



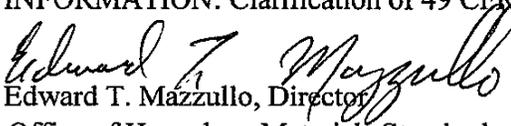
# Memorandum

U.S. Department  
of Transportation  
Research and  
Special Programs  
Administration

Date: DEC 27 2000

Reply to Attn. of: Ref. No. 00-0150

Subject: INFORMATION: Clarification of 49 CFR 175.85(c)(2)

From:   
Edward T. Mazzullo, Director  
Office of Hazardous Materials Standards

To: William Wilkening, Manager  
Cargo Security and Dangerous Goods Program

This is in response to your memorandum concerning the term "impracticable" as used in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask for clarification of the term "impracticable" as the term applies to § 175.85(c)(2).

## Provisions of § 175.85

Section 175.85 specifies cargo location for the transport of hazardous materials on aircraft.

- ▶ Section 175.85(a) prohibits the location of a hazardous material in the passenger cabin or on the flight deck of any aircraft and specifies conditions by which hazardous materials may be carried in main-deck cargo compartments. There are no exceptions to these requirements.
- ▶ Section 175.85(b) requires a hazardous materials package acceptable for cargo-only aircraft be loaded so that each package is accessible to a crew member.
- ▶ Section 175.85(c)(1)(i) through (v) provides exceptions for cargo-only operations from the quantity limitations of § 175.75(a)(2) and accessibility requirements of § 175.85(b) for the hazardous materials listed.
- ▶ Section 175.85(c)(2) provides exceptions to the accessibility requirement of § 175.85(b) and the quantity limitation requirements of § 175.75(a)(2) for hazardous materials acceptable for both cargo-only and passenger-carrying aircraft. The exception applies when other means of transportation are impracticable, and provides that packages must be carried in accordance with procedures approved in writing by the nearest FAA Civil Aviation Security Field Office.



00-0150

175.85

- ▶ Section 175.85(c)(3)(i) through (iii) sets forth conditions under which a small, single-pilot, cargo-only aircraft carrying a hazardous material when other means of transportation are impracticable or unavailable is excepted from the accessibility requirements of § 175.85(b) and the quantity limits of § 175.75. These exceptions may be invoked when a small aircraft is the only means of transporting hazardous materials to a particular destination, including locations that are incapable of supporting larger aircraft operations. These exceptions do not require approval by the FAA.

The term, "impracticable"

As set forth in your May 10, 2000 memorandum, your understanding of the term "impracticable" is correct. For purposes of § 175.85, "impracticable" means that transportation is not physically possible or, cannot be performed by routine and frequent means of other transportation due to extenuating circumstances. Extenuating circumstances include conditions that preclude highway or water transportation, such as a frozen vessel route, road closures due to catastrophic weather or volcanic activity, or a declared state of emergency. Other means of transportation would also be "impracticable" if special characteristics of the material being shipped would render it useless upon arrival if transported by means other than aircraft, such as for time sensitive radio pharmaceuticals, or if air transportation of hazardous materials was necessary due to an emergency.

Your memorandum also related a scenario and interpretation by an air carrier of the term "impracticable," as follows:

In order for a package to get from Kansas City, Missouri, to Klamath Falls, Oregon, on an overnight basis, it must be flown on an aircraft. The package can be transported by other modes, but in a greater length of time. Therefore, transporting the package by any other mode of transportation is "impracticable."

This interpretation is not correct. In the scenario, other forms of transportation are possible, routine and frequent, and do not render the hazardous material useless upon arrival at its destination. The desire of a shipper, carrier, or consignor for expedience is not relevant to the determination of whether other means of transportation are impracticable unless the need for expedient transportation is due to an emergency.

If you believe these provisions need further clarification in the HMR, we invite you to participate with our Office to identify any changes that should be made.

#



U.S. Department  
of Transportation  
Federal Aviation  
Administration

# Memorandum

Nelson  
§ 175.85  
00-0050

Subject: **ACTION:** Request for Interpretation of the applicability of 49 CFR 175.85(c)(2).

Date: MAY 15 2000

From: Manager, Dangerous Goods and Cargo Security Division, ACO-800

Reply to  
Attn. of:

To: Edward Mazzullo, Director, Office of Hazardous Material Standard, DHM-10

I am forwarding an inquiry received by this office requesting an interpretation of the definition of "impracticable" as stated in 49 CFR 175.85(c)(2).

As stated in the attached memorandum from our Northwest Mountain Region, some air carriers are invoking this rule when it is "economically impracticable" or in the case of overnight deliveries when it is "logistically impracticable" to ship via another mode.

We believe these interpretations to be incorrect and that the intent of this regulation is to ensure that hazardous materials that can be transported by truck, rail or water should be so transported by these modes when they cannot normally be carried by air due to their classification, quantity, or both.

Can you publish a clarification of the "impracticable" standard in the Federal Register so we can cite it in subsequent enforcement actions?

William G. Wilkening

Attachment



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

# Memorandum

Subject: ACTION: Request for Interpretation of "Impracticable"  
with Regard to the Carriage of Inaccessible Dangerous  
Goods Aboard Cargo Only Aircraft

Date: MAY 10 2000

From: Manager, Civil Aviation Security Division, ANM-700

Reply to  
Attn. of:

To: Manager, Dangerous Goods/Cargo Security Program,  
ACO-800

Recently, while doing an assessment of Empire Airlines in Portland, Oregon, our DG/CS agent noticed that Empire was loading non-excepted hazardous materials into locations that were inaccessible to the flight crew on the aircraft, in violation of the requirements of 49 CFR 175.85, (see 49 CFR 175.85 [b]). The materials being loaded did not match the description of certain excepted materials listed in 175.85 (c) (1). Empire Airlines is one of many feeder operators for Federal Express and operates Cessna Caravan equipment.

Our DG/CS agent in Portland has reported to our ANM DG/CS Coordinator that conversations with FedEx DG Specialist, David Littlejohn, and DG Specialist for Empire Airlines, Del Randels, suggest that these carriers and possibly many more are interpreting the word "IMPRACTICABLE" from an economic point of view, rather than the impracticable logistical concerns which we believe this regulation 175.85 (C) (2) is intended to address.

The interpretation of Littlejohn and Randels is that if you have a package that needs to get from Kansas City, Missouri, to Klamath Falls, Oregon, on an overnight basis, the only practical way to do this is to fly it on an aircraft. Other modes that could transport the package in a greater length of time are by Littlejohn and Randels definition, **Impracticable**.

We believe this interpretation to be **incorrect** and that the intent of this regulation is to ensure that hazardous materials that can be transported by truck, rail, or water should be so transported by these modes when they cannot normally be carried by air due to their classification, quantity, or both. When air transport is the **ONLY** mode that can actually transport the material to a destination, the air carrier must develop procedures that are approved in writing by the nearest Civil Aviation Security Field Office (CASFO) or regional office. These procedures, if deemed safe, would authorize the materials to be carried in larger quantities than normally allowed and to be inaccessible to the crew in flight.

This scenario has often been used in the States of Alaska and Hawaii when aircraft transport time sensitive items such as radioactive pharmaceuticals, etc. Also, other small air carriers in many regions may have special procedures in their approved "WILL CARRY" dangerous goods manuals, e.g., to transport large containers of propane to mountain top sites for the purpose of running generators where other transportation means are unavailable or impracticable, etc.

49 CFR 175.85 (c) (2), directs that "when packages of hazardous materials acceptable for cargo-only or passenger-carrying aircraft are carried on cargo aircraft only where other means of transportation are "IMPRACTICABLE" or not available, packages may be carried in accordance with procedures approved in writing by the FAA Air Transportation Security Field Office responsible for the operator's overall aviation security program or the FAA Air Transportation Security Division in the region where the operator is located."

Webster's dictionary defines the word "IMPRACTICAL" as "not practical, not wise to put into or keep in practice or effect."

Webster's dictionary defines the word "IMPRACTICABLE" as "not practical, incapable of being performed or accomplished by the means employed or at command."

The ANM DG/CS Coordinator has checked with the ASO DG/CS Coordinator and has found that ASO has not issued any special exceptions to FedEx, and ANM DG/CS Coordinator has not issued any special exception to Empire Airlines to carry dangerous goods in a cargo-only aircraft in inaccessible locations.

Attached you will find interpretations regarding 49 CFR Parts 175.75 and 175.85. RSPA acknowledges in both of these interpretations that these two parts of the regulations are confusing and that they are intended to be clarified in a future rulemaking.

I would appreciate an official interpretation from your office as soon as possible. It is possible that this misconception/misapplication of these regulations have become a trend and could be widespread among the overnight package carriers, their feeder contract carriers, and other parties.



George C. Paul

Attachments

file: 175.75  
- sub: 412



DGI Training Center-East  
P O Box 1283  
Amelia Island, FL 32035



904-321-0874 ■ Fax 904-321-1801

29 July 1996

Mr. Delmer F. Billings  
Chief, Regulations Development  
Office of Hazardous Materials Standards

Dear Mr. Billings,

Thank you for your response to my inquiries regarding 175.75(a)(2). I believe I did not ask the questions correctly, therefore I did not receive the answers to help me understand the regulation. I have included your response for reference.

I understand that if a package is packed according to passenger aircraft packing instructions and is loaded on a cargo aircraft in an inaccessible position, it will be limited to 25kg net for Hazmat and 75kg net for non-flammable gases. 175.75 (a)(2)(iii) goes on to say unless in a freight container.

Question 1 How much then is allowed if it is in a freight container? (assume the package is within the limits specified in Table 172.101)

Question 2 175.75 states specifically it is for items which are allowed on a passenger carrying aircraft. If I have a package prepared according to a cargo aircraft only packing instruction and is within the limits under Table 172.101, what is the limit in an inaccessible hold or position which makes it inaccessible to the crew during flight?

Example: A shipper has a Class 3 item, in Packing Group III, without a subrisk. It is perfectly prepared for a passenger aircraft. It is being transported on a cargo aircraft in an inaccessible position. It will be limited to the 25/75 limitations. I have the same substance, this time it has been packed within the limits for cargo aircraft only and has been tendered to an all cargo carrier.

Will the package prepared under the cargo only limitations be limited to the 25/75 aircraft limitations?

*Handwritten signature/initials*  
9/18/96

Is my interpretation correct in that the passenger quantity will have to follow the 25/75 aircraft limitation while the cargo only shipment will not have a compartment limitation and will not have to be accessible to the crew? Seems very contradictory. A package with perhaps a smaller amount than the cargo only shipment will be limited while the perhaps larger quantity for cargo only will not have to follow the compartment limitation.

I await your reply.

Sincerely,

*Candy L. Cook*

Candy L. Cook  
DGI Training Center

Q10270  
2458



U.S. Department  
of Transportation

Research and  
Special Programs  
Administration

JUN 17 1998

400 Seventh Street, S.W.  
Washington, D.C. 20590

BB-0043

Ms. Candy L. Cook  
DGI Training Center  
P.O. Box 1283  
Amelia Island, FL 32035

Dear Ms. Cook:

This is in response to your letter requesting clarification of quantity limits for carriage on cargo-only aircraft of hazardous materials which are acceptable for carriage on passenger-carrying aircraft. I apologize for the delay in responding.

Your questions are paraphrased and answered as follows:

**Question 1. Packages of hazardous materials acceptable on passenger-carrying aircraft which are stowed aboard a cargo-only aircraft in an inaccessible cargo compartment or in an inaccessible manner within an accessible cargo compartment are limited to 25 kilograms (kg) net weight of hazardous material (and in addition thereto 75 kg net weight of Division 2.2). What is the limitation if the hazardous materials are placed in one or more freight containers aboard the cargo-only aircraft?**

If the cargo compartment is accessible, 49 CFR 175.75(a)(2)(ii) permits 25 kg of hazardous materials (reference to the Division 2.2 limit will be ignored for the sake of simplicity) in each freight container, regardless of the number of containers in the compartment. If the cargo compartment is inaccessible, the 25 kg limit applies to the cargo compartment.

**Question 2. Is a Class 3, Packing Group III, material -- which is within quantity limits and is acceptable for carriage aboard passenger-carrying aircraft -- subject to the 25 kg limit when transported aboard cargo-only aircraft in an inaccessible cargo compartment or in an inaccessible manner within an accessible cargo compartment? Is the same shipment subject to the 25 kg limit if it is offered as acceptable only on cargo aircraft and labeled CARGO AIRCRAFT ONLY?**

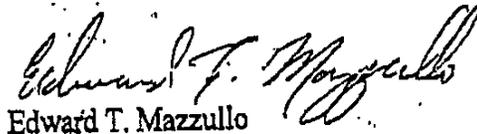
Section 175.85(c)(1) provides a quantity limit exception from both 49 CFR 175.75(a)(2) and 175.85(b) for Class 3, Packing Group III materials. Therefore, the shipment is not subject to the 25 kg limit regardless of whether it is offered as acceptable for passenger-carrying aircraft or cargo aircraft only.

AP1872  
Q458

Your inquiry highlights two points with regard to the provisions of 49 CFR 175.85. First, although the intent of 49 CFR 175.85(c)(1) is to provide exceptions from both the 49 CFR 175.75(a)(2) quantity limits and the 175.85(b) requirement for accessible stowage, the introductory regulatory text of 49 CFR 175.85(c)(1) fails to specifically reference 49 CFR 175.75. We intend to correct this discrepancy in a future rulemaking. Second, for a material not eligible for the 49 CFR 175.85(c)(1) exceptions, such as a Class 8 material, a shipment which is acceptable for carriage aboard passenger-carrying aircraft is subject to the 25 kg limit when transported aboard cargo-only aircraft in an inaccessible cargo compartment or in an inaccessible manner within an accessible cargo compartment. If the same shipment is offered as acceptable only on cargo aircraft and labeled CARGO AIRCRAFT ONLY, it may only be carried accessibly as required by 49 CFR 175.85(b).

I trust this satisfies your inquiry. If this office can be of further assistance, please contact us.

Sincerely,



Edward T. Mazzullo  
Director, Office of Hazardous  
Materials Standards

Approved  
8458

HAZMAT GURU CONSULTING/TRAINING INC  
6917 KIRKWOOD ROAD  
FORT WORTH, TX 76116-0420  
817-732-3810  
FAX: 817-732-2933

LaValle  
File: 175.25  
SC: 412

January 20, 1998

MR. EDWARD MAZZULO, DIRECTOR  
OFFICE OF HAZARDOUS MATERIALS STANDARDS  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION  
400 7TH STREET, SW  
WASHINGTON, DC 20590-0001

DEAR MR MAZZULLO:

SUBJECT: REQUEST FOR INTERPRETATION OF TITLE 49 CODE OF FEDERAL  
REGULATIONS PART 175.75 (a).

Basically our question is:

1. On a cargo only aircraft how many kilos of hazardous materials acceptable  
for passenger or cargo aircraft can be transported in an inaccessible cargo compartment or  
freight container ?

2. On a cargo only aircraft how many kilos of hazardous materials acceptable  
on for cargo aircraft only can be transported in an inaccessible cargo compartment or freight  
container ?

Thank for your consideration and if possible prompt response. This effects one of this  
company's customers involved in transportation of large amounts of hazardous materials on a  
daily basis and we need to assure that the correct interpretation is provided during training of  
aircraft loaders and flight crews.

Sincerely,

H.J. (JERRY) PACE  
PRESIDENT, CEO

Q P 1781  
2442



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

88-0164

JUN 26 1998

Mr. H.J. Pace  
President, CEO  
Hazmat Guru Consulting  
6917 Kirkwood Road  
Fort Worth, TX 76116-9420

Dear Mr. Pace:

This is in response to your letter requesting clarification of quantity limits for carriage on cargo-only aircraft of hazardous materials in inaccessible cargo compartment. I apologize for the delay in responding.

Your questions have been paraphrased and answered as follows:

**Question 1. How much hazardous material acceptable for passenger or cargo aircraft may be transported in an inaccessible cargo compartment or freight container?**

Passenger authorized hazardous materials that are carried aboard passenger aircraft in inaccessible compartments are limited by 49 CFR 175.75(a)(2)(i) to 25 kg. of hazardous materials (reference to the Division 2.2 limit will be omitted for the sake of simplicity) per compartment, whether in a freight container or not. Passenger authorized hazardous materials carried aboard cargo-only aircraft in inaccessible compartments or an inaccessible manner within an accessible compartment are limited to 25 kg. of hazardous material per compartment when not in freight containers. If a passenger authorized hazardous material is carried within freight containers in an accessible cargo compartment, they are limited to 25 kg. of hazardous material per freight container.

**Question 2. How much cargo-only authorized hazardous materials carried aboard cargo-only aircraft are allowed to be transported in an inaccessible cargo compartment?**

The answer is none. Section 175.85(b) prohibits the carriage of hazardous materials acceptable only for cargo aircraft from being carried in an inaccessible fashion. Except as provided in 49 CFR 175.85(c), hazardous materials prepared for transportation by cargo-only aircraft must always be accessible by the flight crew.

AP 1572  
Q 442

Your inquiry highlights some of the difficulty which has been experienced in interpreting §§ 175.75 and 175.85. We are currently examining all of the provisions of 49 CFR Part 175, and intend to correct discrepancies in a future rulemaking.

I trust this satisfies your inquiry. If this Office can be of further assistance, please contact us.

Sincerely,

*Edward T. Mazzullo*  
Edward T. Mazzullo  
Director, Office of Hazardous  
Materials Standards

AP 2062  
8442