

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Parts 171, 172, 173 and 175

[Docket No. HM-166-S, Amdt. Nos. 171-84,
172-102, 173-195, and 175-34]

Magnetized Material

AGENCY: Research and Special Programs
Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule deregulates certain materials classed as magnetized material under the Hazardous Materials Regulations (HMR). RSPA believes that the present rules applying to magnetized materials carried aboard aircraft are obsolete. The intended effect of this rule is to eliminate the marking, labeling, and shipping paper requirements in the HMR with regard to magnetized material, while continuing to forbid the transportation of materials as packaged with a gauss level of more than 0.00525 gauss at a distance of 15 feet.

EFFECTIVE DATE: This amendment is effective February 25, 1986. However, compliance with the regulations, as amended herein, is authorized as of November 25, 1985.

FOR FURTHER INFORMATION CONTACT:

Irving R. Abis, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION: On September 24, 1984, RSPA published a notice of proposed rulemaking in the *Federal Register*, (Notice 84-10), (49 37438). That notice proposed to amend the regulations governing the transportation of magnetized materials aboard aircraft. The notice was published in response to a petition for rulemaking submitted by the Motor Vehicle Manufacturers Association (MVMA). RSPA proposed to deregulate certain materials, such as automobile fenders and other automobile parts, which may meet the lower magnetic criteria in 49 CFR 173.1020 for magnetized material (0.002 gauss or greater at a distance of 7 feet from any point on the surface of the package). The notice also proposed to eliminate the *Magnetized Material* labeling requirement, and the ORM-C marking for packagings which have a gauss level of 0.00525 gauss or less at a distance of 15 feet, and to forbid transportation of

materials by aircraft, which as packaged, have a gauss level of over 0.00525 gauss at a distance of 15 feet.

As stated in the notice, RSPA believes that the current rules on magnetized materials are obsolete and fail to recognize improvements in the technology of aircraft instrumentation over the past 30 years that substantially prevent most magnetized materials from having an adverse effect on the operation of instruments.

In response to Notice 84-10, RSPA received 21 written comments. The respondents included shippers of magnetized materials, the Airline Pilots Association (ALPA), the Air Transport Association of America (ATA), and the U.S. Air Force (USAF). Of those commenters expressing an opinion on the overall merits of the proposal, all commenters were in favor of the proposal except the ALPA, the ATA and the USAF.

The ALPA expressed concern that while individual shipments may not contain sufficient magnetic force to affect aircraft instrumentation, multiple shipments aboard an aircraft may affect instrumentation. Operating information which is required to be furnished to pilots of aircraft (operating under rules contained in 14 CFR Parts 121 and 135) include cockpit checklists. Cockpit checklists include making certain that instruments are working properly. If multiple quantities of individual shipments, each containing non-regulated amounts of magnetized material are stowed aboard an aircraft so as to affect the instrumentation, the problem would become apparent as the pilot performs the pre-flight check. If as a result the instruments are diverted, corrective action must be taken before takeoff. RSPA believes that such occurrences are highly unlikely because of the remote positioning of magnetic flux detectors in modern aircraft. No test results or technical justification were submitted in support of ALPA's position.

The ATA commented that a number of its members were in favor of the proposed rule and one member was against the proposal, stating that in recent years DC-8 aircraft were twice affected by materials with magnetic properties. No information or documentation was supplied regarding the details of these incidents, and there was no indication as to whether the materials were properly or improperly transported under the provisions of the HMR.

The USAF commented in opposition to the proposed rule without providing technical details.

RSPA and the Federal Aviation Administration (FAA) believe that these rules will not reduce the level of air safety and will relieve a burden of undue regulation on shippers and carriers. To assure the proper stowage of cargo aboard aircraft which might not have compasses with remote sensors or aircraft having compass master units located within the fuselage, the FAA is publishing an Advisory Circular to provide information relevant to the preparation and loading of magnetic materials for shipment in civil aircraft.

RSPA is delaying the effective date of this rule for 90 days to allow petitions for reconsideration to be submitted by interested parties. Commenters who can provide test results or technical justification may petition RSPA for reconsideration following the procedures in § 106.35.

It should be noted that this rule amends the rules for air transportation of hazardous materials under the provisions of 49 CFR and does not affect the rules under the *Technical Instructions for the Safe Transport of Dangerous Goods by Air*, published by the International Civil Aviation Organization (ICAO). However, RSPA will recommend that the ICAO Technical Instructions be amended accordingly.

Based on limited information available concerning size and nature of entities likely to be affected, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, RSPA has further determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (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 (49 U.S.C. 4321 et seq.). A regulatory evaluation is considered unnecessary because the anticipated impact is minimal.

List of Subjects

49 CFR Part 171

Hazardous materials transportation,
Definitions.

49 CFR Part 172

Hazardous materials transportation,

Labeling, packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

In consideration of the foregoing, 49 CFR Parts 171, 172, 173 and 175 are amended as follows:

§ 172.101 Hazardous Materials Table.

	+ EAW Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Excep-tions	Specific require-ments	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo ves-sel	Pas-senger vessel	Other require-ments
(1)	(2) (Remove)	(3)	(3a)	(4)	(5a)	(5b)	(6a)	(6b)	(7a)	(7b)	(7c)
	Magnetized material..... (ADD)	ORM-C.....	UN2807.....	Magnetized material..	None	173.1020	No limit.....	No limit.....			
A	Magnetized material. See 173.21(f).										

§ 172.402 [Amended]

5. In § 172.402, paragraph (d) is removed and reserved.

§ 172.446 [Removed and Reserved]

6. Section 172.446 is removed and reserved.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

8. In § 173.21, a new paragraph (f) is added to read 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.

§ 171.8 [Amended]

2. In § 171.8, the entry for "Magnetic Materials" is revised to read as follows:

* * * * *
"Magnetic materials" See § 173.21(f).
* * * * *

§ 173.21 Forbidden materials and packages.

* * * * *
(f) For carriage by aircraft, any material which when packaged has a measurable magnetic field of more than 0.00525 gauss when measured from any surface of the package at a distance of 15 feet.

§ 173.1020 [Removed and Reserved]

9. Section 173.1020 is removed and reserved.

PART 175—CARRIAGE BY AIRCRAFT

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

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

4. In § 172.101, the Hazardous Materials Table is amended by deleting the current entry for Magnetized material and adding a new entry to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR 1.53, unless otherwise noted.

§ 175.30 [Amended]

11. In § 175.30, paragraph (d)(3) is removed and reserved.

§ 175.85 [Amended]

12. In § 175.85, paragraph (g) is amended by removing the last sentence.

Issued in Washington, D.C. on Nov. 18, 1985, under authority delegated in 49 CFR Part 1, Appendix A.

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

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