



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

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

MAY 1 2003

Mr. David H. Coburn
Ms. Cynthia Taub
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, DC 20036

Ref. No. 03-0095

Dear Mr. Coburn and Ms. Taub:

This is in response to your letter requesting confirmation that a product, Ty-Gard 2000® (Ty-Gard), manufactured by Walnut Industries, Inc., meets the cargo restraint requirements of the International Maritime Dangerous Goods Code (IMDG Code) 7.5.2.2; is not subject to the dunnage requirements in 49 CFR 176.76(a); and does not require exemption DOT-E 9689 when transported in accordance with the IMDG Code. You state that several recent shipments have been rejected because, without the exemption, the U.S. Coast Guard questions that fabric restraint systems such as Ty-Gard do not conform to the requirements in 49 CFR 176.76(a). You also cite a March 7, 2001 clarification letter (reference # 00-0317), addressing the same issue and ask us to confirm whether the letter is correct.

The information contained in our March 7, 2001 letter is correct. A shipment that is transported by vessel in accordance with the IMDG Code is not subject to § 176.76(a) and, therefore, does not require an exemption. As stated in our previous letter, freight containers packed to meet the requirements in 7.5.2.2 of the IMDG Code do not specifically require wood dunnage.

With regard to your specific concerns with U.S. Coast Guard inspections, you may wish to contact its Hazardous Materials Standards Division, 202/267-1577.

I hope this information is helpful. If you have additional questions, please do not hesitate to contact this office.

Sincerely,

Hattie L. Mitchell, Chief
Regulatory Review and Reinvention
Office of Hazardous Materials Standards



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McIntyre
§171.12
§176.76
Vessel
03-0095

April 1, 2003

VIA HAND DELIVERY

Mr. Edward T. Mazzullo
Director, Office of Hazardous Material Standards
Research and Special Programs Administration
U.S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Request for Clarification

Dear Mr. Mazzullo:

I am writing on behalf of Walnut Industries, Inc. to request clarification regarding the applicability of certain DOT Hazardous Materials (HazMat) regulations to its product, Ty-Gard 2000[®] ("Ty-Gard"). Walnut Industries has been manufacturing Ty-Gard for 15 years. Ty-Gard is a fabric restraint system used to block and brace cargo for all forms of transportation. Ty-Gard has been impact tested, approved and recommended by the Bureau of Explosives and the Association of American Railroads for rail transportation. See BOE pamphlet No. 6C and Intermodal Loading Guide 43-C (2001) (See Attachment 1, consisting of relevant excerpted pages from this publication). Ty-Gard is also recommended for use in surface and ocean transportation modes by the Institute of Packaging Professionals' Shipper's Guide (1999). Ty-Gard has an excellent safety record, is easier and more economical to use than wood dunnage, and is well regarded by shippers. Accordingly, Ty-Gard has been applied by a large percentage of the intermodal chemical industry for more than ten years with an excellent safety and damage prevention record unparalleled by traditional wood dunnage systems. Please see the attached Ty-Gard 2000[®] Brochure (Attachment 2) for further background on the product.

As noted, Ty-Gard is generally recognized as an acceptable restraint system for all forms of transportation. However, even though Ty-Gard is regularly used in connection with motor carrier and rail transportation, which is subject to more stresses than ocean carriage, some questions have arisen regarding the acceptability of the product for international ocean cargo vessels under DOT's HazMat regulations. Specifically, questions have arisen under 49 C.F.R. § 176.76(a)(4), which provides that for vessels, dunnage "must be secured to the floor when the cargo consists of dense materials or heavy packages." Ty-Gard does not involve any securement to the floor of a container, but instead operates through securement to the walls of the container.

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Based on its understanding that § 176.76(a)(4) would otherwise preclude the use of Ty-Gard in vessels, Olin Corporation applied for an exemption in 1986 that allowed Olin to ship heavy products using Ty-Gard in vessels. Please see the original exemption application, which describes how Ty-Gard was tested and approved by the U.S. Coast Guard and the National Cargo Bureau (Attachment 3). The exemption was granted later that year. See Exemption No. 9689, Attachment 4. Exemption 9689 was subsequently reissued to Air Products and Chemicals, Inc.

In November 2000, Air Products and Chemicals wrote to DOT to request a clarification that the above-mentioned exemption was not necessary when imported or exported hazardous materials cargo is shipped by ocean vessel between the United States and a foreign point in conformity with the International Maritime Dangerous Goods Code ("IMDG Code"). See November 10, 2000 Letter, Attachment 5. The Air Products letter relied on § 171.12 of the DOT regulations, noting that that section allows shippers the option to rely upon the IMDG Code in connection with ocean transportation to or from the United States. Under the performance-based standard incorporated into the IMDG Code (specifically, section 7.5.2.2 of that Code), wood dunnage is not required.

John Gale from your Office responded to Air Products on March 7, 2001 (Attachment 6). Mr. Gale stated as follows:

As provided by [49 C.F.R.] § 171.12, a hazardous material that is packaged, marked, classed, labeled, placarded, described, stowed and segregated, and certified in accordance with the IMDG Code may be offered and accepted for transportation and transported within the United States subject to certain conditions and limitations. Since none of these conditions and limitations include specific compliance with § 176.76(a), a containerized shipment that is transported by vessel may be prepared in accordance with the IMDG Code instead of the specific provisions of § 176.76(a).

The provisions of the IMDG Code relating to freight container packing are performance based and do not provide prescriptive guidance with regard to the specific methods for securing packages. As provided by 7.5.2.2 of the IMDG Code, "Packaged dangerous goods and any other goods within the same cargo transport unit should be tightly packed and adequately braced and secured for the voyage. The packages should be packed in such a way that there will be a minimum likelihood of damage to fittings during transport. Such fittings on packages should be adequately protected." Freight containers packed to meet these requirements do not specifically require wood dunnage. However, cargo shipped in conformance with the dunnage requirements and other

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requirements in § 176.76(a) of the HMR would also meet the IMDG Code requirements for cargo securement.

Mr. Gale also stated that because a containerized hazardous materials shipment that is prepared and transported in accordance with the IMDG Code need not comply with the specific provisions of § 176.76(a), Exemption 9689 was not required for such shipments.

Mr. Gale's letter makes clear that a fabric restraint system that satisfies the IMDG Code -- such as Ty-Gard -- and comports with the requirements in § 171.12 is not required to meet the stipulations of § 176.76 or to hold an exemption of the sort issued in Exemption 9689. However, despite his clarifying letter, some shipments using Ty-Gard have been rejected in recent months by the U.S. Coast Guard based on the incorrect premise that Ty-Gard does not meet the HazMat regulations for vessels without Exemption 9689. Further, on several occasions, the National Cargo Bureau has advised its members that Ty-Gard does not conform to the requirements of DOT's HazMat regulations. In this context, questions have also arisen regarding whether Ty-Gard meets the IMDG Code requirements for dunnage.

Accordingly, Walnut Industries is writing to obtain further clarification about the use of fabric restraints such as Ty-Gard in ocean vessels in settings where § 171.12 is applicable. Specifically, Walnut Industries requests that DOT confirm the following in writing:

1. Ty-Gard 2000[®] system, when used properly, adequately braces and secures the cargo, and minimizes the likelihood of damage to fittings, and therefore meets the cargo restraint requirements of IMDG Code § 7.5.2.2 (2000).
2. Import/export shipments using Ty-Gard 2000[®] shipped under the IMDG Code are not subject to the dunnage requirements of 49 C.F.R. § 176.76, including the requirements for wood dunnage and for securing dunnage to the vessel floor, pursuant to 49 C.F.R. § 171.12.
3. Exemption 9689 is not necessary for shipments using Ty-Gard 2000[®] that are shipped in conformity with the IMDG Code.

As stated above, several recent shipments have been rejected based on concerns that fabric restraints systems such as Ty-Gard are not permitted under 49 C.F.R. § 176.76(a) without an exemption. Such rejections have seriously injured the market for Ty-Gard, as customers are reluctant to use the product if it may lead to the rejection of a shipment. Walnut Industries therefore requests that DOT handle this request on an expedited basis so that this confusion in the field can be rectified as soon as possible.

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We appreciate your prompt attention to this matter. Please call the undersigned at (202) 429-3000 if you have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "David H. Coburn". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

David H. Coburn
Cynthia Taub
Attorneys for Walnut Industries, Inc.