

regarding implementation of Annex 18 to the Convention on International Civil Aviation.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Elaine Economides, International Standards Coordinator, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; telephone, (202) 366-0656.

SUPPLEMENTARY INFORMATION: On August 18, 1986, the RSPA published a notice (Docket HM-184D, Notice No. 86-5) in the Federal Register [51 FR 29503] which requested public comment on the need to amend the Hazardous Materials Regulations (HMR) in order to take account of the 1987-88 edition of the ICAO Technical Instructions.

Three commenters responded to Notice 86-5. Following full consideration of the comments received, the proposals contained in the notice are being adopted as proposed. Two of the commenters supported the proposed rulemaking in full. The third commenter supported the actions proposed in the notice, but recommended a further action be taken to ensure compliance with the additional requirements of the HMR relative to liquids that are toxic by inhalation.

The third commenter, E.I. du Pont de Nemours & Company (Du Pont), noted that the HMR at § 171.11(d)(7) requires persons who transport hazardous materials in accordance with the ICAO Technical Instructions to comply with all U.S. variations indicated therein. Du Pont further pointed out that there is currently no U.S. variation filed with ICAO requiring transporters to comply with the provisions of the HMR relative to the description, marking, labelling and packaging of liquids which are toxic by inhalation when transporting such liquids to, from or within the United States by air. In view of this apparent gap in coverage, Du Pont recommended: (1) That the U.S. file such a variation with ICAO and (2) that 49 CFR 171.11(d) be amended to include a new paragraph setting forth the requirement for compliance with the inhalation toxicity requirements as a specific condition for transporting hazardous materials in accordance with the ICAO Technical Instructions.

Subsequent to receipt of this comment, the United States filed a variation to the ICAO Technical Instructions specifically requiring persons who transport liquids toxic by inhalation to, from or within the United States by air to comply with the additional provisions of the HMR relative to the description, marking,

labeling and packaging of such liquids. This variation will be published in the Addendum to the 1987-88 edition of the ICAO Technical Instructions. While recognizing that paragraph (d)(7) of 49 CFR 171.11 requires the transport of hazardous materials under the ICAO Technical Instructions to be performed in conformance with all U.S. variations thereto, RSPA agrees with Du Pont that specific reference to the additional requirements for liquids with poison inhalation hazards would clearly show U.S. shippers their legal obligations. This would be consistent with the inclusion in § 171.11 of references to other regulatory requirements which are the subject of U.S. variations from the ICAO Technical Instructions.

Du Pont suggested specific language for the new paragraph (d)(9) of § 171.11, but this necessarily differed from the phrasing of the new U.S. variation on liquids toxic by inhalation. Therefore, while adopting Du Pont's recommendation that § 171.11(d) be amended, RSPA has adopted text which more closely follows the phrasing of the new variation.

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 to be 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:

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. HM-184D; Amdt. No. 171-91, 175-39]

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, 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 1987-88 edition of the ICAO Technical Instructions becomes effective on January 1, 1987, pursuant to decisions taken by the ICAO Council

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

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

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

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), 1987-88 edition.

3. In 171.11, paragraph (d)(9) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

(d) * * *
(9) When a hazardous material, which is subject to the requirements of the ICAO Technical Instructions, falls within the inhalation hazard criteria described in § 173.3a(b)(2):

- (i) The shipping description must include the words "Poison-Inhalation Hazard", except that only the word "Poison" is required when the material is shipped in a combination packaging with inner packagings containing one liter or less;
- (ii) The material must be packaged in accordance with the requirements of § 173.3a; and,
- (iii) The package must be marked and labelled in accordance with the requirements of §§ 172.301(a) and 172.402(a)(10).

PART 175—CARRIAGE BY AIRCRAFT

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

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

4. In § 175.10, the introductory text to paragraph (a)(4) and paragraph (a)(15) are revised to read as follows:

§ 175.10 Exceptions.

(a) * * *
(4) Non-radioactive medicinal and toilet articles carried by a crewmember or passenger in checked or carry-on baggage, and aerosols, with no subsidiary risk, for sporting or home use, when carried in checked baggage only, when:

(15) Alcoholic beverages, perfumes, colognes, and liquefied gas lighters that have been examined by the Bureau of

Explosives (B of E) and approved by the Director, Office of Hazardous Materials Transportation, carried aboard a passenger-carrying aircraft by the operator for use or sale on the aircraft.

5. In § 175.30, in paragraph (e)(1)(ii) the period at the end of the sentence is revised to read "; or" and paragraph (e)(1)(iii) is added to read as follows:

§ 175.30 Accepting and inspecting shipments.

(e) * * *
(1) * * *
(iii) Not more than one package is overpacked.

Issued in Washington, DC, on December 8, 1986 under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,
Administrator, Research and Special Programs Administration.

[FR Doc. 86-27965 Filed 12-11-86; 8:45 am]
BILLING CODE 4910-60-M