



DEPARTMENT OF TRANSPORTATION
MATERIALS TRANSPORTATION BUREAU
WASHINGTON, D.C. 20590

16459

**Materials Transportation Bureau
Office of Hazardous Materials Operations
[49 CFR Parts 172, 175]**

[Docket No. HM-149; Notice 77-2]

AIR TRANSPORTATION OF SMALL QUANTITIES OF MATERIALS EXHIBITING VERY LOW LEVELS OF RADIATION

Proposed Exemption Renewal

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of proposed exemption renewal.

SUMMARY: The Materials Transportation Bureau (MTB) proposes to renew for two years the limited exemption, which is now found at 49 CFR 175.10(a)(6), for air transportation of small quantities of materials exhibiting very low levels of radiation, and to except from shipping paper and shippers' certification requirements only those materials shipped as a component part of an instrument or a manufactured article.

DATES: Comments must be received on or before April 22, 1977.

RESSES: Comments must be submitted to the Docket Section, Office of Hazardous Materials Operations, Department of Transportation, 2100 2nd Street SW., Washington, D.C. 20590, where they will be available for public viewing both before and after the closing date.

FOR FURTHER INFORMATION CONTACT:

Director, Office of Hazardous Materials Operations, 2100 2nd Street SW., Washington, D.C. 20590 (phone 202-426-0656). Primary drafters of this proposal are Douglas A. Crockett and Alfred W. Grella.

SUPPLEMENTARY INFORMATION: Effective until May 3, 1977, small quantities of radioactive materials otherwise qualifying for marking, labeling and packaging exceptions under 49 CFR 173.391 are excepted by § 175.10(a)(6) from the remaining requirements of Subchapter C when transported by air.

The § 175.10(a)(6) exception was published two years ago (49 FR 5168, February 4, 1975; 40 FR 17141, April 17, 1975) as 14 CFR 103.1(c)(4), excepting such small quantities from application

of Part 103. It was republished on April 15, 1976 (41 FR 15972) as an exception only to requirements of 49 CFR Part 175. On December 30, 1976 (41 FR 57018), the exception was modified to except such air shipments from all of the requirements of Subchapter C. That amendment was made necessary by uncertainty over the effect on the exception of other parts of Subchapter C of 49 CFR, uncertainty which arose as a result of the transfer of the exception from 14 CFR to 49 CFR.

Conforming with § 107 of the Act (49 U.S.C. 1806) governing exemptions, the § 175.10(a)(6) exception, like its predecessor 14 CFR 103.1(c)(4), is limited to a two-year life unless reexamined and renewed. As was the case with 14 CFR 103.1(c)(4) which became effective on May 3, 1975, § 173.10(a)(6) will terminate unless renewed on May 3, 1977. The MTB proposes to renew it on a finding that renewal is consistent with the public interest and the policy of the Act. Renewal is proposed with the following modifications.

Upon renewal, the text of the exception for radioactive materials qualifying under § 173.391(a) will appear as a new paragraph designated § 175.10(b). The effect of this change will be to require shipping papers and shippers' certifications for air shipment of materials which are not a component part of an instrument or manufactured article. Air shipments of instruments and manufactured articles containing small amounts of radioactive materials will continue to be excepted by § 175.10(a)(6) from the requirements of the subchapter, including shipping paper requirements. The difference in proposed treatment of such materials reflects the fact that low-level radioactive materials incorporated in instruments (timepieces, electronic tubes, smoke detectors, and similar devices) are component parts of those items and are in a nondispersible form.

The text of proposed § 175.10(a)(6) and (b) is updated to reference § 173.391 as of the effective date of renewal, because that section has remained essentially unchanged since the exception was first published in 1975. The reference to § 175.10(a)(6) in § 172.204(c)(4), concerning certification as to intended use, is proposed to be changed to read

"§ 175.10(b)", and the parallel reference to § 175.10(a)(8) is proposed for deletion, since articles addressed in § 175.10(a) are presently not subject to Subchapter C.

Comments received through April 22 will be considered prior to final issuance. The effective date of the final amendment will be May 3, 1977, which due to the lateness of this notice will be less than 30 days after final publication. However, because the proposed requirement for shipping papers and shippers' certification for § 173.391(a) materials is new, mandatory compliance with that requirement will be delayed for at least six weeks beyond May 3.

In accordance with the foregoing, it is proposed to amend Parts 172 and 175, Title 49, Code of Federal Regulations, as follows:

**PART 172—HAZARDOUS MATERIALS
TABLE AND HAZARDOUS MATERIALS
COMMUNICATION REGULATIONS**

§ 172.204 [Amended]

1. In § 172.204, paragraph (c)(4) is amended by changing the last sentence to read, " * * * This requirement does not apply to materials excepted under the provisions of § 175.10(b) of this subchapter."

PART 175—CARRIAGE BY AIRCRAFT

2. In § 175.10, paragraph (a)(6) is revised and paragraph (b) added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(6) Prior to May 3, 1979, radioactive materials which meet the requirements of § 173.391(b) or (c) of this subchapter, in effect on May 3, 1977.

(b) Prior to May 3, 1979, this part does not apply to radioactive materials which meet the requirements of § 173.391(a) of this subchapter, in effect on May 3, 1977.

(49 U.S.C. 1803, 1804, 1806, 1808; 49 CFR 1.53(e).)

NOTE.—The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C., on March 23, 1977.

ALFRED W. GRELLA,
Acting Director, Office of
Hazardous Materials Operations.

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