



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

Office of the
Chief Counsel

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

John R. Carter, III
Program Manager
Science Applications International Corporation
11251 Roger Bacon Drive
Reston, Virginia 20190

May 26, 2004

Dear Mr. Carter,

This responds to your April 30, 2004 letter concerning the applicability of the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180 to Transportation Security Administration (TSA) employees transporting hazardous materials, in government vehicles, from airport screening areas to TSA controlled collection areas for disposal.

In your letter you state that TSA believes, and is requesting [our] concurrence, that hazardous materials collected by TSA at airport locations and transported on public roads by TSA personnel for a noncommercial governmental purpose are not subject to the HMTA requirements.

RSPA's position concurs with TSA's belief along the following general principals:

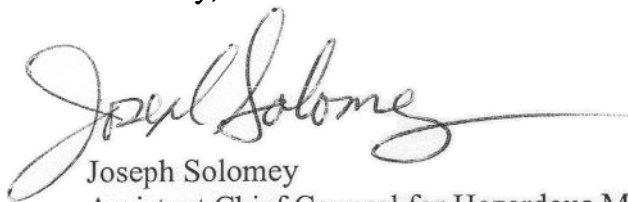
1. The HMR do not apply to TSA as a carrier unless it transports hazardous material in the furtherance of a commercial enterprise.
2. Transportation is not in furtherance of a commercial enterprise if it is carried out by government personnel and for a government purpose. We conclude that:
 - a. TSA employees are government personnel, but contractors for TSA are not; and
 - b. The scope of a governmental purpose is sometimes difficult to define in the abstract, but an activity likely to fall in this domain would be the transportation of hazardous materials from a spoke airport to its associated hub for disposal as described in your letter.
3. The fact that transportation occurs on public roads is of no consequence since a Federal agency that transports hazardous materials for noncommercial purposes, using its own personnel, is not engaged in transportation in commerce regardless of whether the hazardous material is transported on public or private roadways.

TSA, in performing the functions described in your letter using its employees, not contractor employees, is not subject to the Federal hazardous materials transportation law, 49 U.S.C. §§ 5101-5127, and the HMR.

I also refer you to the most recent index of formal and informal interpretations on this subject which can be found at our website: <http://rspa-atty.dot.gov> . Click on "Hazmat Interpretation Letters"; then, click on "Combined by Subject", at the bottom of the next screen; finally, scroll down to "Government Agencies-Transportation By" and view any one of the six informal interpretations on this subject. This response will be added to this portion of the site.

If you need any further information, you may contact me or Bob Kern, of my staff, at the above address, by telephone on 202-366-4400, or by fax on 202-366-7041.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Solomey". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Joseph Solomey
Assistant Chief Counsel for Hazardous Materials
Safety and Emergency Transportation Law