



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

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

JUN 23 2003

Mr. Dennis McMahan
Supply Chain and Logistic Manager
Eliokem, Inc.
1452 East Archwood, Suite 240
Akron, OH 44306

Reference No. 03-0065

Dear Mr. McMahan:

This is in response to your letter asking if a Class 9 label may remain on a package of styrenated phenol liquid when it is shipped in the United States (U.S.) or within a U.S.-designated port area provided the shipping paper does not describe the material as a hazardous material and the disclaimer "Not subject to U.S. DOT regulation" is marked on the package. You state the styrenated phenol liquid meets the criteria for the Class 9 hazard class under the European Agreements concerning the International Carriage of Dangerous Goods by Road (ADR) and Rail (RID) regulations for transportation of hazardous materials by highway or rail in Europe, but does not meet the definition of any hazard class under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), or the International Maritime Dangerous Goods Code (IMDG Code) for transportation in the U.S. The material safety data sheet you provided states the material may cause an adverse effect in an aquatic environment.

The HMR do not authorize labeling in accordance with the ADR/RID regulations. Section 172.401(c) permits labeling in accordance with the IMDG Code, International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, or Canadian Transport of Dangerous Good Regulations only if a material is a hazardous material or dangerous good under any of these regulations. However, the IMDG Code does not include a prohibition consistent with § 172.401. As the IMDG Code does not specifically prohibit the use of labels authorized by ADR/RID, packages of the ADR aquatic environment material may be labeled Class 9 and are acceptable for transportation within the U.S. We recommend ADR labeled packages transported in the U.S. be limited to closed freight containers and transport vehicles to avoid potential frustration of the shipments. A statement such as "non-DOT regulated" or "not subject to U.S. DOT regulation" may appear on the product label for subsequent transportation in the U.S.

Also, in a notice of proposed rulemaking published on December 3, 2002 (Docket No. RSPA-02-13658, HM-215E), we proposed adding Special Provision 146 to § 172.102 of the HMR. This special provision will permit materials that are designated as environmentally hazardous by the Competent Authority of the country of origin, transit, or destination, but do not meet the definition of a hazardous substance or hazardous waste in § 171.8 or any other HMR hazard class to be described as "Environmentally hazardous substances, liquid or solid, n.o.s." The final rule is under development.



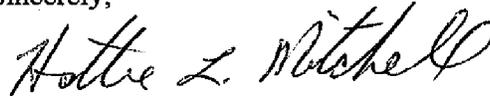
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You also asked us to clarify what is meant by the phrase "final destination" when the styrenated phenol liquid is imported into the U.S. under the IMDG Code, delivered to Eliokem's distribution warehouse, and then further sold and shipped to customers. Specifically, you seek guidance for determining when a hazardous material has completed transportation and is no longer subject to the HMR. "Transportation," as defined in § 5102 of the Federal hazardous materials transportation law (49 U.S.C. 5101-5127), means the movement of property and loading, unloading, or storage incidental to the movement. A hazardous material's transportation ends once a consignee takes physical delivery of the hazardous material from the carrier. After delivery, storage of a hazardous material at a consignee's facility is not "storage incidental to the movement" within the meaning of the Federal hazardous materials transportation law; thus, the HMR do not apply to such storage. Transportation in commerce begins again when the hazardous material is re-offered and accepted for transportation for delivery to another consignee.

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned above the typed name.

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

INFOCNTR

From: dennis_mcmahan@eliokem.com
Sent: Tuesday, March 04, 2003 11:00 AM
To: Infocntr, Infocntr <RSPA>
Subject: Information Center Comments/Questions

Edmonson
171.12
176.2
176.11
Definitions
03-0065
Labeling
172.401

Below is the result of your feedback form. It was submitted by Dennis McMahan (dennis_mcmahan@eliokem.com) on Tuesday, March 4, 2003 at 10:59:37.

Email: dennis_mcmahan@eliokem.com

Name: Dennis McMahan

Category: General Information, Regulations, and Definitions (Sections 171.1 - 171.21)

Organization: Eliokem Inc

Street: 1452 East Archwood Suite 240

City: Akron

State: Ohio

Zip Code: 44306

Phone: 330 734 1117

Fax: 330 734 1101

Comments: Would you please provide a written official response to the following questions. Thank you

I would like clarification on an issue. Eliokem SAS, a French affiliate of our U.S. Company (Eliokem Inc.) produces a product that is regulated and labeled as a Class 9 Dangerous Goods per the ADR/RID regulations in Europe.

Eliokem Inc. imports this material from France for re-sale within the United States. In the United States, this material is not subject to the HMR's and is a non-regulated, non-hazardous material. The product is a styrenated phenol liquid that has a Class 9 label in Europe under the ADR/RID.

We would like clarification on the following three issues:

1. Would it be permissible for the ADR/RID Class 9 Dangerous Goods labels to remain on the material with the disclaimer "Not subject to U.S. DOT regulation" when shipped within the United States? We would not offer shipping papers with this product when shipping in the United States that would describe it as a hazardous material.
2. When exporting this material to France from the United States (via an ocean vessel): Would it be permissible to apply a ADR/RID Class 9 Dangerous Goods label to this material with the disclaimer "Not subject to U.S. DOT regulation" for the U.S. inland portion of the transport to the port, if this product is not regulated per IMDG or the HMR's?

3. The official definition/interpretation of the term "final destination" when discussing a shipment imported into the United States in accordance with the IMDG is unclear to us. In the Office of Hazardous Material Standards response Ref. No. 989-1050 to Browning Chemical Corp. on August 10, 1998, it stated, "a shipment imported into the United States in accordance with the IMDG Code under §171.12 of the HMR's may be offered for transportation and transported in the United States to its final destination." If the product is imported into Eliokem's warehouse in the U.S. and then further sold and shipped to our customer in the U.S., is the "final destination" the customer facility or is it Eliokem's distribution warehouse.

As we make every effort to operate within the laws and regulation of each country in which we conduct business, we await your interpretation and ruling regarding these questions prior to taking any action. We are currently removing the Class 9 Dangerous Goods labels once the product is imported and prior to re-shipping the product in the United States.

Best Regards,

Dennis McMahan
Supply Chain & Logistic Manager
Eliokem Inc.