DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM–224, Amdt No. 171–146, 173–254]

RIN 2137–AC89

Temporary Prohibition of Oxygen Generators as Cargo in Passenger Aircraft

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule.

SUMMARY: To protect life and property, RSPA is issuing an interim final rule temporarily prohibiting the offering for transportation and transportation of oxygen generators as cargo in passenger-carrying aircraft. This rule applies to both foreign and domestic passenger-carrying aircraft entering, leaving or operating in the United States and to any person offering an oxygen generator for transportation on any passenger-carrying aircraft.

DATES: *Effective date*: This interim final rule is effective May 24, 1996.

Comment date: Comments must be received by July 23, 1996.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, room 8421, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in the Department of Transportation headquarters building (NASSIF Building) at the above address on the eighth floor. Public dockets may be reviewed there between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William E. Vincent, Acting Director, Office of Policy and Program Support, (202) 366–4831, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Under a Secretarial delegation (49 CFR 1.53(b)), the Research and Special Programs Administration (RSPA) is the administration within the Department of Transportation (DOT) primarily responsible for issuing regulations implementing the Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127. Under this delegated authority, RSPA has issued the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

Under delegations from the Secretary of Transportation (49 CFR Part 1), the authority for enforcement under the Federal hazmat law is shared by RSPA and each of four modal administrations: the Federal Highway Administration, the Federal Railroad Administration, the Federal Aviation Administration (FAA), and the United States Coast Guard. FAA has primary enforcement authority concerning transportation and shipments of hazardous materials by air. 49 CFR 1.47(k).

The National Transportation Safety Board and the FAA are investigating a recent accident involving a passenger-carrying aircraft. Preliminary evidence indicates that oxygen generators (chemical) were carried as cargo on board the aircraft and may have caused, or contributed to the severity, of the accident. Oxygen generators are safely installed inside thermal protective casings in the cabins of many passenger-carrying aircraft to provide oxygen in emergencies to passengers and certain crew members.

Some persons have offered, and some air carriers have transported, uninstalled generators as cargo on passenger-carrying aircraft under authority in the HMR, including §§ 175.10(a)(2) and 171.11 (which authorizes use of the International Civil Aviation Organization (ICAO) Technical Instructions).

In order to preclude the possibility that an oxygen generator carried as cargo may cause or contribute to a future incident in air commerce, RSPA is issuing this interim final rule prohibiting until January 1, 1997, with one exception, transportation in passenger-carrying aircraft, and offering for transportation in passenger-carrying aircraft, any oxygen generator as cargo. This regulation applies to both foreign and domestic aircraft entering, leaving or operating in the United States and to any person offering an oxygen generator for transportation on any of those aircraft as cargo.

This regulation applies to oxygen generators (chemical) and not to cylinders containing compressed oxygen. Unlike oxygen generators (chemical), compressed oxygen cylinders do not involve heat-producing mixing of chemicals to create oxygen. To clarify the applicability of the prohibition in this rule, RSPA is adding a definition of ''oxygen generator (chemical)'' to 49 CFR § 171.8. That definition reads ''a device containing chemicals that upon activation release oxygen as a product of chemical reaction.''

Exceptions to the prohibition are provided for an oxygen generator for medical use of a passenger that is carried in the passenger cabin and meets the specific safety requirements of § 175.10(a)(7) and for a small oxygen generator for personal use that is transported as checked baggage and meets the specific safety requirements of § 175.10(a)(24).

Because of the potential safety risk posed by continued transportation of oxygen generators as cargo in passenger-carrying aircraft, RSPA has determined that good cause exists for making this rule effective less than 30 days from its issuance and that notice and comment is impractical and contrary to public interest.

Based on currently available information, RSPA believes that at least a temporary ban on offering and transportation of the generators is justified on an emergency basis because of the potential for loss of life and damage to property. Although an opportunity for public comment on this rule has not been provided prior to issuance of this interim final rule, RSPA seeks public comment. Based on comments received, NTSB and FAA investigation, and RSPA and FAA joint inspection of contract maintenance vendors, RSPA may make the ban permanent, terminate or modify the ban, or otherwise amend the provisions of this rule. As an interim final rule, however, this regulation is in effect and binding upon publication in the Federal Register.

RSPA encourages interested persons to participate in this rulemaking by submitting written views, data and information concerning this interim final rule. Commenters should provide a reason or basis for each comment. RSPA will consider all public comments and will make changes to this rule if public comments indicate a change is necessary.

II. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore is subject to review by the Office of Management and Budget. The rule is significant according to the Regulatory Policies and Procedures of

the Department of Transportation (44 FR 11034).

The changes adopted in this rule should not result in any significant additional costs to persons subject to the HMR. About 150,000 of these oxygen generators are installed on about 1,000 U.S. passenger-carrying aircraft. Because of their typical effective life of about ten years, it is not necessary to frequently transport these generators as uninstalled or not-in-use materials. In addition, alternative transportation is available for these generators because this rule does not prohibit or inhibit their transportation by highway, rail, water or cargo aircraft. Because of the minimal economic impact of this rule, a full regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism'') and does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule imposes a limited prohibition on certain persons subject to the HMR. However, there are limited adverse economic impacts on small businesses or other organizations.

Paperwork Reduction Act

There are no information collection requirements in this final rule.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR Parts 171 and 173 are amended 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. 5101–5127, 44701; 49 CFR 1.45, 1.53.

2. In § 171.8, a definition for ''oxygen generator (chemical)'' is added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Oxygen generator (chemical) means a device containing chemicals that upon activation release oxygen as a product of chemical reaction.

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PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

4. In § 173.21, paragraph (k) is added to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(k) Notwithstanding any other provision of this subchapter, including §§ 171.11 and 175.10(a)(2) of this subchapter, an oxygen generator (chemical) as cargo on a passenger-carrying aircraft until January 1, 1997. This prohibition does not apply to an oxygen generator for medical or personal use of a passenger that meets the requirements of § 175.10(a)(7) or § 175.10(a)(24) of this subchapter.

Issued in Washington, DC on May 23, 1996 under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 96–13404 Filed 5–23–96; 12:31 pm]

BILLING CODE 4910–60–P