



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

APR 9 1998

Mr. Frank L. Webb
LAX Civil Aviation Security
Field Office
5757 West Century Boulevard
Suite 500
Los Angeles, California 90045

Dear Mr. Webb:

This is in response to your letter regarding classification of a material containing "Oleoresin capsicum," pressurized with "Nitrogen" in aerosol containers, and in liquid form, non-pressurized, in accordance with the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). A Material Safety Data Sheet was enclosed. I apologize for the delay in responding and hope it has not caused any inconvenience.

You stated that your office is pursuing a case with Code Red Industry of W. Palm Beach, Florida, and would like to get a more accurate understanding of the nature of the material, which you have observed in bottles in liquid form and in aerosol containers. You asked whether the material should be classified as a hazardous material under the HMR.

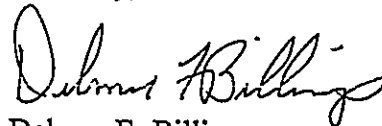
Under the HMR, Oleoresin capsicum is not a tear gas material although when it is pressurized the result is similar to an aerosol containing tear gas. Based on the information you provided, this Office has taken the position that Oleoresin capsicum in aerosol type sprays, must be transported as an aerosol. Currently, the § 172.101 Hazardous Materials Table (HMT) includes the entry "*Tear gas devices, with not more than 2 percent tear gas substances, by mass*", which references the entry for "Aerosols". The description for a mixture containing "Oleoresin capsicum," pressurized with "Nitrogen" in aerosol form is "Aerosols, non-flammable, 2.2, UN 1950."

In liquid form, non-pressurized, Oleoresin capsicum, used for temporary disabling purposes, may meet the definition of a Class 9 material. A "Class 9" material is defined as a material that does not meet the definition of any other hazard class but presents a hazard during transportation which has an anesthetic, noxious or other similar property, such as an irritant (see § 173.140). If Oleoresin capsicum in liquid form, non-pressurized, meets the Class 9 definition, the description would be "Environmentally hazardous substances, liquid, n.o.s., 9, UN 3082, III."

This Office is aware of misunderstanding as to how these materials are classed and described under the HMR. Both definitions for Division 6.1 and Class 9 address irritating materials, but do not specify criteria. Also, there is no specific entry in the HMT for such devices that are not aerosols. This Office regards self-defense sprays which do not meet toxicity criteria for Division 6.1 (§ 173.132) as meeting the criterion for Class 9 specified in § 173.140 (i.e., which could cause extreme annoyance or discomfort to a flight crew member so as to prevent the correct performance of assigned duties), and proposed to add an entry in the HMT to regulate them for transportation by aircraft only. On September 24, 1997, a Notice of Proposed Rulemaking, entitled "Transportation of Hazardous Materials; Miscellaneous Amendments" was published in the **Federal Register** (Docket HM-166Y; 62 FR 50222; copy enclosed). To clarify that both the aerosol and non-aerosol self-defense sprays are subject to the regulations, two new entries, "*Self-defense sprays, aerosol, containing not more than 2% tear gas substances*, see "Aerosols" and "*Self-defense sprays, non-pressurized, containing not more than 2% tear gas substances*" would be added in the HMT.

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,



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

Enclosure

MEMORANDUM FOR: RSPA ATTN: Hazmat

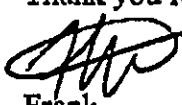
October 2, 1997

Enquim
File 172,101
SC 174,178

FROM: Frank L. Webb, Special Agent, CASFO-LAX, 310-215-2280

We request your assistance in determining whether the attached MSDS items is or should be classified as a dangerous good relevant to 49CFR. We are pursuing a case vs Code Red Industry out of W. Palm Beach Fl. and would like to get a more accurate reading of the nature of this shipment. We've observed this material in liquid form (bottles), and in aerosol containers as well.

You may telephone Sue Ann Robinson or Frank L. Webb at 310-215-2280 or send cc mail. Thank you for your help.



Frank

MATERIAL SAFETY DATA SHEET

(Capsicum Aerosol Spray)

CODE RED INDUSTRIES, INC. 4348 Okeechobee Blvd. BLDG E-6 West Palm Beach, FL 33409 (561) 697-8832	MSDS PREPARED BY: CHROMTEC DATE: 05/20/96 Tele. (561) 625-8901 Fax (561) 624-1687
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1. IDENTIFICATION:

LABEL NAME:	N/A
CHEMICAL FORMULA:	
1. OLEORESIN CAPSICUM	CAS # 8023-77-6
2. NITROGEN	CAS# 007127379
3. INERT INGREDIENTS	

2. PHYSICAL DATA:

DESCRIPTION:	Red or Amber Liquid with a characteristic pungent odor	
SOLUBILITY IN H₂O:	Slight	SPECIFIC GRAVITY: H ₂ O = 1, (3) 0.97 + or - (77 degrees F)
STABILITY:	Stable	VAPOR PRESSURE: N/A

3. FIRE, EXPLOSION AND REACTIVITY DATA

FLASH POINT & METHOD OF USED:	No Flame Projection	DOT CLASSIFICATION:	Irritant
FLAMMABILITY LIMITS IN AIR:	N/P		
FIRE & EXPLOSION HAZARD:	Contents Under Pressure. Do not store above 120 degrees F.		
SPECIAL FIRE FIGHTING PROCEDURES:	Use self contained breathing apparatus and protective clothing.		
HAZARDOUS COMBUSTIBLE OR DECOMPOSITION PRODUCT:	Burning produces carbon monoxide & carbon dioxide.		
CONDITION & MATERIAL TO AVOID:	Temperatures above 120 degrees F. & Oxidizing Agents		

4. HEALTH HAZARD DATA

THRESHOLD LIMIT VALUE :	Not Established		
PERMISSIBLE EXPOSURE LIMIT:	Not Established		
HEALTH HAZARD:	1.	ACUTE:	Powerful Skin, Mucus Membrane & Eye Irritant
	2.	CHRONIC:	Non reported to date.
SIGNS AND SYMPTOMS OF EXPOSURE:	Skin, eye irritation/impaired breathing		
CONDITIONS AGGRAVATED BY EXPOSURE:	Transient skin irritation/eye closing/impaired breathing accompanied by coughing.		

MATERIAL SAFETY DATA SHEET

(Capsicum Aerosol Spray)

CODE RED INDUSTRIES, INC. 4349 Okeechobee Blvd. BLDG E-6 West Palm Beach, FL 33409 (561) 697-8832	MSDS PREPARED BY: CHROMTEC Tel: (561) 626-8901 Fax (561) 624-1687	DATE: 05/20/96
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1. IDENTIFICATION:

LABEL NAME:	N/A		
CHEMICAL FORMULA:		CAS #	8023-77-6
1. OLEORESIN CAPSICUM		CAS#	007727379
2. NITROGEN			
3. INERT INGREDIENTS			

2. PHYSICAL DATA:

DESCRIPTION:	Red or Amber Liquid with a characteristic pungent odor		
SOLUBILITY IN H₂O:	Slight	SPECIFIC GRAVITY:	H ₂ O = 1. (3) 0.97 + or - (17 degrees F)
STABILITY:	Stable	VAPOR PRESSURE:	N/A

3. FIRE, EXPLOSION AND REACTIVITY DATA

FLASH POINT & METHOD OF USED:	No Flame Projection	DOT CLASSIFICATION:	Irritant
FLAMMABILITY LIMITS IN AIR:	N/A		
FIRE & EXPLOSION HAZARD:	Contents Under Pressure. Do not store above 120 degrees F.		
SPECIAL FIRE FIGHTING PROCEDURES:	Use self contained breathing apparatus and protective clothing.		
HAZARDOUS COMBUSTIBLE OR DECOMPOSITION PRODUCT:	Burning produces carbon monoxide & carbon dioxide.		
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... of face mask or hood...
 ... of these persons who are...
 ... is a leak check. KEEP OUT OF REACH OF CHILDREN AND ALL OTHER PERSONS. CONTENTS ARE UNDER PRESSURE.

... above 120 F. In direct sunlight or in an environment where temperature is likely to reach 120 F. or
 ... is an extremely cold environment. Your unit is a non-lethal personal defense weapon and should be treated with caution and care at all times.
 Your unit contains Dimethyl Capicam in a water-based solution and is an irritant which irritates the eyes and mucous membranes and will
 temporarily impair breathing. Persons suffering from asthma, emphysema, or cardiac impairment may be unusually sensitive to this type of
 irritant severe reaction.

TESTING YOUR UNIT: It is recommended that you test the unit, outside and away from all people and animals, in a well-ventilated
 area periodically thereafter to verify proper functioning (using five second or shorter bursts). After test firing, thoroughly clean the nozzle and wash your face
 thoroughly. Remember an almost empty unit is a waste of gas. Do not use the unit in a confined space. Do not use the unit in a confined space
 and do not use the unit in a confined space.

When test firing the unit, familiarize yourself with effective range in the event you ever need to use the unit for defense. Also, if you find
 the unit, you discover that the stream is noticeably shorter than when the unit was first purchased you should replace the unit. It is
 recommended that after any actual defense use, the unit be replaced.

The use of this unit for any purpose other than personal self defense is unlawful under the laws of certain
 jurisdictions. If you have any question check with your local law enforcement agencies. Carrying or transporting this product in any commercial
 vehicle is unlawful under federal law. The unit is designed and intended for personal defensive purposes only. Possession or use may be
 prohibited or restricted by law in certain jurisdictions. Sales to minors may be prohibited in certain jurisdictions.

USING YOUR UNIT: To be effective your unit must be accessible to you. During a moment of surprise or stress you may not be able to
 locate your unit. Therefore you should always be aware of exactly where your unit is and be able to reach it without any
 delay. You are, or may be, in a situation that could give rise to use of your unit, take out the unit from its container, hold the unit
 in front of you, with the nozzle aimed away from you. Be prepared to unlock the actuator lever and fire if necessary. Aim
 the nozzle directly at the face of the assailant. The product is most effective if it enters the eyes, nose, and mouth. Continue to use the unit in short bursts until the assailant is
 fleeing. You should shield your eyes and face if you need fire into the wind.

ACTIVE INGREDIENTS:
 Dimethyl Capicam (Dimethyl Caprylate), in a non-flammable water based solution, preservative with Nitrogen.

Expiration date marked on the container and the unit should be observed. Do not use the unit after the expiration date.
 Do not puncture or incinerate. Also, you should never tamper with the unit.

FIRST AID:
 Avoid accidental contact with eyes, skin and mucous membranes.
 In case of general contact, remove any contact lenses and contaminated clothing.
 Wash eyes and skin thoroughly with large amounts of cold water and expose to fresh air.
 Do not rub or apply any salves, creams, ointments, or lotions.
 Consult a physician if irritation persists.

LIMITED WARRANTY: CodeRed Industries, Inc. warrants only that your personal defense unit shall be free from
 defects in material and workmanship until the date of expiration shown on the unit container. The sole duty or responsibility of CodeRed
 Industries, Inc. is limited to replacement of the defective unit which is returned to CodeRed Industries, Inc. within the
 expiration date shown, and any claims must be commenced within that time frame.

**ALL OTHER WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER
 WRITTEN OR ORAL, ARE SPECIFICALLY AND EXPRESSLY DISCLAIMED.**

CodeRed Industries, Inc. is not liable for incidental or consequential damages of any kind, whether resulting from the use of the unit or
 otherwise to property or otherwise and whether as a result of breach of express or implied warranty, negligence, or strict liability.
 CodeRed Industries, Inc. is not responsible for the results of misuse or irresponsible use.

Warranty terms vary from state to state and therefore the above exclusions may not apply in all states.

This device shall not be sold by anyone other than a licensed or authorized dealer. Possession of this device by a person under the age of
 18 is prohibited by law. The user has the responsibility of a safety or security device. Please do not use the device in a confined space.

AVISO: Coproducto químico que esta unidad sera liberado solamente para uso de emergencia para estados de emergencia. No debe ser
 usado en un espacio confinado.

PRECAUCIONES: Evite el contacto fuera del alcance de los niños.

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91-8832

5. EMERGENCY FIRST AID PROCEDURES:

INHALATION:	Remove individual to fresh air. If breathing is difficult, give oxygen and seek medical attention.
EYE CONTACT:	Remove contact lenses. Rinse eyes thoroughly with cool water. If irritation persists or worsens, seek medical attention.
SKIN CONTACT:	Wash exposed area with mild soap & water. If irritation persists or worsens, seek medical attention.
INGESTION:	Give individual cool water. If condition persists or worsens, seek medical attention.

6. CONTROL AND PROTECTIVE MEASURES:

RESPIRATOR PROTECTION:	Not Required	EYE PROTECTION:	Not Required
PROTECTIVE GLOVES:	Not Required		
VENTILATION TO BE USED:	Local Exhaust		
OTHER PROTECTIVE CLOTHING & EQUIPMENT:	None		
HYGIENIC WORK PRACTICES:	Use as directed on the package label		

7. SPILL, LEAK AND DISPOSAL PROCEDURES:

IF MATERIAL IS SPILLED OR RELEASED:	Good ventilation; contain spill with inert absorbent material; flush down area with soap & water.
WASTE DISPOSAL METHODS:	Disposal per local, state & federal regulations
HANDLING AND STORAGE:	Do not store above 120° F. Do not activate unless necessary. Do not puncture or incinerate pressurized can.
OTHER PRECAUTIONS AND/OR SPECIAL HAZARDS:	Severe transient irritant to eye, mucous, respiratory membranes and to skin. Keep out of the reach of children.

PREPARED BY:

Marlin Bensinger, CHROMTEC *MBS*

DATE: May 20, 1996

The information contained in this MSDS was obtained from current and reputable sources. However, the data is provided without any warranty, express or implied, regarding its correctness or accuracy. It is the user's responsibility both to determine safe conditions for use of this product and to assume liability for loss, injury, damage or expense resulting from improper use of this product.

Re: Memorandum from Frank L. Webb dated October 2, 1997

Oleoresin Capsicum is not a tear gas. However, when it is pressurized in an aerosol the result is similar to an aerosol containing tear gas. RSPA has taken the position that if the aerosol can be used for temporary disabelling purposes, it should be considered the same as an aerosol with a "real" tear gas. Domestically, it is described as Tear gas devices, 6.1, NA 1693, PG II. Internationally it would be Tear gas substance, liquid, 6.1, UN1693

C.W. Schultz
1/7/98

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Innocent office
5757 West Century Blvd
Suite 500
LA, CA 90045
FAX
310 215 2032

Charlie Ke says we have to respond
in this manner; however he suggest we
inform them of our intent as proposed in
~~HM-166Y~~

H&E 02/10/98