

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171 and 175****[Docket No. HM-184C; Notice No. 85-3]****Implementation of the ICAO Technical Instructions****AGENCY:** Materials Transportation Bureau, Research and Special Programs Administration, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Hazardous Materials Regulations (HMR) in order to permit the offering, acceptance and transportation by aircraft, and by motor vehicle incident to transportation by aircraft, of hazardous materials shipments conforming to the most recent edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft when the 1986 edition of the ICAO Technical Instructions becomes effective on January 1, 1986, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

DATE: Comments must be received by October 4, 1985.

ADDRESS: Address comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-0656.

SUPPLEMENTARY INFORMATION: On November 20, 1984, the Materials Transportation Bureau (MTB) published

amendments to the Hazardous Materials Regulations (49 FR 45750) which authorize under certain conditions, and with certain limitations, hazardous materials packaged, marked, labeled, classified and described and certified on shipping papers as provided in the 1985 edition of the ICAO Technical Instructions to be offered, accepted and transported by aircraft within the United States and aboard aircraft of United States registry anywhere in air commerce. In addition, amendments were published to Part 175 of the HMR to align the requirements for the loading and handling of hazardous materials aboard aircraft with those in the 1985 edition of the ICAO Technical Instructions. It was necessary that these amendments be published in order to provide consistency between the Hazardous Materials Regulations and the ICAO Technical Instructions because the ICAO Technical Instructions have become the basic standard applied to the transport of hazardous materials by aircraft worldwide. A more detailed explanation of the reasons for this action was provided in the Notice of Proposed Rulemaking published under Docket No. HM-184 on August 2, 1982 [47 FR 33295].

Since publication of the final rule under Docket No. HM-184B, ICAO has developed a number of amendments to the Technical Instructions. These amendments have been incorporated in the 1986 edition of the ICAO Technical Instructions which will become effective on January 1, 1986. In order to continue to fulfill the intent of the amendments published under Docket Nos. HM-184, HM-184A and HM-184B (i.e., to facilitate the international transportation of hazardous materials by aircraft by insuring a basic consistency between the HMR and the ICAO Technical Instructions), the MTB believes it necessary to amend certain provisions of the HMR to reflect changes introduced in the 1986 edition of the ICAO Technical Instructions. The purpose of this rulemaking action is to propose these necessary amendments to the HMR.

The following is an analysis of this proposal, by section, which provides the background behind the proposed changes:

Section 171.7. The reference to the 1985 edition of the ICAO Technical Instructions in the matter incorporated by reference would be updated to refer to the 1986 edition. A copy of the Report of the Ninth Meeting of the ICAO Dangerous Goods Panel, indicating all changes introduced into the 1986 edition

of the Technical Instructions, is on file in the public docket.

Section 175.10. The exception for aircraft parts and supplies in subparagraph (a)(2), which is currently aligned with the corresponding text of the 1984 edition of the Technical Instructions, would be amended to reflect the wording introduced in the 1986 edition of the Technical Instructions. ICAO changed the exceptions for aircraft parts and supplies in the Technical Instructions in order to achieve consistency with paragraph 2.4.2 of Annex 18 of the Convention. An amendment was proposed to this paragraph under Docket No. HM-184B, but on the basis of several comments and because it was anticipated that ICAO would introduce further changes to the corresponding provisions upon publication of the 1986 edition, the amendment was withdrawn. The text now proposed provides that replacements for aircraft parts and supplies that would be classed as hazardous materials must be transported in accordance with the HMR except that aircraft batteries would not be subject to a gross weight limitation and, in place of the packaging normally required, containers specially designed for the transport of aircraft spares and supplies may be used. In addition, subparagraph (a)(17) would be amended to provide that packagings containing dry ice used to pack perishables in carry-on baggage be designed to permit the release of carbon dioxide gas in order to eliminate the risk of unacceptable pressure increase in the packagings.

Section 175.33. Paragraph (a)(6) of this section would be revised to provide that when radioactive materials are transported in freight containers or overpacks, the information required to be supplied to the pilot-in-command may be provided for an overpack or freight container rather than for the individual packages contained within the overpack or freight container.

Administrative Notices**A. Executive Order 12291**

The MTB has determined that the effect of this regulatory proposal would not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. et seq.). A regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning the size and nature of entities likely affected, I certify that this notice will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporated by reference.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

In consideration of the foregoing, 49 CFR Parts 171 and 175 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 49 CFR 1.53(e).

2. In § 171.7, paragraph (d)(27) would be revised to read as follows:

§ 171.7 Matter incorporated by reference.

(d) * * *

(27) International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284-AN/905 (ICAO Technical Instructions), 1986 edition.

PART 175—CARRIAGE BY AIRCRAFT

3. The authority citation for Part 175 would be revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 49 CFR 1.53(e).

4. In § 175.10, paragraph (a)(19) would be amended by inserting the words "provided the package permits the release of carbon dioxide gas." after the words "carry-on baggage" and paragraph (a)(2) would be revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(2) Hazardous materials required aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. Unless otherwise approved by the Associate Director for HMR, items of replacement for such hazardous materials must be transported in accordance with this subchapter except that—

(i) In place of the required packagings, packagings specially designed for the

transport of aircraft spares and supplies may be used, provided such packagings afford equivalent safety to those that would be required by this subchapter; and,

(ii) Aircraft batteries are not subject to a gross weight quantity limitation.

§ 175.33 [Amended]

5. In § 175.33(a)(6), the words "overpacks or freight containers," would be added preceding the words "their category."

Issued in Washington, D.C. on July 10, 1985.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

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