

DEPARTMENT OF TRANSPORTATION

**Research and Special Programs
Administration**

49 CFR Parts 171, 173, and 175

[Docket No. HM-184B; Notice No. 84-5]

**Implementation of the ICAO Technical
Instructions**

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, 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 (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments are necessary to facilitate the continued shipment of hazardous materials in international commerce by aircraft when the 1985 edition of the ICAO Technical Instructions becomes effective on January 1, 1985, 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 September 14, 1984.

ADDRESS: Address comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 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 Branch is located in Room 8426, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 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: Edward A. Altemos, International Standards Coordinator, Materials

Transportation Bureau, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 428-0656.

SUPPLEMENTARY INFORMATION: On November 29, 1983, the Materials Transportation Bureau (MTB) published amendments to the Hazardous Materials Regulations (48 FR 53710) which allow under certain conditions, and with certain limitations, hazardous materials packaged, marked, labeled, classified and described and certified on shipping papers as provided in the 1984 edition of the ICAO Technical Instructions to be offered accepted and transported by aircraft within the United States and aboard aircraft of United States registry anywhere in commerce. In addition, amendments were published to Part 175 of the HMR to align the requirements for the loading and handling of hazardous materials aboard aircraft with those in the 1984 edition of the ICAO Technical Instructions. It was necessary that these amendments be published in order to provide consistency between the Hazardous Materials Regulations 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 the 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-184A, ICAO has developed a number of amendments to the Technical Instructions. These amendments have been incorporated in the 1985 edition of the ICAO Technical Instructions which will become effective on January 1, 1985. In order to continue to fulfill the intent of the amendments published under HM-184 and HM-184A (i.e., to facilitate the international transportation of hazardous materials by aircraft by insuring a basic consistency between the HMR and the ICAO Technical Instructions), the MTB believes it necessary to amend certain provisions of the HMR to reflect changes introduced in the 1985 edition of the ICAO Technical Instructions. The purpose of this rulemaking action to propose these necessary amendments to the HMR.

The following is an analysis of this proposal, by section, which provides the background behind the proposed changes:

Section 171.7. The reference to the 1984 edition of the ICAO Technical Instructions in the matter incorporated by reference would be updated to refer

to the 1985 edition. A copy of the Report of the Eighth Meeting of the ICAO Dangerous Goods Panel, indicating all changes introduced into the 1985 edition of the Technical Instructions, is on file in the public dockets.

Section 173.800. Subparagraph (b)(1) of this section would be removed and the exception for mercurial barometers contained therein added to § 175.10.

Section 175.10. One of the existing exceptions in this paragraph would be amended and an additional exception added. The exception for aircraft parts and supplies in subparagraph (a)(2), which is currently aligned with the corresponding text of the 1984 edition of the Technical Instructions, would be amended to reflect the wording introduced in the 1985 edition of the Technical Instructions. ICAO changed the exceptions for aircraft parts and supplies in the Technical Instructions in order to achieve consistency with paragraph 2.4.2 of annex 18 of the Convention. The proposed text provides that replacements for parts and supplies that would be classed as hazardous materials must be transported in accordance with the HMR except that batteries would be authorized up to a gross weight of 110 pounds. In addition, a new exception for mercurial barometers would be added as a new subparagraph (a)(22).

Section 175.33. Paragraph (a) of this section would be revised to provide that the net quantity or gross weight, as applicable for the particular hazardous material, must be shown on the notification to pilot-in-command unless the regulations impose no limit on the maximum quantity of that hazardous material that may be contained in one package. It would also be revised to improve editorial clarity.

Section 175.85. Subparagraph (c)(1)(v) would be revised to change the lower flashpoint limit of flammable liquids that may be carried in an inaccessible location from 90 °F(32 °C) to 73 °F (23 °C) in order to maintain alignment with the corresponding paragraph in the ICAO Technical Instructions.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

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, 173, and 175 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. In § 171.7, paragraph (d)(27) would be 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), 1985 edition.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

§ 173.860 [Amended]

2. In § 173.860, paragraph (b)(1) would be removed.

PART 175—CARRIAGE BY AIRCRAFT

3. In § 175.10, paragraph (a)(2) would be revised and a new paragraph (a)(22) would be added as follows:

§ 175.10 Exceptions.

(a) * * *

(2) Hazardous materials required aboard an aircraft for its operation. Items of replacement thereof must be transported in accordance with this subchapter except that aircraft batteries are authorized up to a gross weight of 110 pounds.

(22) A mercurial barometer carried as carry-on baggage only, by a representative of a government weather bureau or similar official agency. The barometer must be packaged in a strong outer packaging having a sealed inner liner or bag of strong, leak proof and puncture-resistant material impervious to mercury, which will prevent the escape of mercury from the package irrespective of its position. The pilot-in-command must be informed of the presence of any such barometer.

4. In § 175.33, the existing paragraphs (a)(3), (4), (5), and (6) would be redesignated (a)(5), (6), (7) and (8) respectively, paragraph (a)(2) would be revised and new paragraphs (a)(3) and (a)(4) added as follows:

§ 175.33 Notification of pilot-in-command.

(a) * * *

(2) The total number of packages;

(3) The net quantity or gross weight, as applicable, for each package except those containing radioactive materials

and for those for which there is no limit imposed on the maximum net quantity per package;

(4) the location of the packages aboard the aircraft;

§ 175.85 [Amended]

5. In § 175.85(c)(1)(v), the figures "90 °F (32 °C)" would be replaced by the figures "73 °F (23 °C)".

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 App. A to Part 1 and paragraph (a)(3) of App. A to Part 106)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under the terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034) or require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) I certify that this proposal would not, if adopted, have a significant economic impact on a substantial number of small entities because the overall economic impact of this proposal would be minimal. A regulatory evaluation and environmental assessment are available for review in the docket.

Issued in Washington, D.C., on June 25, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau

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