, if identified by DOE as part of their contractual responsibilities. DOE is ultimately in control and responsible for security operations.

We concur with Mr. Jones' assessment of our status and assure that RL is fully aware of its responsibilities for direction and oversight in these matters. We request that a clarification letter from DOT be provided to RL. We request the letter include an interpretation that PTH is exempt from Subchapter C - Hazardous Materials Regulations, including transport of ammunition and explosives while in performance of their security duties off of the Hanford Site, in support of other law enforcement authorities. In essence, these activities are not in commerce.

If you have any questions, please contact Dennis Claussen, of my staff, on (509) 372-0938.

Sincerely,

Steven H. Wisness, Director
Office of Site Services

OSS:DWC

cc: J. H. Portsmouth, DFSNW