



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

APR - 7 1993

Mr. Brent Huber
Stuart & Branigin
300 Main Street, Suite 800
Lafayette, Indiana 47902-1010

Dear Mr. Brent:

This is in response to your letter of January 8, 1993, concerning the applicability of the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) to State universities.

Your questions are paraphrased and answered, as follows:

- Q. Must state universities comply with the HMTA and the HMR when they transport hazardous materials in state university vehicles driven by state university employees on streets and roads shared by the public?
- A. So long as a state university is not transporting the hazardous materials "in furtherance of a commercial enterprise" as an agency or instrumentality, a state university would not meet the definition of person in 49 CFR U.S.C. § 1802(11) that must comply with the HMR.
- Q. When, if at all, must state universities comply with the HMTA and the HMR?
- A. A state agency or instrumentality, including a state university, must comply with the HMTA and the HMR when it offers hazardous materials to a non-governmental carrier (by motor vehicle, aircraft, rail, or vessel) or transports these materials in "furtherance of a commercial enterprise."

I hope this information is helpful. If I can be of further assistance, please contact me.

Sincerely,

Debra F. Billings

for
Thomas G. Allan
Deputy Director, Office of
Hazardous Materials Standards

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RUSSELL H. HART
ROGER D. BRANIGIN, JR.
THOMAS L. RYAN
JAMES V. MCGLONE
CARL W. KLOEPFER
THOMAS R. MCCULLY
LARRY R. FISHER
NINA B. KIRKPATRICK
MARK I. LILLIANFELD
STEPHEN R. PENNELL
ANTHONY S. BENTON
ERIK D. SPYKMAN
WILLIAM E. EMERICK
JOHN C. DUFFEY
MARK E. DEYOUNG
THOMAS B. PARENT
LAURA L. BOWKER

STUART & BRANIGIN
LAWYERS
THE LIFE BUILDING
300 MAIN STREET, SUITE 800
POST OFFICE BOX 1010
LAFAYETTE, INDIANA 47902-1010

KEVIN D. NICOSON
SUSAN K. HOLTBERG
JOHN M. STUCKEY
DEBORAH B. NOAH
BRENT W. HUBER
MICHAEL M. OBERMAN
DAVID A. STARKWEATHER
SALLY A. BAUMLER

TELEPHONE (317) 423-1561
FACSIMILE (317) 742-8175

OF COUNSEL
GEORGE A. RINKER
JOHN F. BODLE

ALLISON E. STUART (1886 - 1950)
ROGER D. BRANIGIN (1902 - 1975)

January 8, 1993

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Mr. Edward T. Mazzullo
Director of Office of Hazmat Standards
Department of Transportation
Room 8100
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: Request for Interpretative Ruling Regarding the
Applicability of the Hazardous Materials Transportation
Act ("HMTA") and Department of Transportation ("DOT")
Regulations to State Universities

Dear Mr. Mazzullo:

Kathie Molinar, Office of the Chief Counsel, DOT, asked that I direct this request to you. Please provide a formal interpretative ruling regarding the following questions:

Must state universities comply with the HMTA and DOT regulations when they transport hazardous materials in state university vehicles driven by state university employees on streets and roads shared by the public?

Please include in this interpretation an analysis regarding whether such transportation by state universities constitutes transportation in "commerce" by a "person" within the meaning of 49 App. U.S.C. § 1802(2) and 49 App. U.S.C. § 1802(11), respectively.

I. Prior Interpretative Rulings

Several of the DOT's prior rulings are informative. In a letter April 23, 1991 Judith S. Kaleta, Chief Counsel of the DOT, concluded that the Department of Energy "is not required to comply with the HMR [Hazardous Materials Regulations] when it offers or transports hazardous materials in a Government vehicle because those DOE activities are presumed to be for a governmental purpose and thus not in commerce." Earlier, in a letter dated January 11, 1980, Mr. Alan I. Roberts of the

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Materials Transportation Bureau of the DOT concluded that the DOT regulations did not "apply to purely governmental, non-business activities. . . . [S]o long as the State manages and effects its own transportation, using State vehicles and State employees acting within the scope of their duties, the Hazardous Materials Regulations do not apply."

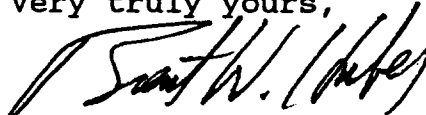
In view of these prior rulings, when, if at all, must state universities comply with the HMTA and DOT regulations?

II. Factual Background

In analyzing the above question(s), please assume the following facts. The university in question is state-supported and an "agency or instrumentality" of a state. The state university transports hazardous materials in state university vehicles driven by state university employees acting within the scope of their employment. Such transportation takes place on streets, roads, and highways shared by the general public. Access to these roads, streets, and highways is generally not restricted. In some instances, there are signs indicating that persons are entering university property and/or access is limited by the use of gates and fences.

I look forward to receiving this interpretative ruling at your earliest convenience. If you require additional information, please contact me. Thank you very much for your attention to this matter.

Very truly yours,



Brent W. Huber

BWH/kac

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