



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

AUG 4 1999

Mr. Thomas J. Dolce, P.E.
Principal Engineer
Levine-Fricke
3670 West Shore Road
Warwick, RI 02886-5051

Ref. No. 98-0371

Dear Mr. Dolce:

This is in response to your letter dated December 10, 1998, regarding the use of the materials of trade exception in 49 CFR 171.8 and 173.6. I am sorry for the delay and hope this has not caused you any inconvenience.

In your letter you ask if different scenarios meet the definition of materials of trade (MOT) in § 171.8. You ask us to assume that the materials are transported over public roadways by private company or employee owned vehicles and meet the type and quantity limitations, packaging and hazard communication requirements of § 173.6. For ease of response, each of your scenarios are paraphrased below:

Scenario One: A sample of a Class 3 paint, ink or similar liquid (which is used in the company's manufacturing process) transported from Plant 1 to Plant 2 where it will undergo quality control testing in a laboratory located in Plant 2.

Answer: One criteria for a MOT is that a hazardous material is transported by a private carrier in direct support of its principal business which is not transportation by motor vehicle. Therefore, a hazardous material transported between a company's facilities for purposes of quality control testing meets the definition of MOT.

Scenario Two: A sample of a Class 3 paint, ink or similar liquid (which is used in the company's manufacturing process) transported from one of the plants to an independent outside laboratory (not owned or affiliated with the subject company) for testing.

Answer: See response to one.

Scenario Three: A container of a Class 3 paint, ink or similar liquid (which is used in the company's manufacturing process) transported from Plant 1 to Plant 2 for use either in trial or actual manufacturing operations conducted in Plant 2.



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Answer: See response to one.

Scenario Four: Gasoline (Class 3) shipped from Plant 1 to Plant 2 for use in lawn mowers, trimmers and snowblowers. Also, please address the issue of a company employee transporting gasoline from a local filling station back to the plant for use as described above.

Answer: Gasoline transported between a company's facilities, even when purchased at a local filling station and transported back to a company's facility, for use in lawn mowers, trimmers and snowblowers meets the definition of MOT.

Scenario Five: A pesticide transported from Plant 1 (or the pesticide distributor's location) to Plant 2 for use as a pest control agent at Plant 2 in an outdoor area used to test the company's products.

Answer: Transportation of a pesticide by a company employee between a company's facilities, or from a distributor's location to a company facility, for use as a pest control agent in an outdoor area used to test a company's products meets the definition of MOT.

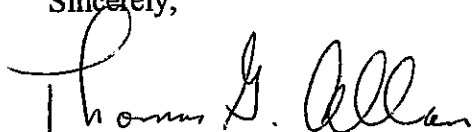
Scenario Six: The purchase of a Class 3 flammable liquid by a company employee from a local hardware store and transportation to Plant 1 for use in Plant 1's manufacturing operations.

Answer: Transportation of a hazardous material by a company employee from a local hardware store to a company's facility for use in its manufacturing operations meets the definition of MOT.

Scenario Seven: Do samples transported by salesman to various industrial/commercial establishments meet the definition of materials of trade?

Answer: The transportation of hazardous materials by a salesman to various industrial/commercial establishments meets the definition of MOT.

Sincerely,



Thomas G. Allan

Acting Director

Office of Hazardous Materials Standards

December 10, 1998

Mr. Edward Mazzullo
Director OHMS
USDOT/RSPA
400 7th Street SW
Washington, D.C. 20590

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Re: Materials of Trade Exceptions

Dear Mr. Mazzullo:

I have several questions regarding the applicability and use of the "**Materials of Trade Exceptions**" in 49 CFR 171.8 and 173.6. I would appreciate your agency's review and response to the following questions.

1. A manufacturing company operates several plants in different geographical locations and routinely ships certain hazardous materials from one plant to another across public roadways. Do the following materials meet the definition of materials of trade in Section 171.8; specifically the third paragraph of the definition which includes hazardous material carried "by a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle."

When answering the questions, please assume the materials are transported over public roadways by private company or employee owned vehicles and meet the type and quantity limitations of Sections 173.6 (a) and (d); the packaging provisions of Section 173.6 (b); and the communication requirements of Section 173.6 (c). Also assume that the company does not wish to take advantage of the small quantity, limited quantity or consumer commodity exceptions.

First Material – A sample of a Class 3 paint, ink or similar liquid (which is used in the company's manufacturing process) transported from Plant 1 to Plant 2 where it will undergo quality control testing in a laboratory located in Plant 2.

Second Material – A sample of a Class 3 paint, ink or similar liquid (which is used in the company's manufacturing process) transported from one of the plants to an independent outside laboratory (not owned or affiliated with the subject company) for testing.

Third Material – A container of a Class 3 paint, ink or similar liquid (which is used in the company's manufacturing process) transported from Plant 1 to Plant 2 for use either in trial or actual manufacturing operations conducted in Plant 2.

Fourth Material – Gasoline (Class 3) shipped from Plant 1 to Plant 2 for use in lawn mowers, trimmers and snowblowers. Also, please address the issue of a company

MR. EDWARD MAZZULLO

USDOT/RSPA

December 10, 1998

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employee transporting gasoline from a local filling station back to the plant for use as described above.

Fifth Material – A pesticide transported from Plant 1 (or the pesticide distributor's location) to Plant 2 for use as a pest control agent at Plant 2 in an outdoor area used to test the company's products.

Sixth Material – The purchase of a Class 3 flammable liquid by a company employee from a local hardware store and transportation to Plant 1 for use in Plant 1's manufacturing operations.

2. A related question involves the transportation of samples of hazardous materials by salespersons to various industrial/commercial establishments. Do these samples meet the materials of trade definition?

Your review and response to the above questions will be greatly appreciated. Please call me at 401-738-3887 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Dolce', written over a horizontal line.

Thomas J. Dolce, P.E.
Principal Engineer