



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

APR 16 2019

Wade Winters
President
Regulatory Resources Inc.
379 Aragon Avenue
Los Alamos, NM 87547

Reference No. 18-0152

Dear Mr. Winters:

This letter is in response to your November 29, 2018, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the restriction of public access to roads in accordance with § 171.1(d)(4). You describe a scenario in which a public road (i.e., a state route) runs through government land and explain that while the roads are mostly controlled by guards, certain government roads that intersect the state road are restricted by signage only. You reference three other Letters of Interpretation that indicate that signs, signals, gates, or guard stations are appropriate means of restricting public access as required by § 171.1(d)(4) and seek confirmation that the same answer would apply to your scenario.

The answer is yes. Shipments that occur on private roads whose access is restricted to the public (e.g., limited to authorized personnel), whether by signage (as you described and presented in your letter) or by physical barriers, are not subject to the requirements of the HMR.

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

Sincerely,

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

November 29, 2018

Standards and Rulemaking Division,
Pipeline and Hazardous Materials Safety Administration
Attn: PHH-10
U.S. Department of Transportation, East Building
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

Dear Standards and Rulemaking Division,

There have been over the years a number of letters issued from PHMSA discussing the means to restrict public access for a shipment of hazardous materials to be considered "not in commerce" (see Ref. Nos. 99-0261, 00-0090, and 03-0151) The letters indicate the use of signs, signals, gates, or guard stations as examples. This letter seeks to confirm the use of signage as a means to achieve public access restriction.

Signs are used throughout the USA to convey Federal and State regulations regarding travel on our roadways. Speed limit signs and Stop signs are just a couple of examples. The DOT Federal Highway Administration (FHA) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), Chapter 2A, Section 2A.01, states "[t]he functions of signs are to provide regulations, warnings, and guidance information for road users." According to Section 1A.13 and 2B.01, the definition of "regulatory sign" is a sign that gives notice to road users of traffic laws or regulations, and "shall be used to inform road users of selected traffic laws or regulations and indicate the applicability of the legal requirements."

Road signage is a means to communicate specific requirements, some of which must be obeyed. Signage that prohibits unauthorized access is included. For example, a sign with words, "RESTRICTED AREA – Authorized Personnel Only" or a sign displaying "NO Trespassing" clearly visible from the road denies entry to private or government owned property to all but those authorized.

Questions have arisen during courses about the use of signs to prohibit public access, thus, rendering transportation of hazardous materials on the private or government owned property beyond such signage not to be "in commerce." One example in particular is a public road (we'll say State Route 1) that runs through a portion of government land. Access to the government land is controlled by guards. For those wishing to transverse State Route 1 through the government land must provide federal or state issued photo identification. Government owned roads that intersect this stretch of State Route 1 will have signs that clearly state "RESTRICTED AREA – Authorized Personnel Only" or a sign displaying "NO Trespassing" (Figure 1).



Figure 1 (3 examples)

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RRI is seeking PHMSA concurrence that signage like that in Figure 1 which strictly prohibits unauthorized access to private or government owned land to anyone not specifically authorized fulfills the intent of public-restricted access for the purpose of hazardous materials transportation.

Thank you.

For Regulatory Resources, Inc.,



W. A. Winters
President