Calidria ASBESTOS

UNION CARBIDE CORPORATION • METALS DIVISION • P. O. BOX 579 • NIAGARA FALLS, N.Y. 14302 • TEL: 716-278-3376

August 24, 1979

To: "Calidria" Asbestos Distributors and Warehouses

Please reference the letter I sent to you on July 30, 1979, concerning new Department of Transportation (DOT) regulations for the packaging and shipping of asbestos. In this letter I referred to our petition requesting certain changes in the regulations. I am pleased to report that the changes we requested were approved and are described in the attached copy of the Federal Register dated August 16, 1979. In summary the changes are:

1. Bags of product already in your inventory which do not conform to the new regulations can be shipped until December 31, 1979. You should make sure that all such inventory is shipped first, and prior to the end of the year. Mr. Gordon Dickson of this office will be checking with you and assisting you to dispose of current inventory as necessary.

2. As an alternate to palletizing and unitizing, dust and sift-proof bags can be shipped in "strong outside fiberboard or wooden boxes." Less than pallet quantities of dust and sift-proof bags can also be shipped via private carrier; i.e., in your trucks or your customer's trucks. These two options allow you to continue to service small customers without too much extra effort. If you use cardboard or wooden boxes the "ASBESTOS ORM-C" marking must be visible on the outside of the boxes. We can provide you with gummed labels to meet this requirement.

Please contact Gordon Dickson if you anticipate any problems in disposing of "non-conforming product" before December 31, 1979.

Very truly yours,

John L. Myers

John L. Myers
Marketing Manager

JLM:dal
Attachment

CC: Mr. G. L. Dickson

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PLAINTIFF'S EXHIBIT
UC-1515

Materials Transportation Bureau

49 CFR Part 173

[Docket Nos. HM-160; Amdt. Nos. 172-47, 173-123, 174-33, 175-7, 176-6, 177-44]

# Transportation of Asbestos; Additional Revisions of Amendment No. 173-123

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

**ACTION:** Additional Revisions of Previous Amendment No. 173-123.

**SUMMARY:** These revisions to Amendment No. 173-123 (44 FR 18673, March 29, 1979) will permit carriage of asbestos: (1) by private carrier in dust and sift-proof bags and other non-rigid packaging without palletizing and unitizing; (2) in dust and sift-proof bags and other non-rigid packagings within fiberboard or wooden boxes when shipped in less than pallet load quantities. This revision also clarifies the authority to ship leaktight hopper cars and leaktight hopper motor vehicles, and provides a grandfather clause for shipments initially shipped and transported prior to August 20, 1979.

**EFFECTIVE DATE:** August 20, 1979.

**FOR FURTHER INFORMATION CONTACT:** Delmer F. Billings, Standards Division, Materials Transportation Bureau, Research and Special Programs Administration, DOT, Washington, D.C. 20590, phone 202-426-2075.

**SUPPLEMENTARY INFORMATION:** On March 29, 1979, the MTB published an amendment to the final rule under docket HM-160 in the Federal Register (44 FR 18673). Since this publication, the MTB has received two petitions for reconsideration in accordance with the provisions of 49 CFR 106.35.

One petitioner requested that the MTB clarify the meaning of the word "airtight" as it is used in § 173.1090(d)(1), and he questioned whether hopper cars would be authorized by the provisions of this same section. For the purposes of this section, the word "airtight" means that there can be no transfer of either air or particles between the packaging and the surrounding atmosphere under ambient conditions. Packaging specified in this section need not be pressure tight packaging. In an effort to eliminate any confusion, the word "airtight" has been deleted from this section, and the word "leaktight" has been substituted. Also, this section has been amended to include a specific reference allowing the use of leaktight hopper cars or hopper motor vehicles for the shipment of asbestos.

A petitioner stated that difficulties arise due to the lack of a provision allowing the shipment of dust and sift-proof bags or other non-rigid packagings in less than pallet load quantities. The petitioner stated that the use of an exclusive use vehicle for shipments of only a few bags of asbestos is extremely uneconomical and that it is also not feasible to maintain supplies to unitize and palletize small quantity shipments of bags of asbestos. This petitioner requested that fiber boxes be allowed as an alternative to the palletizing and unitizing method. The MTB is in basic agreement with this petitioner concerning small quantity shipments of asbestos in bags, therefore, this amendment provides for the shipment of dust and sift-proof bags or other non-rigid packagings when in rigid outside fiberboard or wooden boxes. This option will continue to provide for public safety by providing for equal protection of the bags during shipment but will allow shipment of less than pallet load quantities.

A petitioner objected that the amendment to the final rule as published on March 29, 1979, did not include the provision allowing private highway carriers to transport dust and sift-proof packagings without palletizing and unitizing which appeared in the final rule published on December 4, 1978 (43 FR 56684). The MTB agrees that the provision should be reinstated in view of the closer control exercised by private carriers over shipments. This provision will allow for private carriage by highway of dust and sift-proof bags and other non-rigid packagings which are not palletized and unitized.

Several questions have been raised concerning the meaning of the words "exclusive use" as used in § 173.1090(d)(3). For the purposes of this section, "exclusive use" means that the consignor has complete use of the transport vehicle and that the loading is carried out by the consignor and unloading is carried out by the consignee or consignees.

A petitioner also cited a need for an extended effective date for packages of asbestos initially entered into transportation prior to August 20, 1979, but which would still be required to be shipped from distributors, warehouses, and the like, after that date. It was stated that many distributors, etc., do not have the ability or facilities to repackage such shipments and, therefore, such stocks would not be able to be reshipped after the effective date of the final rule, thus causing severe hardships. The MTB is in agreement that this situation could pose a serious burden and, therefore, this amendment includes a provision allowing packages of asbestos initially shipped prior to August 20, 1979, to continue to be shipped until December 31, 1979.

In consideration of the foregoing, § 173.1090 as it appeared in the Federal Register published on March 29, 1979 (44 FR 18673) is revised as follows:

In § 173.1090, paragraphs (d) (1), (2), and (3) are revised; paragraphs (d) (4) and (5) are added to read as follows:

**§ 173.1090 Asbestos.**

* * * * *

(d) * * *

(1) Rigid, leaktight packagings, such as metal or fiber drums, portable tanks, hopper-type rail cars, or hopper-type motor vehicles;

(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;

(3) Bags or other non-rigid packagings which are dust and sift-proof. When transported by other than private carrier by highway, such packagings containing asbestos must be 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; or

(4) Bags or other non-rigid packagings which are dust and sift-proof in strong outside fiberboard or wooden boxes.

(5) Notwithstanding the requirements of this section, packages containing asbestos initially shipped and transported prior to August 20, 1979, may continue to be shipped and transported until December 31, 1979.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1.)

Note.—The Materials Transportation Bureau has determined that this final rule will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034) nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is available in the docket.

Issued in Washington, D.C. on August 10, 1979.

L. D. Santman,

*Director, Materials Transportation Bureau.*

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