DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. HM-184C; Amdt. Nos. 171-85, 175-35]

Implementation of the ICAO Technical Instructions

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

ACTION: Final rule.

SUMMARY: This document amends 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.

EFFECTIVE DATE: January 1, 1986.

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

SUPPLEMENTARY INFORMATION: On July 16, 1985, the RSPA published a notice (Docket HM-184C, Notice No. 85-3) in the **Federal Register** [50 FR 28820] which requested public comment on the need to amend the Hazardous Materials Regulations (HMR) in order to take account of the 1986 edition of the ICAO Technical Instructions..

Three commenters responded to Notice 85-3. Following full consideration of the comments received, the proposals contained in the notice are being adopted with certain changes. Two of the comments received supported the actions proposed in the Notice of Proposed Rulemaking, but offered specific comments on the amendments of § 175.10(a)(2) concerning the transport of aircraft parts, equipment and supplies.

The third commenter found the amendment proposed to § 175.10(a)(2) to be "unacceptable" in its entirety. That commenter, ERA Helicopters, Inc., objected on the basis that Alaska operators usually depend on their own aircraft to provide parts to aircraft requiring unscheduled field maintenance where no other suitable means of transport exists. The RSPA does not believe that the need for expeditious movement of replacement aircraft parts is a problem unique to Alaska operators. In addition, the commenter provided no safety arguments as to why a hazardous material shipped by an aircraft operator presents any less hazard, or should be transported any differently, than the same hazardous material offered for transport by another shipper. This commenter also requested further review to determine whether this amendment would meet the criteria of the Regulatory Flexibility Act. In the absence of any information provided in this comment or any of the other comments demonstrating that significant impacts would result from the amendment, the RSPA continues to believe that this amendment will not have a significant impact on a substantial number of small entities under the criteria of this Act. Therefore, the amendment to § 175.10(a)(2) has been adopted.

The Air Line Pilots Association (ALPA) took issue with the use of the word "equivalent" in the proposed § 175.10(a)(2)(i), and suggested that the packagings should be required "to meet or exceed DOT and/or ICAO specifications." The RSPA has not accepted this suggestion because it could be interpreted to require full conformance to the DOT specifications including, for example, the embossment of DOT specification markings, when required. This is considered to be contrary to ICAO's intent in permitting the use of packaging specially designed for aircraft spares. However, the wording of this paragraph has been slightly revised in order to improve clarity. ALPA also noted that Special Provision A59 of the ICAO Technical Instructions specifically excepted serviceable aircraft tire assemblies from the provisions of athe ICAO Technical Instructions, and that this special provision was similar to the existing § 175.10(a)(2)(x) of the HMR which would have been eliminated by the proposed amendment. ALPA expressed the opinion that, to avoid confusion, specific reference to aircraft tires should be retained in § 175.10(a)(2). The RSPA agrees, and a new § 175.10(a)(2)(iii) has been included excepting serviceable aircraft tire assemblies from the HMR under certain conditions.

The Air Transport Association of America (ATA) suggested that the ICAO Dangerous Goods Panel should consider whether replacement aircraft parts and supplies should be excepted from the requirement of being accompanied by a dangerous goods transport document when originated as company materials by the air carrier transporting the goods. The RSPA believes there could be merit in such an exception, provided these goods are still indicated on the notification to pilot-in-command, and should ICAO adopt such an exception, would be prepared to propose a similar amendment to the HMR.

Administrative Notices

A. Executive Order 12291

The RSPA has determined that the effect of this final rule will 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. 4321 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

rule 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, Incorporation by reference.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

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

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted.

2. In § 171.7, paragraph (d)(27) is revised to read:

§ 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.

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PART 175—CARRIAGE BY AIRCRAFT

3. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1807, 1808, 49 CFR 1.53, unless otherwise noted.

4. In § 175.10, paragraph (a)(17) is 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) is 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 Director, Office of Hazardous Materials Transportation, 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 provide at least an equivalent level of protection to those that would be required by this subchapter;

(ii) Aircraft batteries are not subject to a gross weight quantity limitation; and,

(iii) A tire assembly with a serviceable tire it not subject to the provisions of this subchapter provided the tire is not inflated to a guage pressure exceeding the maximum rated pressure for that tire.

* * * * *

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

Issued in Washington, D.C. on November 25, 1985 under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

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