



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

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

Mr. Mark Mullis
Manager, Hazmat Compliance
CSX Intermodal
301 West Bay Street
Jacksonville, FL 32202

Ref. No.:03-0017

Dear Mr. Mullis:

This responds to your letter regarding the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), as they apply to fumigated lading shipped to the United States in accordance with the International Maritime Dangerous Goods (IMDG) Code, by vessel.

In accordance with the HMR, with certain exceptions, if all or part of the transportation is by vessel, a hazardous material which is classed, packaged, marked, labeled, placarded and described in accordance with the requirements of the IMDG Code may be offered and accepted and transported in the United States (See § 171.12(b)). The description "Fumigated Unit, Class 9, UN 3359" is listed in the IMDG Code's "Dangerous Goods List" and subject to the requirements of the IMDG Code as a fumigated unit loaded with cargoes under fumigation.

The fumigation requirements in § 173.9 of the HMR apply to all modes of transportation (air, water, rail, and highway). In accordance with the HMR, a "package" (a rail car, freight container, truck body, or trailer) containing any lading which has been fumigated with any material, or is undergoing fumigation, is subject to the requirements of § 173.9, requiring display of the FUMIGANT marking. However, if the transport vehicle or freight container has been sufficiently aerated so that it does not pose an unreasonable risk to health and safety, the shipment is not subject to the requirements for display of the FUMIGANT marking.

Domestically, a "package" that is subject to the HMR only because of the hazardous materials designation specified in § 173.9(a), is not subject to any other requirements (e.g., shipping papers or emergency response information (See § 173.9(h))). Internationally, transport documents (shipping paper) must indicate the date of fumigation, type and amount of fumigant used, and instructions for disposal of any residual fumigant, including fumigation devices (See § 173.9(f)).

The International Maritime Organization's Recommendations on the Safe Use of Pesticides in Ships are intended as a guide to competent authorities, mariners, fumigators and pesticide manufacturers, and others concerned. The IMO's Recommendations on the Safe Use of Pesticides in Ships



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generally address national and international controls on pesticide usage and safety precautions relative to pesticide materials or fumigants. The general safety precautions state that the instructions given on the label of a package of pesticide materials, particularly those relating to safety and disposal of residual material, should be strictly followed.

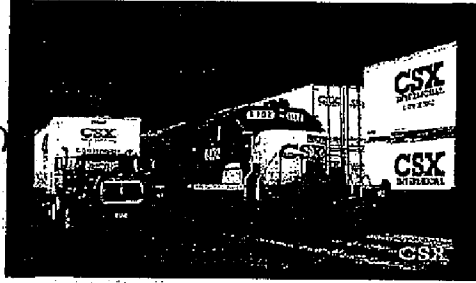
I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,



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

Engrum
§ 173.9
IMDG/Fumigation
03-0017



*CSX Intermodal
301 West Bay Street
Jacksonville, FL 32202*

Mr. Edward Mazzullo, Director
Office of Hazardous Materials Standards
U.S. Department of Transportation
400 7th Street, S.W.
Washington, DC 20590

Subject: Request for Interpretation on Fumigated Shipments pursuant to 49 CFR Section 173.9

Dear Mr. Mazzullo:

I am writing to request an interpretation regarding 49 CFR § 173.9, as there has been some confusion among our shipper's customers regarding the international shipment of freight containers in which the lading has been fumigated but that do not otherwise contain hazardous materials. We would therefore appreciate your interpretation and clarification on the following issues:

1. Currently, certain shipments are entering the United States labeled as HazMat under the IMDG Regulations as "Cargo Transport Unit Under Fumigation, UN 3359, Class 9, PG N/A." Given that these shipments are using an IMDG label, can you please advise whether the shipments are subject to the requirements of 49 CFR § 171.12 despite the fact that the shipments are otherwise exempt from hazardous materials requirements (other than those imposed by § 173.9) pursuant to 49 CFR § 173.9(h)?

2. For example, 49 CFR § 171.12(b)(16) includes a requirement that emergency response information accompany shipments labeled under the IMDG Code. However, it is our understanding that under 49 CFR § 173.9(h), international shipments of freight containers in which the lading has been fumigated but that do not otherwise contain hazardous material are exempt from the subchapter's requirements (other than those listed in § 173.9) and therefore do not require emergency response information, even if they are labeled under the IMDG Code. We would appreciate either your confirmation that our view is correct or your explanation as to why it is not.

3. In addition, please confirm that shipments properly subject to 49 CFR § 173.9(h) would not require emergency response information in the United States even if the IMDG Code requires such information.

4. Please clarify the nature of the disposal information required for international shipments under 49 CFR § 173.9(f). For example, would an MSDS or similar document that specifies disposal instructions be sufficient? In addition, would instructions regarding ventilating or aerating the residual fumigant be sufficient disposal instructions? Finally, does the disposal information need to address residual fumigant only, or does it also need to address empty fumigant containers? If the latter, can you please advise the nature of the disposal information that might be required under § 173.9(f)?

5. Are domestic shippers of freight containers in which the lading has been fumigated but that do not otherwise contain hazardous material exempt from providing a HazMat description pursuant to 49 CFR § 173.9(h)? We assume that the answer is yes, but again would appreciate either your confirmation or your explanation of why we are not correct.

Thank you for your assistance in this matter. We would appreciate a prompt response given continuing uncertainty in the trade on these matters. Should you have any questions or comments, please feel free to contact me at 904-633-1418.

Sincerely,

Mark Mullis

Mark Mullis

Manager, HazMat Compliance