PLAINTIFF'S EXHIBIT

UC-3530

INTERNAL CORRESPONDENCE

UNION CARBIDE CORPORATION

270 PARK AVENUE, NEW YORK, NEW YORK 10017

To (Name): See Attached Distribution List
Division
Location
Floor Number

Copy to

Date: April 3, 1979
Originating Dept.
Floor Number
Answering letter date

Subject: Transportation of Asbestos: DOT Docket No. HM-160

File: R.1.2.3 (HM-160)

Responding to several petitions for reconsideration, the Department of Transportation has announced revisions to its recently adopted regulations applicable to asbestos. As you will recall from my letter of December 8, 1978, the DOT, under Docket No. HM-160, amended the Hazardous Materials Regulations to include the transportation of "commercial asbestos."

In a notice published in the Federal Register on March 29, 1979 the DOT revised the regulations applicable to the packaging of "commercial asbestos" and extended the effective date of Docket HM-160 from April 30, 1979 to August 20, 1979.

With regard to the packaging requirements, the regulations, as revised, allow shipments of asbestos when packaged in:

(1) Rigid, airtight packagings such as metal or fiber drums, portable tanks. (See §173.1090(d)(1)

Note: As was the case when the regulations were originally published, covered hopper cars are not specifically identified as an approved container and the term airtight is not defined. Despite the following comment found in the "supplementary information" section of the notice - "The MTB has determined that freight containers and, probably, motor vehicles and rail cars (emphasis added) would not satisfy the requirements of §173.1090(d)(1)" - it is the writer's understanding that covered hopper cars are authorized under §173.1090(d)(1) provided such cars are airtight. This was confirmed with MTB's Delmer Billings in a phone conversation on April 2, 1979.

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By copy of this letter to Stan Hoffman, his comments are requested concerning the need for written confirmation from DOT that hopper cars are authorized.

(2) Bags or other non-rigid packagings in closed freight containers, motor vehicles, or rail cars that are:

(a) Loaded by and for the exclusive use of the consignor

(b) Unloaded by the consignee

(See §173.1090(d)(2)

Note: This provision does not require that packagings be dust and sift proof nor be palletized and unitized.

(3) Bags or other non-rigid packagings which are dust and sift proof and which are palletized and unitized by methods such as shrink wrapping in plastic film or wrapping in fiberboard secured by strapping. Provisions have been added for shipments via water allowing the use of slings which are shrink-wrapped or stretch-wrapped and transported without the use of pallets. (See §173.1090(d)(3)

Note: The intent of unitizing, as noted in the "supplementary information" section of the notice, extends beyond facilitating the handling of multiple packages of asbestos but also "...assists in the prevention of airborne asbestos contamination of individuals involved in the transportation of asbestos."

A copy of the amendment to Docket No. HM-160 is enclosed. If there are questions concerning its contents, please contact M. D. Michaud or the writer on extension 2523.

W. G. Kahler II

WGK:pd
Enclosure

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[4910-60-M]

Title 49—Transportation

CHAPTER I—RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-160; Amdt. No. 172-47, 173-123, 174-33, 175-7, 176-6, 177-44]

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Transportation of Asbestos; Revision of Amendment No. 173-123; Effective Date Extension

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Revision of previous Amendment No. 173-123 and extension of the effective date for all amendments.

SUMMARY: This revision of Amendment No. 173-123 regarding the transportation of asbestos as published on December 4, 1978, in the FEDERAL REGISTER (43 FR 56664) will allow shipments of asbestos when packaged in bags or other non-rigid packagings to be transported in closed freight containers, motor vehicles, or rail cars when loaded by the consignor and unloaded by the consignee; or in bags and other non-rigid packagings that are dust and sift proof which are palletized and unitized. Unitized loads in slings need not be palletized during transportation by vessel. The effective date of the entire Docket HM-160 is revised from April 30, 1979 to August 20, 1979.

EFFECTIVE DATE: August 20, 1979.

ADDRESS: All written comments received in this rulemaking action are available for examination during regular business hours in the Docket Branch, Room 6500, TransPoint Building, 2100 Second Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Delmer F. Billings, Standards Division, Materials Transportation Bureau, Research and Special Programs Administration, 2100 Second Street, S.W., Washington, D.C. 20590, phone 202-755-4902.

SUPPLEMENTARY INFORMATION: On December 4, 1978, the MTB published a final rule under Docket HM-160 in the FEDERAL REGISTER (43 FR 56664). Since this publication, the MTB has received several petitions for reconsideration in accordance with the provisions of 49 CFR 106.35. The petitions requested reconsideration of the provisions and/or extension of the effective date of the final rule. This document will incorporate methods of shipment which were identified in the notice of proposed rulemaking (43 FR 8562, March 2, 1978) and also those which were included in the final rule. These amendments represent minimum safety requirements and are intended to reduce the risks to public health associated with the generation of unacceptable airborne concentrations of asbestos that my result from packaging and handling of asbestos shipments in commercial transportation.

Two petitioners based their petitions on the fact that the final rule contained a provision requiring bags and other non-rigid containers of asbestos to be palletized and unitized by some method such as shrink-wrapping in plastic film or wrapping in fiberboard secured by strapping. It was noted that this requirement was not included in the notice of proposed rulemaking (43 FR 8562), thus making comments on this requirement impossible during the normal comment period for the proposed rulemaking. Petitioners also posed the question of whether or not freight containers, rail cars, etc., constituted rigid, airtight packagings as required in § 173.1090(d)(1). It was stated that if such containers were not included in this provision, all shipments of bags or non-rigid containers would be required to be palletized and unitized according to the provisions of § 173.1090(d)(2), and that this requirement would impose great hardship on the asbestos industry and on shippers

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of large volumes of asbestos who normally ship using exclusive use vehicles and rail cars. It was also indicated that neither the equipment nor facilities exist at the present time to achieve compliance with the palletizing and unitizing requirement of the final rule by the published effective date. The MTB has determined that freight containers and, probably, motor vehicles and rail cars would not satisfy the requirements of § 173.1090(d)(1).

By allowing the use of unitized pallet loads as identified in the final rule, the MTB intended to recognized less restrictive handling requirements for bagged asbestos than those that would have been required by the "loading by consignor/unloading by consignee" approach. However, it was not the intent of the MTB to eliminate the more restrictive consignor/consignee approach. Therefore, § 173.1090(d) is being revised to allow the option of either the consignor/consignee approach as identified in the original proposed rulemaking with inclusion of an exclusive use provision or the unitized pallet approach using bags or other non-rigid packagings as required by the final rule.

One petitioner noted that a method of shipment of asbestos via water was the use of slings which are shrink-wrapped or stretch-wrapped and transported in the hold of a vessel without the use of pallets. It was the petitioner's contention that the use of pallets would increase the incidents of unintentional release of asbestos due to the interaction of the pallets against the bags which are unitized by the slings. It was noted that pallets were used in all instances except when placed in the hold of the transport vessel. Given the lack of detailed data on the amount of asbestos fibers released in transportation and the circumstances and cause for such release, the MTB is in general agreement that increased unintentional releases may be likely if pallets were used under the method identified in the petition. Therefore, § 173.1090(d) is being revised to allow slings in loads that are shrink-wrapped or stretch-wrapped to be transported by water without the use of pallets. Future monitoring of hazardous materials incident reports will assist the MTB in determining the safety and efficiency of this and other methods for shipment of asbestos.

One petitioner suggested that the terms "pallet" and "palletized" be defined in the rulemaking. The MTB does not intend to publish a definition of pallet or palletized. It is the MTB's opinion that any rigid platform or board upon which goods may be placed for transportation would meet the requirements when unitizing a load of bags or other non-rigid packagings.

Several petitioners cited a need for the MTB to define the term "dust and sift proof". For the purposes of this amendment, the MTB considers dust and sift proof to mean packagings which are constructed so as to prevent the release of their contents either through materials of construction, seams, or closures during conditions normally incident to transportation.

One petitioner requested that the use of gluing of bags into a unit be allowed as an alternative to the unitizing methods identified in the final rule. It is the MTB's opinion that the use of shrink-wrapping or other similar methods of enclosure assist not only in unitizing a pallet load of bags or other non-rigid packagings, but also assist in the prevention of airborne asbestos contamination of individuals involved in the transportation of asbestos. Simply gluing these packagings together to form a unit would not provide this added measure of safety to which the final rule addresses itself. Therefore, gluing of bags into a unit is not being included as an alternative unitizing method.

One petitioner requested that quantities of less than 2,000 pounds, net weight, per vehicle be excepted from the palletizing and unitizing requirement. It is MTB's opinion that the palletizing and unitizing requirement does not unreasonably restrict the shipment of asbestos in any quantity. This requirement is necessary to provide a minimum level of safety.

Several petitioners requested an extension of the effective date of the final rule. The effective date has been extended to allow five months for compliance as originally intended by the December 4, 1978 publication.

Primary drafters of this document are Delmer F. Billings, Standards Division, Office of Hazardous Materials Regulation, and Douglas A. Crockett, Standards Division, Office of Hazardous Materials Regulations.

In consideration of the foregoing, the effective date and paragraph (d) of § 173.1090 as they appeared in the FEDERAL REGISTER published on December 4, 1978 (43 FR 56664) are revised to read as follows:

1. The effective date of the final rule as it appeared in HM-160 on December 4, 1978, is revised to read as follows:

EFFECTIVE DATE: August 20, 1979.

2. In § 173.1090 paragraph (d) as it appeared at 43 FR 56669 is revised to read as follows:

§ 173.1090 Asbestos.

* * * * *

(d) Commercial asbestos must be offered for transportation and transported in—

(1) Rigid, airtight packagings such as metal or fiber drums, portable tanks;

(2) Bags or other non-rigid packagings in closed freight containers, motor vehicles, or rail cars that are loaded by and for the exclusive use of the consignor and unloaded by the consignee; or

(3) Bags or other non-rigid packagings which are dust and sift proof and which are palletized and unitized by methods such as shrink wrapping in plastic film or wrapping in fiberboard secured by strapping. Pallets need not be used during transportation by vessel for loads with slings that are unitized by methods such as shrink wrapping, if the slings adequately and evenly support the loads and the unitizing method prevents shifting of the bags or other non-rigid packagings during conditions normally incident to transportation.

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

NOTE.—The Materials Transportation Bureau has determined that these amendments do not require a regulatory analysis under the Items of Executive Order 12044 and DOT implementing procedures (43 FR 9582). A regulatory evaluation is available for review in the Docket.

Issued in Washington, D.C. on March 22, 1979.

L.D. SANTMAN,
Director,
Materials Transportation Bureau.

[FR Doc. 79-9325 Field 3-28-79; 8:45 am]

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