



DEPARTMENT OF TRANSPORTATION
HAZARDOUS MATERIALS REGULATIONS BOARD
WASHINGTON, D.C. 20590

HM-96

8161

[Docket No. HM-96; Amdt. Nos. 171-18,
173-72]

**PART 171—GENERAL INFORMATION AND
REGULATIONS**

PART 173—SHIPPERS

Etiologic Agents

On July 22, 1972, and November 29, 1972, the Hazardous Materials Regulations Board published two notices, (1) 72-9 and (2) 72-13, respectively, in Docket No. HM-96 (37 FR 14728 and 25243). Interested persons were invited to comment on the proposals they contained.

1. Notice 72-9 proposed to require direct reporting to the Center for Disease Control (CDC) of the Department of Health, Education, and Welfare in the case of fire, breakage, spillage, or suspected contamination involving etiologic agents. This report was proposed to replace the immediate report to this Department required by § 171.15 for certain hazardous materials incidents.

Comments were about equally divided in their position for or against the proposal. However, those commenters voicing their opinion against the proposal set their objections on the difficulties carriers to maintain separate emergency telephone numbers for incidents involving different hazardous materials. Because of a higher probability of confusion, safety in transportation of hazardous materials could suffer. In addition, the public should not be required to make two phone calls, reporting the same matter.

The Board finds that the objections are valid and that, as much as possible, it should not establish rules that would cause proliferation of telephone numbers. Therefore, the amendment provides that reports must be made either to the Department of Transportation or to the CDC. The Board still recognizes the importance of quickly informing the CDC should a report be made to DOT and not CDC. Consequently, the Board has made arrangements to assure that any immediate reports it receives on etiologic agents will be promptly relayed to the Center for Disease Control. Accordingly, the rule has been changed to require reporting to DOT as specified for other hazardous materials. However, any immediate report made directly to CDC will constitute compliance with the regulations without the requirement for an additional call to the Department.

2. Notice 72-13 proposed to authorize that quantities of etiologic agents of less than 50 ml in one outside packaging be exempt from the Hazardous Materials

Regulations. Several comments were received on the proposal and each commenter agreed except one, the Atomic Energy Commission. That Commission stated in part: "[h]owever, to exempt them from the regulations in toto by listing them in § 173.386(d) seems to be contrary to the interest of public safety. They should be controlled and regulated, not exempted. They should be allowed on passenger-carrying aircraft by specific provisions for their safe transportation, not by deleting all requirements for their safe packaging and labeling."

The Board has carefully considered the comments from the AEC, which objected in part to the proposed amendment, and all the other comments from other authorities supporting the amendment, and has determined in the interest of public safety, to promulgate the amendment with the exemption. It is to be noted, however, that exempt quantities of etiologic agents will still be regulated by other agencies. The Board specifically stated in the preamble to Notice 72-13 that "[t]his action would have no effect on the present Department of Health, Education, and Welfare regulations on etiologic agents which continue to apply to the packaging of these substances." The petition of CDC and the Board's proposal were based on the fact that the packaging and labeling requirements of 42 CFR 72.25 will continue to apply. No comments or objections were received regarding these packaging requirements.

The Food and Drug Administration of the Department of Health, Education, and Welfare noted that it is of critical importance to the public health that it be permitted to ship samples for analysis, including suspect food products and quality assurance samples, on passenger-carrying aircraft. It requested that § 173.386(d) be amended to list "samples for analysis" as an additional exemption. This request is outside the scope of the present rulemaking and will be covered in a separate notice of proposed rulemaking.

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

1. In § 171.15, paragraph (a)(5) and the introductory text of paragraph (b) are amended; paragraph (a)(6) is added as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) * * *

(5) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

(6) A situation exists of such a nature that, in the judgment of the carrier, it should be reported in accordance with paragraph (b) of this section even though it does not meet the criteria of paragraph (a)(1), (2), or (3) of this section; e.g., a continuing danger of life exists at the scene of the incident.

(b) Each notice required by paragraph (a) of this section shall be given the Department by telephone at Area Code (202) 426-1830. Notice involving etiologic agents may be given the Director, Center for Disease Control, U.S. Public Health Service, Atlanta, Ga., Area Code (404) 633-5313, in place of the notice to the Department. Each notice must include the following information:

2. In § 173.386, paragraph (d)(3) is added to read as follows:

§ 173.386 Etiologic agents; definition and scope.

(d) * * *

(3) Cultures of etiologic agents of 50 milliliters (1.666 fluid ounces) or less total quantity in one outside package.

This amendment is effective June 30, 1973. However, compliance with the regulations, as amended herein, is authorized immediately.

(Secs. 831-835 title 18, United States Code; sec. 9 Department of Transportation Act, 49 U.S.C. 1657; Title VI sec. 902(h) Federal Aviation Act of 1958, 49 U.S.C. 1421-1430, 1472(h), and 1655(c))

Issued in Washington, D.C., on March 23, 1973.

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Board Member for the
Federal Aviation Administration.

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