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

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

JAN 16 2004

Captain Sam Rogers
National Cargo Bureau, Inc.
17 Battery Place
Suite 1232
New York, NY 10004

Ref No. 03-0301

Dear Captain Rogers:

This responds to your November 25, 2003 letter requesting clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to the transportation of forbidden hazardous materials and a shipper's responsibility for classifying a material. Specifically, you ask about a material that is likely to decompose or polymerize below certain temperatures.

As your letter indicates, the HMR permit a material that is packaged, marked, classed, labeled, placarded, described, stowed and segregated, and certified in accordance with the IMDG Code to be offered and accepted for transportation in the United States under certain conditions (see §171.12(b)). Materials forbidden for transportation under the HMR may not be transported under the provisions of this section.

Section 173.21 lists materials and packages that are prohibited for transportation under the HMR. You are correct that, in accordance with paragraph (f) of this section, a package containing a material that is likely to decompose with a self-accelerated decomposition temperature (SADT) of 50° C or less, or polymerize at a temperature of 54° C or less with an evolution of dangerous gas when decomposing or polymerizing may not be transported unless the material is stabilized or inhibited in a manner that precludes such decomposition. This provision applies to any material, whether previously classified or not. For transportation by vessel, such materials must be transported in accordance with the control-temperature requirements of section 21 of the General Introduction of the IMDG Code.

You also ask us to confirm that a shipper is responsible for classing a hazardous material in accordance with the HMR and, specifically, for SADT testing of a material. Your understanding is correct. Under

030301

173.21

the HMR, it is the shipper's responsibility to determine the hazard class of a material and for performing the tests necessary to make this determination.

I hope this information is helpful.

Sincerely,

Susan Gorsky
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards

NATIONAL CARGO BUREAU INC.

MAIN (212) 785-8300
FAX (212) 785-8333
ncbnyc@natcargo.org

173.21
03-0301

Sent via facsimile and US Mail (202) 366-3012

Research and Special Programs Administration
Department of Transportation
Office of Hazardous Materials Standards, DHM-10

November 25, 2003

Attn: Mr. Edward Mazzullo, Director

Re.: Petition for Letter of Interpretation / Opinion

Mr. Mazzullo,

Basis a conversation yesterday with Mr. Charles Ke, the designated chemist within the Office of Hazardous Materials Technology who deals with forbidden materials, we request a written response to address the topics discussed.

To provide a little background, in the context of the regulations as they appear in §§171.12(b) and 173.21 (rev. 1998) copies attached, for which §171.12(b) allows the use of the IMDG Code in the process of preparing and offering hazardous shipments, subject to certain conditions and limitations, one of these limiting factors in subparagraph (4) requires: "A forbidden material or package according to §173.21 of this subchapter or column 3 of the §172.101 table may not be transported under the provisions of this subchapter."

Section §173.21 states that the offering for transportation or transportation of the following is forbidden.

> "(a) Materials that are designated "Forbidden" in column 3 of the §172.101 table.
> . . . . . .
> (f) A package containing a material which is likely to decompose with a self-accelerated decomposition temperature (SADT) of 50°C (121°F) or less, or polymerize at a temperature of 54°C (130°F) or less with an evolution of a dangerous quantity of heat or gas when decomposing or polymerizing, unless the material is stabilized or inhibited in a manner to preclude such evolution. The SADT may be determined by any of the methods described in Part II of the UN Manual of Tests and Criteria.
> . . . . . .
> (f)(3)(ii) For transportation by vessel, shipments are authorized in accordance with the control-temperature requirements of Section 21 of the General Introduction of the IMDG Code."

Note here that although the regulatory references above are basis 1998, the regulatory requirement has not changed, merely the sectional references due to publication reformatting.

Our interpretation, confirmed in conversation with Mr. Ke, for which we request a written interpretation, is that based on the aforementioned regulations, *any material whether previously classified or not*, which is likely to decompose with an SADT of 50°C or less is forbidden from being offered by the shipper or transported pursuant to 49CFR 173.21(f) unless, and if transported by vessel, said material is carried by vessel pursuant to the temperature control requirements of section 21 of the General Introduction to the IMDG Code.

Secondly, that pursuant to §173.22 titled "Shipper's responsibility" that the above mentioned classification procedure and SADT Testing is solely the responsibility of the shipper not the carrier, this further supported by the "Shipper's certification" as required by §172.204.

We would greatly appreciate any consideration you may provide us in responding at your earliest convenience.

As always, best regards and enjoy a safe and healthy Thanksgiving.

Sam Rogers

Capt. Sam Rogers
National Cargo Bureau, Inc.

Encl. referenced regulation 49 CFR, rev. 1998