

(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.

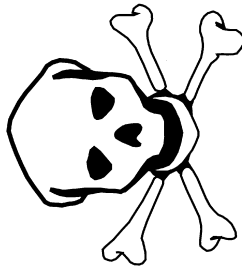
(a) For the purpose of this section, not including 49 CFR part 387, a rail

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 as an alternative to the FUMIGANT marking.

(c) *FUMIGANT marking.* (1) The FUMIGANT marking must consist of red letters on a white background that is at least 30 cm (11.8 inches) wide and at least 25 cm (9.8 inches) high. Except for size and color, the FUMIGANT marking must be as follows:

DANGER



**THIS UNIT IS UNDER FUMIGATION
WITH * _____ APPLIED ON**

Date _____

Time _____

DO NOT ENTER

(2) The “*” shall be replaced with the technical name of the fumigant.

(d) No person may affix or display on a rail car, freight container, truck body, or trailer (a package) the FUMIGANT marking specified in paragraph

(c) of this section, unless the lading has been fumigated or is undergoing fumigation.

(e) The FUMIGANT marking required by paragraph (b) of this section must

remain on the rail car, freight container, truck body, or trailer until:

(1) The fumigated lading is unloaded; and

(2) The transport vehicle or freight container has undergone sufficient aeration to assure that it does not pose an unreasonable risk to health and safety.

(f) For international shipments, transport documents must indicate the date of fumigation, type and amount of fumigant used, and instructions for disposal of any residual fumigant, including fumigation devices.

(g) Any person subject to the requirements of this section, solely due to the fumigated lading, must be informed of the requirements of this section and the safety precautions necessary to protect themselves and others in the event of an incident or accident involving the fumigated lading.

(h) Any person who offers for transportation or transports a rail car, freight container, truck body or trailer that is subject to this subchapter solely because of the hazardous materials designation specified in paragraph (a) of this section is not subject to any other requirements of this subchapter.

[Amdt. 173-260, 62 FR 1234, Jan. 8, 1997]

§ 173.10 Tank car shipments.

(a) Tank cars containing any 2.1 material (including a cryogenic liquid) or Class 3 material with a flash point below 38 °C (100 °F), except liquid road asphalt or tar, may not be offered for transportation unless originally consigned or subsequently reconsigned to parties having private-siding (see Note 1 of this section) or to parties using railroad siding facilities which have been equipped for piping the liquid from tank cars to permanent storage tanks of sufficient capacity to receive contents of car.

(b) A tank car containing any Class 2 material must not be offered for transportation unless the car is consigned for delivery (see paragraph (c) of this section) and unloading on a private track (see Note 1 of this section) except that where no private track is available, delivery and unloading on carrier tracks is permitted provided the following conditions are complied with:

(1) Any tank car of DOT-106A or 110A type (see §§179.300 and 179.301 of this

subchapter) may be offered for transportation and the loaded unit tanks may be removed from car frame on carrier tracks, provided the shipper has obtained from the delivering carrier and filed with originating carrier, written permission (see Note 2 of this section) for such removal. The consignee must furnish adequately safe mechanical hoist, obtained from the carrier if desirable, by which the tanks shall be lifted from the car and deposited directly upon vehicles furnished by the consignee for immediate removal from carrier property or tanks must be lifted by adequately safe mechanical hoist from car directly to vessels for further transportation.

(c) Any tank car of other than DOT-106A or 110A type (see §§179.300 and 179.301 of this subchapter), containing anhydrous ammonia, liquefied hydrocarbon or liquefied petroleum gas, and having interior pipes of liquid and gas discharge valves equipped with check valves, may be consigned for delivery and unloading on carrier tracks, if the lading is piped directly from the car to permanent storage tanks of sufficient capacity to receive the entire contents of the car. Such cars may also be consigned for storage on a private track or on a carrier track when designated by the carrier for such storage.

(d) For cars of the DOT-106A or 110A type (see §§179.300 and 179.301 of this subchapter), the tanks must be placed in position and attached to the car structure by the shipper.

(e) Class 3 materials with a flash point below 38 °C (100 °F) and Division 2.1 materials (including a cryogenic liquid) may not be loaded into tank cars on carrier property from tank trucks or drums.

NOTE 1: For this purpose, a private track is a track outside of carrier's right-of-way, yard, and terminals, and of which the carrier does not own either the rails, ties, roadbed or right-of-way; or a track or portion of a track which is devoted to the purpose of its user, either by lease or written agreement; in which case the lease or written agreement will be considered as equivalent to ownership.

NOTE 2: Carriers should give permission for the unloading of these containers on carrier tracks only where no private siding is available within reasonable trucking distance of final destination. The danger involved is the