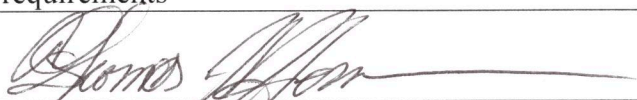


HAZARDOUS MATERIALS GUIDANCE

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Revision: 2	49 CFR Sections Affected: 173.9
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Summary:

This Hazardous Materials Guidance document explains the requirements of the hazardous materials regulations (HMR) applicable to the offering and the rail transportation of fumigated freight containers and rail cars, or containers or rail cars undergoing fumigation.

Discussion:

The HMR define a package (including a rail car) that has been fumigated with any material or is undergoing fumigation, as a package containing a hazardous material and generally, prohibit the offering for transportation or the transportation of such a rail car or package, unless (1) it is marked as a "FUMIGANT," (2) the transport documents and shipping papers contain certain information, and (3) persons subject to the HMR solely because the package is considered a fumigant are informed of the applicable requirements of the HMR and necessary safety precautions to protect themselves in the event of an incident or accident involving the fumigated lading. See 49 CFR § 173.9 (§ 173.9).

Paragraph (b) of § 173.9 requires the "FUMIGANT" marking specified by paragraph (e) of the section to be "prominently displayed so that it can be seen by any person attempting to enter the interior of the transport vehicle or freight container." For domestic transportation, § 173.9 permits the use of "a hazard warning label authorized by EPA under 40 CFR part 156 as an alternative to the FUMIGANT marking." (EPA only provides a description of a label but no illustration.)

Paragraph (g) of § 173.9 requires the transport documents for an international shipment required to be marked with the "FUMIGANT" marking to indicate "the date of fumigation, type and amount of fumigant used, and instructions for disposal of any residual fumigant, including fumigation devices." The International Maritime Dangerous Goods Code (IMDG Code), Volume 1, Chapter 5.5, Section 5.5.2, contains a similar requirement. Thus, offerors of rail cars or containers required to be marked as a "FUMIGANT" under § 173.9 must provide rail carriers receiving the shipments with the information required by the HMR and, if an international shipment, Section 5.52 of the IMDG Code.

In addition, paragraph (h) of § 173.9 requires persons' subject to the HMR solely because a package is considered a "FUMIGANT" under § 173.9, to be "informed" of the applicable requirements of the HMR and necessary safety precautions to protect themselves in the event of an incident or accident involving the fumigated lading. The requirement to be "informed" means an offeror, receiver, and the employees handling and/or exposed to the fumigated container must be notified of the fumigated container, dangers associated with the fumigation, and safety precautions to be taken if an incident or accident involving the package were to occur.

Paragraph (i) of § 173.9 provides that an offeror or person who transports a freight container, rail car, or other package subject to the HMR solely because of its designation as a hazardous material under § 173.9 (i.e., because the package has been fumigated or is undergoing fumigation), is not subject to any other requirements of the HMR other than the requirements of § 173.9. For example, if an ocean carrier offers a rail carrier a container loaded with furniture that has been fumigated, and the receiving rail carrier handles no other hazardous materials, the receiving rail carrier needs only to comply with § 173.9 in transporting the container (i.e., the train crew transporting the container would not be considered hazardous materials employees under the HMR who are required to be trained in accordance with the HMR). Only the requirements of § 173.9 would apply.