

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 172 and 175**

[Docket No. HM-184F; Amdt. Nos. 172-131, 175-49]

RIN 2137-AB99

Implementation of the International Civil Aviation Organization's Technical Instructions

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

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) in order to permit aircraft operators to accept and transport by aircraft certain hazardous materials in accordance with requirements contained in the current edition of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). The HMR incorporate by reference the 1993-1994 edition of the ICAO Technical Instructions. This action is necessary to align certain requirements contained in the HMR for the loading and handling of hazardous materials aboard aircraft with the ICAO Technical Instructions. The intended effect of this action is to promote uniformity in standards applicable to air carriers operating within the United States.

DATES: Effective: October 1, 1993.

Compliance date: However, compliance with the requirements as adopted herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga (202) 366-0656, International Standards Coordinator, or Diane LaValle (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On November 7, 1990, RSPA published in the *Federal Register* a notice of proposed rulemaking (Docket HM-184F, Notice No. 90-14) (55 FR 46839) which proposed to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to align certain requirements in §§ 172.101 and 175.10 with the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). Without this alignment, shippers of hazardous materials could be forced to assume the costs and

burdens of complying with two different regulatory standards.

In response to Notice 90-14, four comments were received expressing support for all the proposed revisions. These commenters were representatives of shippers, carriers, trade associations, and public interest groups.

Two commenters, the Air Transport Association and the Radiopharmaceutical Shippers and Carriers Conference, pointed out that several revisions to the 1991-1992 ICAO Technical Instructions were not addressed in Notice 90-14 and questioned why these changes were not incorporated in the notice. The omission of these changes in Notice 90-14 was inadvertent. Consequently, Notice 92-1 requesting comments on four other provisions relating to §§ 175.10, 175.701 and 175.702 was published on January 16, 1992 (57 FR 1891). No comments were received on Notice 92-1. Therefore, with one exception, the proposals contained in Notice Nos. 90-14 and 92-1 are adopted in this final rule. Action on a proposal to incorporate by reference the 1991-1992 edition of the ICAO Technical Instructions is no longer warranted. The 1993-1994 edition of the regulations was incorporated by reference under a separate rulemaking action (HM-215; 57 FR 60738, December 22, 1992).

The amendments adopted herein are effective without the customary 30-day delay following publication to allow these changes to appear in the next revision of 49 CFR.

Section-by-Section Review

The following is a section-by-section summary of revisions.

Section 172.101

Notice 90-14 proposed to amend the § 172.101 Hazardous Materials Table (the Table) by adding the phrase "or other battery powered mobility aids" to the entry "Battery, electric storage, wet, with wheel chair." The purpose of this action was to allow other mobility aids to be shipped under this description. Under a separate rulemaking action, the entry "Battery, electric storage, wet, with wheel chair" was changed to "Wheel chair, electric (*spillable or non-spillable type batteries*)." This rule, therefore, adds a new entry to read "Mobility aids, see Wheel chair, electric."

Section 175.10

In paragraph (a)(16), the words "not exceeding 70% alcohol by volume" are included immediately following the words "Alcoholic beverages." This limit is added because alcoholic beverages

with high alcohol content produce a flammable atmosphere at normal room temperatures. Permitting highly flammable liquids in the passenger compartment or in checked baggage would compromise safety.

Paragraphs 175.10(a) (19) and (20) were proposed to be amended by revising all references to the wording "wheel chair," each place it appears, to read "wheel chair or other battery powered mobility aids", for consistency with the earlier change made in this final rule to the entry appearing in the § 172.101 Table. These changes have not been made in this final rule because paragraphs (a) (19) and (20) are further revised by another final rule published under Docket No. HM-166X, which appears elsewhere in this *Federal Register* publication. A new paragraph (a)(23) is added to permit a person to carry heat-producing articles (e.g., battery operated equipment such as underwater torches and soldering equipment) with the heat producing component or energy source removed, in carry-on baggage only, with the approval of the aircraft operator. Removal of the heat-producing component or energy source eliminates the risk of inadvertent activation of such articles during transportation. A new paragraph (a)(24) is added to allow a small oxygen generator, meeting certain requirements and intended for personal use, to be carried as checked baggage only, with the approval of the aircraft operator.

Section 175.701

Minor editorial changes are made in paragraph (b)(1). Paragraph (b)(2) is revised to clarify that the prescribed minimum separation distance requirements for packages containing Class 7 (radioactive) materials in passenger-carrying aircraft pertain to the distances between the packages and the passengers and crew. A new paragraph (b)(3) is added to specify separation distances between Class 7 (radioactive) materials and animals.

Section 175.702

Paragraph (b)(2)(i), containing minimum separation distance limits for packages of Class 7 (radioactive) materials on a cargo aircraft only, is revised to include overpacks and freight containers containing radioactive materials, and to change the prescribed separation distance between animals and radioactive materials.

Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This final rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). This final rule does not impose additional requirements and, in fact, provides limited relief in some areas. A regulatory evaluation is available for review in the docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (i) The designation, description, and classification of hazardous materials;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4)(A) and (B).

This rule concerns the designation, classification and handling of hazardous materials. This final rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be May 1, 1994. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The provisions in this final rule apply to persons who offer or transport hazardous materials by aircraft, some of whom may be small entities. Information available to RSPA is insufficient to determine the number of

such entities. However, this rule relaxes certain provisions and will result in small savings.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172 and 175 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

2. The following entry is added to the § 172.101 Hazardous Materials Table in appropriate alphabetical order:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

SECTION 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Pas-senger aircraft or rail car	Cargo aircraft only	Vessel stow-age	Other stow-age provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)

Mobility aids, see Wheel chair, electric.

PART 175—CARRIAGE BY AIRCRAFT

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

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

§ 175.10 [Amended]

4. In § 175.10, in paragraph (a)(16), the words "not exceeding 70% alcohol by volume" are added immediately following the words "Alcoholic beverages".

5. In § 175.10, paragraphs (a)(23) and (a)(24) are added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(23) With the approval of the operator of the aircraft and as carry-on baggage,

electrically powered 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. The heat-producing component, or the energy source, must be removed so as to prevent unintentional functioning during transport.

(24) With the approval of the operator and as checked baggage, a small chemical 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, non-resilient, 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) The generator must be well insulated and, when it is actuated at a temperature of 20 °C (68 °F), 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 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)(24)).

6. In § 175.701, paragraph (b)(1) is 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) is revised and a new paragraph (b)(3) is 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.

7. In § 175.702, paragraph (b)(2)(i) is 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—

(A) Humans is at least 9 meters (30 feet); and

(B) Live animals is at least 0.5 meters (20 inches) for journeys not exceeding 24 hours and at least 1.0 meters (39 inches) for journeys longer than 24 hours;

Issued in Washington, DC, on September 14, 1993 under the authority delegated in 49 CFR part 1.

George W. Tenley, Jr.,
Acting Administrator, Research and Special Programs Administration.

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