

including the identification number. However, the shipping paper may not be immediately available at the scene of an incident. Thus, other than the ORGANIC PEROXIDE placard, there may not be other information readily available to inform responders of the unique characteristic (*i.e.*, temperature controlled) of this type of material to assist them in determining an appropriate response. We believe the LAPD petition has merit and propose to add a new paragraph (b)(2) in § 172.336 to require the identification number to be displayed on a transport vehicle or freight container containing any quantity of an organic peroxide, temperature controlled, material that is required to be placarded in accordance with the requirements in § 172.504(e), Table 1.

### C. Fumigant Marking

Effective October 1, 1998, we adopted new requirements for fumigated loads (62 FR 1217; 01/08/97). Formerly, fumigation requirements applied only to rail transportation and set forth different provisions depending on the type of fumigant used. We adopted requirements in § 173.9 specifying that a fumigated transport vehicle or freight container is a "package" for purposes of the fumigation requirements, and expanded the requirements to cover all modes of transportation. The rule applies to fumigation with any material and set forth defining criteria and concentration thresholds for unlisted fumigants. This approach benefits shippers, carriers, law enforcement agencies, and, in particular, transport workers who may be exposed unknowingly when they open transport units. Thus, if the transport unit or freight container has been treated with any material, or is undergoing fumigation, it is subject to the fumigation marking requirements of the HMR.

The Industrial Fumigant Company (IFC) petitioned us (P-1368) to amend the HMR to revise paragraphs (b) and (e) of § 173.9 to require only the EPA FUMIGANT warning label to be prominently displayed instead of the FUMIGANT marking currently prescribed in the HMR. The petition also requested that we allow for aeration of the transport vehicle or freight container without requiring unloading of the lading that has been fumigated. In addition, the petitioner requested that we clarify the phrase "or treated with any material," as it applies to materials, such as ready-to-use liquid formulations or "foggers," such as ant and roach repellants. IFC said that these "foggers," or non-residual insecticides, are lower

in toxicity than fumigants and can be found in ready-to-use liquid formulations used in a household environment. IFC stated it would be incorrect to place a FUMIGANT marking on an application such as this, and that the phrase "or treated with any material" is too broad and could cause confusion.

In regard to ready-to-use liquid formulations, such as pyrethrin, we believe persons entering a transport unit should be made aware of the presence of chemicals that may pose a threat to their health and safety. We do not agree with IFC that such chemicals do not pose a risk during transportation, and we continue to believe that persons offering or transporting treated or fumigated loads must have immediate knowledge relative to such materials or fumigants.

We also do not agree that only the EPA fumigant marking or label should be displayed on a transport vehicle or freight container containing fumigated lading. The design of the FUMIGANT marking was adopted for consistency with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) for fumigated lading in transportation in commerce. For domestic transportation, we allow the hazard warning label authorized by EPA under 40 CFR part 156 as an alternative to the FUMIGANT marking.

However, we believe that this petition has merit and should, in part, be granted. We understand that some fumigated materials are aerated without being unloaded from the transport vehicle or freight container. Thus, the requirement as written in § 173.9(e)(1), that the FUMIGANT marking must remain on the package unless both the fumigated lading is unloaded and the transport vehicle is sufficiently aerated may be an unnecessary burden on the fumigation industry. In this NPRM, we propose to revise the requirements in paragraph (e) of § 173.9 to specify that the FUMIGANT marking must remain on the vehicle or container until the fumigated lading is "unloaded or has undergone sufficient aeration." The word "or" replaces the word "and" in the current paragraph (e)(1). This revision will permit aeration or ventilation of the vehicle or container without unloading.

### III. Materials Poisonous by Inhalation (PIH)

#### A. Revision of PIH Label and Placard and Transition Periods

In a final rule issued January 8, 1997 (62 FR 1217), we adopted new labels

and placards for both liquids (Division 6.1) and gases (Division 2.3) that are PIH materials to enhance their identification when transported in commerce. The dark background for skull and crossbones of the symbol depicted on the PIH label and placard graphically conveys the appropriate information to alert responders to the hazards of PIH materials. The new PIH label and placard also improve hazard communication by creating an instantly recognizable difference between PIH materials and other poisons. The effective date was delayed one year, until October 1, 1998. At that time, we included transitional provisions for continued use of the POISON or POISON GAS labels and placards, until October 1, 1999, and October 1, 2001, respectively.

However, on the new PIH label and placard, we inadvertently specified a smaller skull and crossbones symbol in the upper black diamond than currently shown on the Poison placard and label. In this notice, we are proposing to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull and crossbones symbol at the top of the placards and labels to conform, pictorially, in size, with the symbol on the Poison placard and label used for poisons other than those that are PIH materials. Increasing the size of the symbol will make these placards and labels more visible from a distance and will enhance the ability of emergency responders and transport workers to identify the PIH materials.

Identification number markings are not prohibited on the POISON GAS or POISON INHALATION HAZARD placards, as specified in § 172.334. Display of an identification number on a hazard warning placard must be in conformance with the identification number marking requirements prescribed in § 172.332(c) of the HMR. That is, the identification number must be displayed across the center area of the placard in 88 mm (3.5 inches) black Alpine Gothic or Alternate Gothic No. 3 numerals on a white background 100 mm (3.9 inches) high and approximately 215 mm (8.5 inches) wide, and the top of the 100 mm (3.9 inches) high white background must be 40 mm (1.6 inches) above the placard horizontal center line. Because we are proposing to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull and crossbones symbol at the top of the PIH placards, identification number markings displayed on the proposed PIH placards may cause overlapping of the lower point of the upper black diamond and