



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

JUL 9 1998

Mr. Gary J. Garrahan  
Environmental Engineer  
Digital Audio Disc Corporation  
P.O. Box 3710  
Terre Haute, Indiana 47803-0710

Ref. No: 98-0038

Dear Mr. Garrahan:

This is in response to your letter of April 30, 1998, requesting clarification of the materials of trade (MOTs) exception provided in the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). You presented the following scenario:

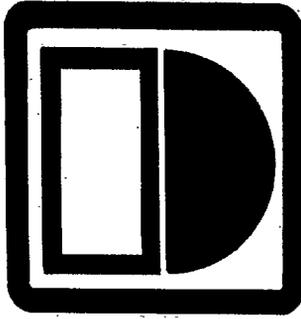
Your manufacturing operations consist of two buildings separated by a road with public access. Occasionally you may have a need to transport a small quantity (e.g., 1 gallon of a Class 3, PG II material) from one building to the other. This is not a normal business practice, it would occur only when necessary. The material is transported by a private carrier and is used to directly support your manufacturing process.

The above scenario qualifies for transportation as MOTs provided all requirements in § 173.6 are met.

I hope this satisfies your request.

Sincerely,

Delmer F. Billings  
Chief, Standards Development  
Office of Hazardous Materials Standards



# Digital Audio Disc Corporation

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April 30, 1998

Mr. Edward Mazzullo, Director  
Office of Hazardous Material Standards (DHM-10)  
U.S. Department of Transportation  
400 7th Street SW  
Washington, D.C. 20590

**RE: Clarification on Materials of Trade Exception**

Mr. Mazzullo:

On April 29, I spoke by phone with Mr. Mark Berger of your office, regarding a clarification to the Materials of Trade exception. I would like to formally verify the answer to my questions.

Simply put, my question is: Does the Materials of Trade exception apply to the transportation of hazardous materials which are used in a manufacturing process?

Consider the following scenario:

Our manufacturing operations consist of two buildings separated by a public way. Occasionally, an unforeseen situation may arise where we deplete our inventory of a particular raw material or manufacturing aid to the point where it may impair the manufacturing process prior to receipt of a new shipment. Under such a circumstance, in order to keep the manufacturing process operating, it would be convenient to transport a small quantity (*e.g., one gallon of a Class 3, Packing Group II liquid*) from one building to the other by our company truck, under the Materials of Trade exception, until the inventory of this material is replenished through normal business means. In other words, this transportation would be infrequent and would only occur as a result of an immediate, urgent and necessary business need, as opposed to a regular business practice.

We believe that the transportation of such small quantities of hazardous materials would be allowed due to the definition:

*Material of trade* means a hazardous material, other than a hazardous waste, that is carried on a motor vehicle-

- (1) For the purpose of protecting the health and safety of the motor vehicle operator or passengers;
- (2) For the purpose of supporting the operation or maintenance of a motor vehicle (including its auxiliary equipment); or
- (3) By a private motor carrier (including vehicles operated by a rail carrier) **in direct support of a principal business that is other than transportation by motor vehicle.**

The fact that the carriage of the hazardous material would be for the purpose of directly supporting our manufacturing process would seem to fit the definition.

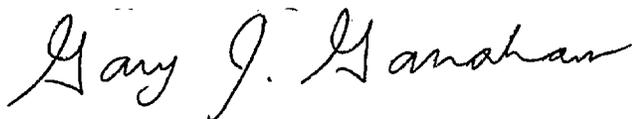
While a scenario such as the one we have described may not have been considered during the development of §173.6, we believe that interpreting §173.6 to include such a scenario does meet the spirit and intent of the exception for the following reasons:

1. The materials in question are in small quantity (thus affording low hazard);
2. They are transported for the sole purpose of supporting a principal business (i.e., manufacturing);
3. The transportation of these materials is infrequent, as it is inefficient to transport such small quantities on a routine basis.

In speaking with Mr. Berger, who stated that he discussed this scenario with several people in your office who helped develop §173.6, it appeared that our interpretation did, in fact, meet the definition of a material of trade, particularly since such transportation would be deemed inefficient, thus occurring infrequently.

We thank you for consideration of our inquiry and look forward to your response.

Sincerely,



Gary J. Garrahan  
Environmental Engineer,  
Digital Audio Disc Corporation