U.S. Department
of Transportation

**Research and
Special Programs
Administration**

Office of the
Chief Counsel

400 Seventh Street, S.W.
Room 8407
Washington, D.C. 20590

Phone: (202) 366-4400
Fax: (202) 366-7041

MAY 22 2000

Cheryl C. Burke, Esq.
General Counsel
Washington Metropolitan
Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Dear Ms. Burke:

Thank you for your recent letter in which you requested confirmation that the Washington Metropolitan Area Transit Authority (WMATA) is not subject to the requirement to register with the Research and Special Programs Administration (RSPA) and to pay a registration fee. As you indicate, this letter follows up the discussions last December between WMATA staff members and two persons at RSPA: David Donaldson, of RSPA's Office of Hazardous Materials Planning and Analysis, and Frazer Hilder, of RSPA's Office of the Chief Counsel.

As Mr. Hilder explained at that time, the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180, do not apply to a governmental agency when the agency (or its employees) actually perform the transportation as part of carrying out a governmental function (as opposed to a commercial enterprise). See 49 U.S.C. § 5102(9) and 49 C.F.R. § 171.8 (defining a "person" to whom the regulations prescribed under § 5103(a)(1) apply).

With respect to RSPA's registration requirement, 49 U.S.C. § 5108(i)(2)(B) also specifically provides that "a department of the United States Government, [and] an authority of a State or a political subdivision of a State" are not required to register and pay the registration fee. This statutory exception is repeated in RSPA's regulations at 49 C.F.R. § 107.606(a).

According to your letter, WMATA is an interstate compact authority and an agency of the District of Columbia, the State of

Maryland, and the Commonwealth of Virginia. Accordingly, WMATA is excepted from the registration requirement in 49 C.F.R. § 107.601 et seq., and it has never been required to register with RSPA.

Because WMATA is covered by an exception in the law and regulations, there is no need for you to apply for an exemption under 49 U.S.C. § 5117. The 2-year period for issuing an "exemption" does not apply to an "exception" from the regulations.

WMATA is also not subject to the other requirements in the HMR, except when it offers a hazardous material for transportation in commerce (i.e., to a common carrier) or transports hazardous material in furtherance of a commercial enterprise. However, a contractor that offers or transports hazardous materials on behalf of WMATA is fully subject to the HMR.

I hope this information is helpful. If you have additional questions or we can be of further assistance, please contact myself or Mr. Hilder at 202-366-4400.

Sincerely,

Edward H. Bonekemper, III
Assistant Chief Counsel for
Hazardous Materials Safety and
Research and Technology Law