



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

AUG 6 2008

Mr. Darren Lenox
Customs Compliance Manager
ACCO Brands Corporation
300 Tower Parkway
Lincolnshire, IL 60069

Ref. No. 08-0182

Dear Mr. Lenox:

This responds to your June 30, 2008 letter requesting a determination that the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) do not apply to a divided chamber dry-erase board marker that contains 5 ml of a Packing Group II flammable liquid ink. You assert that the marker, referred to as "Enduraglide," does not pose an unreasonable risk to health, safety, and property when transported in commerce and, thus, should not be subject to the HMR. You ask that we except Enduraglide markers from the HMR in accordance with the exception provided in § 173.120(d).

The unabsorbed flammable liquid ink contained in the markers, as described by your letter, poses a Packing Group II flammable liquid hazard and, therefore, meets the definition of a hazardous material. The exception you reference in § 173.120(d) does not apply to the markers you describe. As we stated in a letter of interpretation dated June 25, 2008 (Ref. No. 08-0163) the Enduraglide markers are considered hazardous materials, but may take advantage of the small quantity exceptions provided in § 173.4.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,

Susan Gorsky,
Acting Chief, Standards Development
Office of Hazardous Materials Standards



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Supko
§ 173.120(d)
Definitions
08-0182

June 30, 2008

Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
Attn: PHH-10
U.S. Department of Transportation
East Building
1200 New Jersey Ave. SE
Washington, D.C. 20590-0001

**RE: 49 CFR 173.120(d) -Dry Erase Board Markers with free liquid
Reference No. 08-0163**

Ladies and Gentlemen:

In a letter dated May 30, 2008 (enclosed), ACCO Brands requested an interpretation under 49 CFR 173.120(d) that certain Enduraglide markers are not subject to regulation under the HMR. Due to the design, structure, composition and packagings of the product; we believed that the markers themselves do not rise to the definition of a hazardous material in Section 171.8 in that they do not pose "...an unreasonable risk to health, safety and property when transported in commerce..."

In a response letter dated June 25, 2008 (enclosed), the Office of Hazardous Materials Standards merely stated that the Enduraglide markers are eligible for the small quantity exception in 49 CFR 173.4. However, the letter failed to address our specific request per 49 CFR 173.120(d) of whether the markers should be subject to regulation under the HMR at all.

We respectfully request that you reconsider our May 30, 2008 letter and address our specific, original request. If you agree with our original assessment, we would appreciate your affirmation that your interpretation represents a Competent Authority ruling so that we may pursue similar treatment from other States and international modes of transportation when and as required.

If you should have any questions or require additional information, please contact me at (847) 484-3278 or darren.lenox@acco.com.

Respectfully,

Darren Lenox
Customs Compliance Manager

cc: Susan Gorsky, Office of Hazardous Materials Standards
Shane Kelley, Office of Hazardous Materials International Standards
Chuck McHugh, Haz-Mat Compliance & Verification



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May 30, 2008

Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
Attn: PHH-10
U.S. Department of Transportation
East Building
1200 New Jersey Ave. SE
Washington, D.C. 20590-0001

RE: 49 CFR 173.120(d) -Dry Erase Board Markers with free liquid

Ladies and Gentlemen:

ACCO Brands is an international supplier of a variety of office products such as staplers, dry-erase boards, computer accessories and other office supplies. Included in our product lines is a patented divided chamber dry-erase board marker that is marketed under the trademarked name "Enduraglide". These markers contain 5 ml of free liquid ink solution composed of at least 55-75% ethanol, 10-30% isopropanol and approximately 10-20% other non-hazardous pigments and surfactants (by weight). An example MSDS from the liquid ink supplier is attached. *We have requested the supplier update the MSDS for the pertinent hazardous materials transport information (i.e., UN number, proper shipping name, etc.).*

Enduraglide markers provide a distinct advantage over the more traditional alcohol absorbed nib markers in that the Enduraglide markers deliver much more consistent ink flow over the life of the marker and last up to twice as long. We have attached both cutaway and complete color illustrations and design drawings of the marker that portray the fluid mechanics and leak protection built in to the marker.

The patented free liquid ink system of divided chambers limits the air in the ink tank, thus reducing the possibility of ink leaking. Leaking generally occurs due to changes of air pressure and temperature. When there is a lot of air in an ink tank, it has nowhere to go except for pressing the ink to the tip, causing leakage. In a chambered system, when the ink in the first chamber closest to the tip is consumed, it draws from the next chamber. This minimizes air in the chamber that may cause leakage. In case ink leaks out of the chamber, there is also a buffer reservoir between the ink tank and the tip.

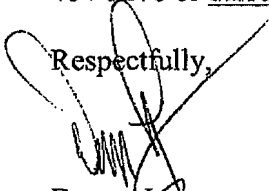
These markers are packaged in a variety of display plastic bubble - over cardboard- clamshell packagings. The most common is a four-pack of markers in different colors. Attached is a sample of the four-pack, including color design drawings of the clamshell packaging and updated cardboard artwork.

The display packages are consolidated in varying numbers in an outer strong fibreboard box. The completed package is overpacked in a strong fibreboard box. The packages and overpacks are marked with "ORM-D" and are offered for transportation described as "Consumer Commodity, ORM-D"; however, we believe that the markers themselves do not rise to the definition of a hazardous material in Section 171.8 in that they do not pose "...an unreasonable risk to health, safety and property when transported in commerce..."

We are requesting an interpretation under 49 CFR 173.120(d) that the Enduraglide markers described above are not subject to regulation under the HMR. If you agree with our assessment, we would appreciate your affirmation that your interpretation represents a Competent Authority ruling so that we may pursue similar treatment from other States when and as required.

If you should have any questions or require additional information, please contact me at (847) 484-3278 or darren.lenox@acco.com.

Respectfully,



Darren Lenox
Customs Compliance Manager

cc: Chuck McHugh, Haz-Mat Compliance & Verification