

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

[Docket No. HM-184E; Notice No. 88-4]

Implementation of the International Civil Aviation Organization's Technical Instructions**AGENCY:** Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend 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 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 1989-1990 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.

DATE: Comments must be received by November 14, 1988.

ADDRESS: Address comments to Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

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 December 12, 1986, RSPA published a final rule in the Federal Register (51 FR

44790) under Docket HM-184D. The final rule authorized, under certain conditions and with certain limitations, hazardous materials to be packaged, marked, labeled, classified, described and certified on shipping papers as provided in the 1987-1988 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 these amendments be published in order to provide consistency between the Hazardous Materials Regulations (HMR) and the ICAO Technical Instructions because the ICAO Technical Instructions have become the basic standard applied to the transport of hazardous materials by aircraft worldwide. A more detailed explanation of the reasons for this action was provided in an earlier notice of proposed rulemaking published under Docket No. HM-184 on August 2, 1982 [47 FR 33295].

Since publication of the final rule under Docket No. HM-184D, ICAO has developed a number of amendments to the ICAO Technical Instructions. These amendments have been incorporated in the 1989-1990 edition of the ICAO Technical Instructions which will become effective on January 1, 1989. In order to facilitate the international transportation of hazardous materials by aircraft by insuring a basic consistency between the HMR and the ICAO Technical Instructions, the RSPA believes it is necessary to amend certain provisions of the HMR to reflect changes introduced in the 1989-1990 edition of the ICAO Technical Instructions. The purpose of this rulemaking action is to propose these necessary amendments to the HMR.

The following changes are proposed:

Section 171.7. The reference to the 1987-1988 edition of the ICAO Technical Instructions in paragraph (d)(27) of 49 CFR 171.7 would be updated to refer to the 1989-1990 edition.

Section 175.10. Part 1, section 2.4.2 of the ICAO Technical Instructions has been amended to permit non-catalytic hair curlers containing hydrocarbon gas to be carried on aircraft. The restriction requiring such curlers to be contained only in checked baggage has also been removed. The exception for catalytic hair curlers containing hydrocarbon gas in paragraph (a)(21) of 49 CFR 175.10, which is currently aligned with the corresponding text of the 1987-1988 edition of the ICAO Technical Instructions, would be amended to reflect changes incorporated in the 1989-1990 edition of the ICAO Technical Instructions.

Administrative Notices*Executive Order 12291*

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 (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 would be 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) would be 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.

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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) would be 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 September 8, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

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