

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171 and 175**

[Docket No. HM-184E; Amdt. No. 171-99, 175-42]

Implementation of the ICAO Technical Instructions

January 3, 1989.

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 1989-90 edition of the ICAO Technical Instructions becomes effective on January 1, 1989, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

EFFECTIVE DATE: January 1, 1989.

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

SUPPLEMENTARY INFORMATION: On September 15, 1988, RSPA published a notice of proposed rulemaking (Docket HM-184E, Notice No. 88-4) in the *Federal Register* (53 FR 35968) which requested comments on RSPA's intention to incorporate by reference the 1989-1990 edition of the ICAO Technical Instructions in § 171.7(d) of the HMR, and revise § 175.10(a)(21) to align the requirements in the HMR with the ICAO Technical Instructions. The proposed amendment to § 175.10(a)(21) would permit "hair curlers containing hydrocarbon gas, no more than one per passenger or crew member, provided that the safety cover is securely fitted over the heating element at all times. Gas refills for such curlers are not

permitted in checked or carry-on baggage."

Four comments were received in response to Notice 88-4. One commenter expressed support for the incorporation by reference of the 1989-1990 ICAO Technical Instructions into the HMR. The three other commenters suggested editorial revisions to the provision. The National Business Aircraft Association (NBAA) recommended that a qualifying term such as box, package, or hair curling unit be added following the word "one", and noted that the proposed provision contains no limitation on the size of the hair curling unit. RSPA believes that the proposed wording adequately conveys that no more than one hair curling unit is permitted per passenger or crew member. Further, NBAA provided no information to support the need for a restriction on the size of these hair curling units. RSPA has not adopted these suggested changes in this final rule. The Air Transport Association (ATA) and the Airline Pilots Association (ALPA) both suggested that the words "at all times" be included in the provision, with ALPA going a step further by suggesting that the phrase "the hair curler shall not be used on board the aircraft" be added. As suggested by both ATA and ALPA, the provision would read: "Hair curlers containing hydrocarbon gas, no more than one per passenger or crew member, provided that the safety cover is securely fitted over the heating element at all times. *The hair curler shall not be used on board the aircraft.*" ATA and ALPA stated that these changes are needed to emphasize that the hair curling units may not be used on board an aircraft. RSPA finds the suggested language is redundant. The requirement that the safety cover be securely fitted over the heating element is unqualified, that is, the cover cannot be removed in order to use the hair curler in flight. Because the additional language is not necessary, and for consistency with the ICAO Technical Instructions, RSPA has not adopted the suggested change in this final rule.

Administrative Notices.

Executive Order 12291

The RSPA has determined that this final rule (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 (42 U.S.C. 4321 *et seq.*) A regulatory evaluation is available for review in the Docket.

Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

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

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 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted

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

§ 171.7 Matter incorporated by reference.

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(d) * * *
(27) International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284-AN/905 (ICAO Technical Instructions), 1989-1990 edition.

PART 175—CARRIAGE BY AIRCRAFT

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

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. In § 175.10, paragraph (a)(21) is revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(21) Hair curlers containing hydrocarbon gas, no more than one per passenger or crew member, provided that the safety cover is securely fitted over the heating element. Gas refills for such curlers are not permitted in checked or carry-on baggage.

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Issued in Washington, DC on January 3, 1989.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

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