



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

Office of the
Chief Counsel

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

Maruren (Mark) Lacey, 1st Lt. USAF
Program Manager, NPTLOX System
311 HSW/YAMA
7980 Lindbergh Landing
Brooks City-Base, TX 78235-5119

June 14, 2004

Dear Lt. Lacey,

This responds to your June 9, 2004 e-mail concerning the applicability of the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180 to US Air Force employees transporting hazardous materials, in government vehicles upon public highways.

In your e-mail you state that the US Air Force is requesting our written concurrence that hazardous materials transported by US Air Force military personnel on public roads for a noncommercial governmental purpose are not subject to HMR requirements.

RSPA's position concurs with the US Air Force's belief along the following general principals:

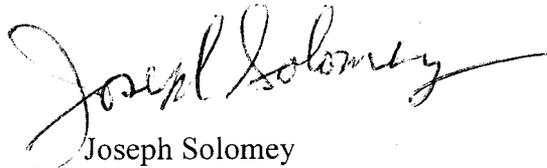
1. The HMR do not apply to the US Air Force as a carrier unless it transports hazardous material in the furtherance of a commercial enterprise.
2. Transportation is not in furtherance of a commercial enterprise if it is carried out by government personnel and for a government purpose. We conclude that:
 - a. US Air Force military personnel are government personnel, but contractors for the US Air Force 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 liquid oxygen converters in cryogenic pressurized cylinders upon a public road as described in your e-mail.
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.

The US Air Force, in performing the functions described in your e-mail using military personnel, 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 seven 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,



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

cc: Marvin S. Hsie, Maj. USAF, MSC, CHE
Chief, Resource Management Healthcare Technologies
c/o Elizabeth Hunnicutt
Essex Cryogenics of MO., Inc.
8007 Chivvis Drive
St. Louis, MO 63123