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

(f) The requirements of this subchapter do not apply to shipments of hazardous materials carried aboard an aircraft that is not owned by a government or engaged in carrying persons or property for commercial purposes, but is under the exclusive direction and control of the government for a period of not less than 90 days as specified in a written contract or lease. An aircraft is under the exclusive direction and control of a government when the government exercises responsibility for:

(1) Approving crew members and determining they are qualified to operate the aircraft;

(2) Determining the airworthiness and directing maintenance of the aircraft; and

(3) Dispatching the aircraft, including the times of departure, airports to be used, and type and amount of cargo to be carried.

[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 at *www.govinfo.gov.*

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

(a) [Reserved]

(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 packaging 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) 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; 76 FR 56315, Sept. 13, 2011; 80 FR 72924, Nov. 23, 2015]

§ 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