

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration**

49 CFR Parts 171, 172, 173 and 175

[Docket No. HM-184A; Notice No. 83-4]

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 air when the 1984 edition of the ICAO Technical Instructions becomes effective on January 1, 1984, 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 on or before October 14, 1983.

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 post card. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street, SW., 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. Telephone: (202) 426-3148.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C., 20590. Telephone: (202) 426-0656.

SUPPLEMENTARY INFORMATION: On December 6, 1982, the Materials Transportation Bureau (MTB) published amendments to the Hazardous Materials

Regulations (47 FR 54817) 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 1983 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 Hazardous Materials Regulations to align the requirements for the loading and handling of hazardous materials aboard aircraft with those in the 1983 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 air worldwide. A more detailed explanation of the reasons for this rulemaking 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-184, ICAO has developed a number of amendments to the Technical Instructions. These amendments have been incorporated in the 1984 edition of the ICAO Technical Instructions which will become effective on January 1, 1984. In order to continue to fulfill the intent of the amendments originally published under HM-184 (i.e., to facilitate the international transportation of hazardous materials by air 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 1984 edition of the ICAO Technical Instructions. The purpose of this rulemaking action is to propose these necessary amendments to the HMR.

Before commencing a section by section analysis of the proposed changes, the MTB believes some clarification of the rules published under HM-184 is necessary. The question has been raised as to whether these amendments permit carriers to operate in accordance with Part 5 of the ICAO Technical Instructions (Operator's Responsibilities) as opposed to Part 175 of the HMR. The MTB considers it important to stress that air carriers must fully comply with Part 175 of the HMR and that compliance with Part 5 of the ICAO Technical Instructions is not

authorized in place of full compliance with Part 175 of the HMR. At the same time, however, the MTB would like to note that a series of amendments have been previously made to Part 175, and others are proposed in this notice, in order to make Part 175 consistent with the ICAO Technical Instructions to the maximum extent possible.

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 1983 edition of the ICAO Technical Instructions in the matter incorporated by reference would be updated to refer to the 1984 edition.

Section 171.8

A new definition of "Competent authority" would be added. This definition is necessitated by the inclusion of this term in the proposed changes to § 173.86. The definition proposed is that already contained in Part 107 of the HMR and it currently pertains only to the regulations governing the designation of approval agencies for Intermodal Portable Tanks. However, the MTB believes that this definition has applicability to the HMR, in general, and is now proposing its inclusion in § 171.8.

Section 171.11

Several changes are being proposed to this section. First, it is proposed to amend paragraph (d)(4) to clarify the fact that the additional shipping paper entries required by § 171.11(d)(4) when hazardous materials are transported by highway pursuant to the provisions of § 171.11, only apply to those materials considered hazardous materials for transportation by highway. For instance, the name of the DOT class corresponding to the ICAO class would not be required for a material in ICAO Class 8 that is corrosive only to aluminum. In addition, it is proposed that materials in ICAO Class 6.1, Packing Group III and ICAO Class 9, other than those considered hazardous substances under the HMR, be excepted from the requirement to show the corresponding DOT class because such materials are not generally regulated for transportation by highway and because there is no single DOT class corresponding to these ICAO classifications. It is also proposed to add a new paragraph (d)(7) to this section to clarify the fact that hazardous materials shipments made under the provisions of § 171.11 must conform to any applicable

United States variation published in the ICAO Technical Instructions.

Sections 172.406 and 172.512

It is proposed that these sections be amended to permit freight containers or aircraft unit load devices containing hazardous materials to be identified by a tag with a red hatched border upon which the classes of the dangerous goods contained within the freight container or unit load device is indicated. This method of identification, which is required by Paragraph 2.7 of Part 5, Chapter 2, of the ICAO Technical Instructions, would be permitted as an alternative to the labeling or placarding currently required. However, freight containers and aircraft unit load devices would still be required to be labeled or placarded, as appropriate, for transportation by highway. It is also proposed that § 172.512 be amended to clarify the fact that if a freight container or aircraft unit load device is loaded by a carrier, it is the responsibility of the carrier to apply the required placards, labels or tag.

Section 173.6

A new paragraph (d) would be added which would prohibit the offering for transport by air of an overpack containing hazardous materials that are required by § 175.78 to be segregated when loaded aboard an aircraft. This would be consistent with a recent amendment to the ICAO Technical Instructions and is necessary in order to permit the air carrier to comply with his loading responsibilities.

Section 173.86

Under the existing HMR, "new explosives" are considered forbidden materials until examined and approved in accordance with § 173.86. This has resulted in serious difficulties with the import of air shipments of explosives because there is no provision for the air transport of samples for examination and approval. Therefore, the time of delay incurred by shippers outside the United States in obtaining the necessary approval is prohibitive. Furthermore, the MTB believes that requiring DOT approval of all explosives imported under the provisions of the ICAO Technical Instructions is contrary to the spirit of those regulations in that the MTB should be in a position to recognize approvals issued by the competent authority of the country in which the shipment originates. Naturally the MTB would expect that foreign competent authorities would provide for a similar recognition of explosives

approvals issued by the DOT. Consequently, it is proposed that two new paragraphs be added to § 173.86. The first would permit the MTB to approve explosives, without examination by the Bureau of Explosives, on the basis of test data, foreign competent authority or other suitable information. The second paragraph would permit the import of explosives by either air or sea without a DOT approval provided that the Associate Director for HMR is satisfied that the approval issued by the competent authority of the country in which the shipment originates is satisfactory. Only foreign competent authority approvals would be accepted which are issued pursuant to either the UN Recommendations or national or international regulations based on, and consistent with, the UN Recommendations such as the ICAO Technical Instructions or the International Maritime Dangerous Goods Code (IMDG Code).

Section 175.10

Consistent with recently adopted changes to the ICAO Technical Instructions the existing exception from the HMR for installed carbon dioxide cylinders used to power mechanical limbs would be modified to permit passengers to carry spare cylinders, and a new exception would be added to permit passengers to carry in checked baggage not more than one catalytic hair curler containing hydrocarbon gas.

Section 175.33

The requirements for information to be contained in the notification to pilot-in command would be modified to include a specific provision to advise the pilot when hazardous materials are being carried under the terms of an exemption. Although this requirement has just been added to the ICAO Technical Instructions, such information is already required to appear in the notification by § 175.33(a)(1)(i) when a hazardous material is described on the notification in accordance with § 172.101. The proposed new paragraph would explicitly state that similar information must be included in the notification when a hazardous material is described in accordance with the ICAO Technical Instructions as permitted by § 175.33(a)(i) (ii).

Section 175.78

Note 3 to the table which provides the segregation requirements for hazardous materials loaded abroad would be amended to reflect changes to the segregation of explosives of different

compatibility groups that were recently adopted by the United Nations Committee of Experts on the Transport of Dangerous Goods and subsequently by ICAO.

Section 175.630

Paragraph (a) of this section would be revised to relax the current requirement for segregation of poisons and etiologic agents from foodstuffs by permitting poisons or etiologic agents to be carried in a closed unit load device which may be stowed adjacent to a closed unit load device containing foodstuffs. Currently a separation of one intervening unit load device is required between poisons or etiologic agents and foodstuffs, and this separation would still be required if either the poisons or etiologic agents, or the foodstuffs, are loaded in other than a closed unit load device. This change would reflect changes recently adopted for incorporation in the 1984 edition of the ICAO Technical Instructions.

Finally, it should be noted that it is the intent of the MTB that any amendment to the HMR adopted as a result of these proposals should become effective on January 1, 1984, in order to coincide with the January 1, 1984, date established by ICAO as the implementation date for the 1984 edition of the Technical Instructions.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

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, it is proposed to amend Parts 171, 172, 173 and 175 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), 1984 edition.

2. In § 171.8 a new definition for "Competent authority" would be added in appropriate alphabetical order to read:

§ 171.8 Definitions and abbreviations.

"Competent authority" means a national agency responsible under its national law for the control or regulation of a particular aspect of the transportation of hazardous materials (dangerous goods). The term "Appropriate authority", as used in the ICAO Technical Instructions, has the same meaning as "Competent authority". The Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau, is the United States Competent Authority for purposes of this subchapter and 46 CFR Parts 64 and 146.

3. In § 171.11, paragraph (d)(7) would be renumbered (d)(8), paragraphs (d)(4)(ii) and (d)(4)(iii) would be renumbered (d)(4)(iii) and (d)(4)(iv) respectively, paragraph (d)(4)(i) would be revised and new paragraphs (d)(4)(ii) and (d)(7) would be added to read:

§ 171.11 Use of ICAO Technical Instructions.

(d)

(4) When a hazardous material, that is regulated by this subchapter for transportation by highway, is transported by motor vehicle on a public highway under the provisions of this section, the motor vehicle must be placarded in accordance with Subpart F of Part 172 of this subchapter and the shipping paper must include—

(i) With the exception of hazardous materials in ICAO Class 6.1, Packaging Group III, and in ICAO Class 9, the name of the DOT hazard class most closely corresponding to the ICAO Class in association with the basic description required by the ICAO Technical instructions unless the shipping name contains the key word or words of the hazard class of the material;

(ii) The letters "ORM-E" in association with the basic description for a material in ICAO Class 6.1, Packing Group III or in ICAO Class 9, that is also a hazardous substance;

(7) If a United States variation is indicated in the ICAO Technical instructions for any provision governing

the transport of the hazardous material, the hazardous material is transported in conformance with that variation.

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

4. In § 172.512, the section heading and paragraphs (a) and (b) are revised to read:

§ 172.512 Freight containers and aircraft unit load devices.

(a) Capacity of 640 cubic feet or more. Each person who offers for transportation, and each person who loads and transports, a hazardous material in a freight container or aircraft unit load device having a capacity of 640 cubic feet or more shall affix to the freight container or aircraft unit load device the placards specified for the material in accordance with § 172.504. However,—

(1) The placarding exception provided in § 172.504(c)(1) applies to motor vehicles transporting freight containers and aircraft unit load devices,

(2) The placarding exception provided by paragraphs (c)(1) and (c)(2) of § 172.504 applies to each freight container and aircraft unit load device being transported for delivery to a consignee immediately following air or water shipment, and

(3) Placarding is not required on a freight container or aircraft unit load device if it is only transported by air and is identified as containing a hazardous material in the manner provided in Part 5, Chapter 2, Section 2.7, of the ICAO Technical Instructions.

(b) Capacity less than 640 cubic feet. Each person who offers for transportation by air, and each person who loads and transports by air, a hazardous material in a freight container or aircraft unit load device having a capacity of less than 640 cubic feet shall affix one placard of the type specified by paragraph (a) of this section unless the freight container or aircraft unit load device—

(1) is labeled in accordance with § 172.406(e)(3);

(2) Contains radioactive materials requiring the Radioactive Yellow III label and is placarded with one Radioactive placard and is labeled in accordance with § 172.406(e); or,

(3) Is identified as containing a hazardous material in the manner provided in Part 5, Chapter 2, Section 2.7, of the ICAO Technical Instructions.

When hazardous materials are offered for transportation, not involving air transportation, in a freight container having a capacity of less than 640 cubic feet, the freight container need not be placarded. However, if not placarded it must be labeled in accordance with Subpart E of this part.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. In § 173.6, a new paragraph (d) would be added to read:

§ 173.6 Shipments by air.

(d) No person may offer for transportation aboard aircraft an overpack containing hazardous materials which require segregation under the provisions of § 175.78 of this subchapter.

6. In § 173.86, paragraph (c)(2) would be amended by replacing the words "paragraph (d) or (e)" with the words "paragraph (d), (e), (f) or (g)", paragraph (d) would be revised by removing the words "and approval" and new paragraphs (f) and (g) be added to read:

§ 173.86 New explosives definitions; approval and notification.

(f) Notwithstanding the provisions of paragraph (b) or (d) of this section, the Associate Director for Hazardous Materials Regulation may approve a new explosive on the basis of appropriate information supplied to him by a shipper or manufacturer or on the basis of approvals issued for the explosive by the competent authority of a foreign government, or may authorize the transportation of an explosives sample for the purpose of examination by the Bureau of Explosives.

(g) Notwithstanding the provisions of paragraph (b) of this section, an explosive may be transported under the provisions of §§ 171.11, 171.12 or 176.11 without the approval of the Associate Director for Hazardous Materials Regulation provided that the Associate Director for Hazardous Materials Regulation has acknowledged, in writing, the acceptability of an approval issued by the competent authority of a foreign government pursuant to the provisions of the UN Recommendations, the ICAO Technical Instructions, the IMDG Code or other national or international regulations based on the provisions of the UN Recommendations. In such cases, a copy of the approval of the foreign competent authority, and a

copy of the written acknowledgement of its acceptability must accompany the shipment.

PART 175—CARRIAGE BY AIRCRAFT

7. In § 175.10, paragraph (a)(18) would be amended and a new paragraph (a)(21) added to read:

§ 175.10 Exceptions.

(a) * * *

(18) Carbon dioxide gas cylinders worn by passengers for the operation of mechanical limbs and spare cylinders of a similar size for the same purpose in sufficient quantities to insure an adequate supply for the duration of the journey.

(21) Catalytic hair curlers containing hydrocarbon gas, not more than one per passenger or crew member, when carried in checked baggage, 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.

8. In § 175.33, a new paragraph (a)(6) would be added to read:

§ 175.33 Notification of pilot-in-command

(a) * * *

(6) An indication, when applicable, that a hazardous material is being carried under terms of an exemption.

§ 175.72 [Amended]

9. In § 175.72, Note 3 to Table 1 would be revised by removing the period at the end of the note and adding the words "except that compatibility groups C, D and E may be stowed together. Explosives of ICAO Division 1.4, Compatibility Group S may be stowed with explosives of all compatibility groups with the exception of A and L."

10. In § 175.630, paragraph (a) would be revised to read:

§ 175.630 Special requirements for poisons and etiologic agents.

(a) Hazardous materials bearing the POISON or ETIOLOGIC AGENT label may not be carried in the same compartment of an aircraft with material which is marked as or known to be foodstuffs, feed, or any other edible material intended for consumption by humans or animals unless either the poisons or etiologic agents and the foodstuffs, feed, or other edible materials are loaded in separate unit load devices which, when stowed on the aircraft, are not adjacent to each other, or the poisons or etiologic agents are loaded in one closed unit load device and the foodstuffs, feed or other edible materials are loaded in another closed unit device.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) 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 July 29, 1983.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

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