



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

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

JUL 3 2001

Anne N. Christenson, Esq.  
Law Office of Fennemore Craig  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913

Reference No. 01-0135

Dear Ms. Christenson:

This is in response to your May 28, 2001 letter and several telephone conversations with members of my staff concerning a product your client tested for corrosiveness using the methods prescribed in 49 CFR 173.137 and exemption DOT-E 10904. You stated the four samples tested according to § 173.137 classified the material either as non-hazardous or as Class 8 (corrosive), Packing Group II. The four samples tested according to DOT-E 10904 all classified the material as Class 8, Packing Group II. You asked which test result your client should use to classify the material.

If several tests give different results on whether a material is or is not a hazardous material, the most conservative test result should be used to establish its classification under the Hazardous Material Regulations (49 CFR Parts 171-180). For your client, based on the information you provided, this would mean classifying the material as Class 8, Packing Group II.

I hope this satisfies your request.

Sincerely,

Hattie L. Mitchell  
Chief, Regulatory Review and Reinvention  
Office of Hazardous Materials Standards



01-0135

173.137

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Edmonson  
§ 173.137  
Packing Group  
01-0135

May 28, 2001

Mr. Ed Mazullo, Director  
Office of Hazardous Materials Standards  
Research and Special Programs Administration  
400 Seventh Street, SW  
Washington, DC 20590-0001

Re: Request for Written Interpretation

Dear Ed:

I am writing this letter on behalf of a client who ships potentially corrosive hazardous materials. My client had a product tested to determine its corrosivity and degree of danger. Four samples of the product were tested using the testing requirements specified in 49 C.F.R. § 173.137. These test results varied considerably; the results ranged from noncorrosive to a packing group II material. My client then had four samples of the product tested using the methodology in DOT-E 10904 (Fourth Revision). All these test results indicated that the product was a packing group II material. Based on these varying testing results, which packing group do the Hazardous Materials Regulations require my clients to use and why?

Thank you for your assistance with this matter. Please contact me if you have any questions.

Sincerely,

FENNEMORE CRAIG

*Anne N. Christenson*

Anne N. Christenson

PHX/ACHRISTE/1186141.1/53078.179



U.S. Department  
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400 Seventh St., S.W.  
Washington, D.C. 20590  
**DEC 12 2000**

DOT-E 10904  
(FOURTH REVISION)

EXPIRATION DATE: October 31, 2002

(FOR RENEWAL, SEE 49 CFR § 107.109)

1. **GRANTEE:** InVitro International  
Irvine, California
2. **PURPOSE AND LIMITATION:** For the offering of hazardous materials for transportation in commerce, this exemption authorizes the use of a classification test method for the determination of skin corrosivity as an alternative to a procedure specified in the Hazardous Materials Regulations. This exemption provides no relief from any regulations other than as specifically stated.
3. **REGULATORY SYSTEM AFFECTED:** 49 CFR Parts 106, 107 and 171-180.
4. **REGULATIONS FROM WHICH EXEMPTED:** The marking requirements of 49 CFR §§ 172.203(a), 172.301(c) and 172.302(b) and (c); §§ 173.136(a) and 173.137 in that the use of a non-animal test method is authorized.
5. **BASIS:** This exemption is based on the application of InVitro International's dated September 27, 2000, submitted in accordance with § 107.109.
6. **HAZARDOUS MATERIALS:**  
  
The following types of materials may be tested as specified by this exemption:
  - a. Acids, inorganic and organic.
  - b. Acid derivatives (anhydrides, haloacids, salts etc.), inorganic and organic.
  - c. Acyl halides.
  - d. Alkylamines and polyalkylamines.

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- e. Bases, inorganic and organic.
- f. Chlorosilanes.
- g. Metal halides and oxyhalides.

7. SAFETY CONTROL MEASURES:

a. As an alternative to the procedure specified in § 173.136(a), the corrosivity of a material described in Paragraph 6 above may be determined in accordance with the test method specified in Paragraphs 4.4A through 4.4E of InVitro International's application dated September 28, 1992, as amended.

b. For materials that are determined to be corrosive, packing groups must be assigned according to Paragraph 4.4C of the application, as amended as described in paragraph 5. above.

8. SPECIAL PROVISIONS:

a. This exemption authorizes the use of an alternative test method for the determination of skin corrosivity by any person or class of persons, in addition to the holder of this exemption, subject to the terms specified herein. However, no person may apply the test method authorized by this exemption unless that person maintains a current copy of this exemption and the test method identified in Paragraph 7 above at each facility where the tests are performed for the purpose of determining the hazard class and packing group of a material for its transportation in commerce.

b. A current copy of this exemption must be retained by each person initially offering a hazardous material for transportation under this exemption.

c. Packages containing corrosive materials, classed and assigned packing groups as authorized by this exemption, may be offered and reoffered for transportation and transported in the same manner as required for corrosive materials classed according to § 173.136(a).

d. The marking requirements of 49 CFR, §§ 172.203(a), 172.301(c) and 172.302(b) and (c) are waived unless another exemption is involved requiring the display of an exemption number.

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Address all inquiries to: Associate Administrator for  
Hazardous Materials Safety, Research and Special Programs  
Administration, Department of Transportation, Washington, D.C.  
20590-0001.  
Attention: DHM-31.

The original of this exemption is on file at the above office.  
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prohibited.

PO: GEC/sdc