Research and Special Programs Administration

49 CFR Part 175

[Docket No. HM-184F; Notice 92-1]

RIN-2137-AB99

Implementation of the International Civil Aviation Organization's Technica Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by adding four provisions that are in the current (1991–1992) edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transportation of Dangerous Goods by Air. These provisions were inadvertently omitted in a previous notice published under Docket HM-184F. This amendment is necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

DATES: Comments must be received by February 18, 1992.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and be submitted, if possible, in five copies. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the docket number (i.e., Docket HM-184F). The Dockets Unit is located in room 8419 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. Telephone (202) 366-5046. The public dockets may be reviewed between the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. (202) 366-0656.

SUPPLEMENTARY INFORMATION: On November 7, 1990, RSPA published a notice of proposed rulemaking (NPRM) in the Federal Register (55 FR 46839). RSPA proposed to authorize, under certain conditions and with certain limitations, hazardous materials to be packaged, marked, labeled, classified, described and certified on shipping papers in accordance with the 1991–1992 edition of the ICAO Technical Instructions, and to be offered, accepted and transported by aircraft within the United States and aboard aircraft of United States registry anywhere in air commerce. It was necessary that this NPRM be published in order to provide consistency between the Hazardous Materials Regulations (HMR) and the ICAO Technical Instructions, which have become the basic standard applied to the transport of hazardous materials by aircraft worldwide. Three changes were proposed in the November 1990 NPRM to reflect amendments incorporated in the 1991–1992 edition of the ICAO Technical Instructions; however, four other changes were inadvertently omitted from the NPRM. The purpose of this rulemaking is to propose that these additional changes be made to the HMR.

Section-by-Section Review

Section 175.10

Two new paragraphs would be added to this section. A new paragraph (a)(24) would be added regarding heat-producing articles (i.e., underwater torches and soldering equipment). With the approval of the aircraft operator, these articles may be carried in carry-on baggage only, provided the heat producing component or energy source has been removed. This provision is intended to eliminate fires in carry-on baggage due to the inadvertent activation of such articles.

A new paragraph (a)(25) would be added regarding small oxygen generators. With the approval of the aircraft operator, a small oxygen generator, one per person, may be carried as checked baggage only, provided it meets certain requirements. This provision is intended to permit the transport of an oxygen generator for personal use.

Section 175.701

Minor editorial changes would be made in paragraph (b)(1). Paragraph (b)(2) would be revised to specify that the prescribed minimum separation distance limits apply to the distances between radioactive materials and the passengers and crew. A new paragraph (b)(3) would be added to specify separation distances between radioactive materials and animals.

Section 175.702

Paragraph (b)(2)(i) would be revised to extend the provisions for separation distances to include overpacks and freight containers containing radioactive materials, and to reduce the prescribed separation distances between animals and radioactive materials.

Administrative Notices

A. Executive Order 12291 and Administrative Notices

The RSPA has determined that this rulemaking: (1) Is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*) The proposals in this document reflect changes introduced in the 1991–1992 edition of the ICAO Technical Instructions. Their anticipated economic impacts are so minimal that preparation of a regulatory evaluation is not considered necessary. An earlier regulatory evaluation on implementation of the ICAO Technical Instructions was prepared for Docket HM-184. A copy of that regulatory evaluation is available for review in Docket HM-184F.

B. Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposal has no substantial direct impact of the States, on Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Therefore, this proposed rulemaking contains no policies with Federalism implications as defined in Executive Order 12612.

c. Regulatory Flexibility Act

Based on limited information concerning the size and nature of entities likely to be affected by this proposed rule, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials.

Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 175 would be amended as follows:

PART 175—CARRIAGE BY AIRCRAFT

1. The authority citation for part 175 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

2. In § 175.10, paragraphs (a)(24) and (a)(25) would be added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(24) With the approval of the operator of the aircraft, heat producing articles (e.g., battery-operated equipment such as underwater torches and soldering equipment which, if accidentally activated, will generate extreme heat and can cause fire) may be carried in carry-on baggage only. The heat producing component, or the energy source, must be removed so as to prevent unintentional functioning during transport.

(25) With the approval of the operator(s) and as checked baggage only, a small oxygen generator for personal use, one per person, that meets the following requirements:

(i) The generator, without its packaging, must be capable of withstanding a 1.8 m (5.9 feet) drop test onto a rigid, nonresilient, flat and horizontal surface, in the position most likely to cause damage, without loss of its contents and without actuation:

(ii) The generator must be equipped with an actuating device with at least two positive means of preventing unintentional actuation;

(iii) When actuated at a temperature of 20 °C (68 °F) and the generator well insulated, the temperature of any external surface of the generator must not exceed 100 °C (212 °F);

(iv) The generator must be in the manufacturer's original packaging and this must include a sealed outer wrapping or other means which can be taken as clear evidence that the generator has not been tampered with; and

(v) The generator packaging must be marked to indicate that the package meets the requirements of this paragraph (e.g., conforms with 49 CFR 175.10(a)(25)).

3. In § 175.701, paragraph (b)(1) would be amended by removing the reference "paragraph (b)(2)" each place it appears, and adding in its place "paragraphs (b)(2) and (b)(3)"; the text preceding the table in paragraph (b)(2) would be revised and a new paragraph (b)(3) would be added to read as follows:

§ 175.701 Separation distance requirements for packages containing Class 7 (radioactive) materials in passenger-carrying aircraft.

* * * * *

(b) * * *

(2) The following table prescribes minimum separation distances that must be maintained in passenger-carrying aircraft between Class 7 (radioactive) materials labeled Radioactive Yellow-II or Radioactive Yellow-III and passengers and crew.

* * * * *

(3) Class 7 (radioactive) materials in packages, overpacks or freight containers labeled Radioactive Yellow-II or Radioactive Yellow-III must be separated from live animals by a distance of at least 0.5 meters (20 inches) for journeys not exceeding 24 hours, and by a distance of at least 1.0 meters (39 inches) for journeys longer than 24 hours.

* * * * *

4. In § 175.702, paragraph (b)(2)(i) would be revised to read as follows:

§ 175.702 Requirements for carriage of packages containing Class 7 (radioactive) materials in a cargo aircraft only.

* * * * *

(b) * * *

(2) * * *

(i) The separation distance between the surfaces of the Class 7 (radioactive) materials packages, overpacks or freight containers and any space occupied by humans is at least 9 meters (30 feet) and between live animals is at least 0.5 meters (20 inches) for journeys not exceeding 24 hours; at least 1.0 meters (39 inches) for journeys longer than 24 hours.

* * * * *

Issued in Washington, DC on January 8, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety

[FR Doc. 92-899 Filed 1-15-92; 8:45 am]

BILLING CODE 4910-60-M