

EFFECTIVE DATE NOTE: At 68 FR 61941, Oct. 30, 2003, § 173.6 was amended in paragraphs (b)(1) and (b)(3) by revising the word "movement" to read "shifting", effective Oct. 1, 2004. At 69 FR 30588, May 28, 2004, the effective date was delayed until Jan. 1, 2005.

**§ 173.7 U.S. Government material.**

(a) Hazardous materials offered for transportation by, for, or to the Department of Defense (DOD) of the U.S. Government, including commercial shipments pursuant to a DOD contract, must be packaged in accordance with the regulations in this subchapter or in packagings of equal or greater strength and efficiency as certified by DOD in accordance with the procedures prescribed by "Performance Oriented Packaging of Hazardous Material, DLAR 4145.41/AR 700-143/AFR 71-5/NAVSUPINST 4030.55/MCO 4030.40." Hazardous materials offered for transportation by DOD under this provision may be reshipped by any shipper to any consignee provided the original packaging has not been damaged or altered in any manner.

(1) Hazardous materials sold by the DOD in packagings that are not marked in accordance with the requirements of this subchapter may be shipped from DOD installations if the DOD certifies in writing that the packagings are equal to or greater in strength and efficiency than the packaging prescribed in this subchapter. The shipper shall obtain such a certification in duplicate for each shipment. He shall give one copy to the originating carrier and retain the other for no less than 1 year.

(2) [Reserved]

(b) Shipments of hazardous materials, made by or under the direction or supervision of the U.S. Department of Energy (DOE) or the Department of Defense (DOD), for the purpose of national security, and which are escorted by personnel specifically designated by or under the authority of those agencies, are not subject to the requirements of this subchapter. For transportation by a motor vehicle or a rail car, the escorts must be in a separate transport vehicle from the transport vehicle carrying the hazardous materials that are excepted by this paragraph. A document certifying that the shipment is for the purpose of national security

must be in the possession of the person in charge of providing security during transportation.

(c) Shipments of explosive samples, not exceeding 1 g net weight, offered by and consigned to the Bureau of Alcohol, Tobacco and Firearms (ATF) of the Department of the Treasury are not otherwise subject to the regulations in parts 110-189 of this subchapter when placed in a specifically designed multi-unit assembly packed in a strong outside packaging. The packaging must be of a type accepted by ATF as capable of precluding a propagation of any explosion outside the packaging. The second component from the outside of the packaging must be marked or tagged to indicate the presence of an explosive.

(d) Notwithstanding the requirements of §§ 173.416 and 173.417 of this subchapter, packagings made by or under the direction of the U.S. Department of Energy may be used for the transportation of Class 7 materials when evaluated, approved, and certified by the Department of Energy against packaging standards equivalent to those specified in 10 CFR part 71. Packages shipped in accordance with this paragraph shall be marked and otherwise prepared for shipment in a manner equivalent to that required by this subchapter for packagings approved by the Nuclear Regulatory Commission.

(e) Class 1 (explosive) materials owned by the Department of Defense and packaged prior to January 1, 1990, in accordance with the requirements of this subchapter in effect at that time, are excepted from the marking and labeling requirements of part 172 of this subchapter and the packaging and package marking requirements of part 178 of this subchapter, provided the packagings have maintained their integrity and the explosive material is declared as "government-owned goods packaged prior to January 1, 1990" on the shipping papers. In addition, packages of these materials owned by the Department of Defense that are marked and labeled in conformance with the requirements of the HMR that were in effect at the time they were

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originally marked and labeled are excepted from the current marking and labeling requirements.

[29 FR 18671, Dec. 29, 1964. Redesignated at 32 FR 5606, Apr. 5, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 173.7, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 173.8 Exceptions for non-specification packagings used in intrastate transportation.

(a) *Non-specification bulk packagings.* Notwithstanding requirements for specification packagings in subpart F of this part and parts 178 and 180 of this subchapter, a non-specification bulk packaging may be used for transportation of a hazardous material by an intrastate motor carrier until July 1, 2000, in accordance with the provisions of paragraph (d) of this section.

(b) *Non-specification cargo tanks for petroleum products.* Notwithstanding requirements for specification packagings in subpart F of this part and parts 178 and 180 of this subchapter, a non-specification cargo tank motor vehicle having a capacity of less than 13,250 L (3,500 gallons) may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with the provisions of paragraph (d) of this section.

(c) *Permanently secured non-bulk tanks for petroleum products.* Notwithstanding requirements for specification packagings in subpart F of this part 173 and parts 178 and 180 of this subchapter, a non-specification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than 450 L (119 gallons), may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with the provisions of paragraph (d) of this section.

(d) *Additional requirements.* A packaging used under the provisions of paragraphs (a), (b) or (c) of this section must—

(1) Be operated by an intrastate motor carrier and in use as a pack-

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aging for hazardous material before October 1, 1998;

(2) Be operated in conformance with the requirements of the State in which it is authorized;

(3) Be specifically authorized by a State statute or regulation in effect before October 1, 1998, for use as a packaging for the hazardous material being transported;

(4) Be offered for transportation and transported in conformance with all other applicable requirements of this subchapter;

(5) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or a marine pollutant (except for gasoline); and

(6) On and after July 1, 2000, for a tank authorized under paragraph (b) or (c) of this section, conform to all requirements in part 180 (except for § 180.405(g)) of this subchapter in the same manner as required for a DOT specification MC 306 cargo tank motor vehicle.

[Amdt. 173–259, 62 FR 1216, Jan. 8, 1997, as amended by Amdt. 172–262, 62 FR 49567, Sept. 22, 1997; Amdt. 173–259, 63 FR 8142, Feb. 18, 1998; 66 FR 45380, Aug. 28, 2001]

### § 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

(a) For the purpose of this section, not including 49 CFR part 387, a rail car, freight container, truck body, or trailer in which the lading has been fumigated with any material, or is undergoing fumigation, is a package containing a hazardous material, unless the transport vehicle or freight container has been sufficiently aerated so that it does not pose an unreasonable risk to health and safety.

(b) No person may offer for transportation or transport a rail car, freight container, truck body, or trailer in which the lading has been fumigated or treated with any material, or is undergoing fumigation, unless the FUMIGANT marking specified in paragraph (c) of this section is 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, a hazard warning label authorized by EPA under 40 CFR part 156 may be used