

ASARCO

New York Office
General Traffic
Department



January 17, 1977

File: GEN-0-120-340.3

Mr. R. Gagnon
Black Lake

Dear Rollie:

Last week I told you of a pending investigation being made by the Materials Transportation Bureau of the United States Department of Transportation relative to certain materials which are now not classified as hazardous.

I am enclosing a copy of the Federal Register outlining the contents of the advance notice of proposed rule making and suggest you discuss it with QAMA members to determine the position of that organization.

Sincerely,

Frank Meunier

enc.

cc: R. Muth

KMX 00730

LCW
To discuss at
QAMA meeting

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JAN 20 '77	
☒	M. J. M.
☒	P. G.
☒	P. D.
☒	M. R.
☒	L. C. W.
☐	K. P.
☐	D. A.
☐	G. C.
☐	H. M.
☐	C. R.

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cc QAMA

at all times. This request is being considered because of limited requests for openings during this period. (There were eight requests during 1975-1976).

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (can), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Ninth Coast Guard District.

The Commander, Ninth Coast Guard District, will forward any comments received before January 12, 1977, with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revising § 117.706 to read as follows:

§ 117.706 Sandusky Bay, Ohio.

(b) *Ohio Department of Highways bridge between Martin Point and Daybury.* (1) The owner or agency controlling this bridge shall provide the necessary draw tender and the proper mechanical appliances for the safe, prompt opening of the draw for the passage of vessels except when ice prevents navigation.

(2) The opening signal and the acknowledging signal shall be those prescribed in paragraph (a) (2) and (3) of this section.

(3) The draw shall open on signal, except that the draw need not open from 11 p.m. to 7 a.m. daily, except when notification prior to 3 p.m. has been given.

(4) Advance notification should be given to the Sandusky Post, State Highway Patrol.

(5) Public vessels of the United States, vessels in distress, and state or local government vessels used for public safety shall be passed through the draw of this bridge as soon as possible at any time even though the closed periods may be in effect.

(6) The owner or agency controlling the bridge shall keep a copy of the regulations in this section, together with a notice stating exactly how the Sandusky Post, State Highway Patrol, may be reached, conspicuously posted both upstream and downstream, either on the bridge or elsewhere in such a manner that it can be easily read from an approaching vessel at all times.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g) (2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)

(2)); 49 CFR 1.46(c) (5), 33 CFR 1.05-1(c) (4).)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 1, 1976.

D. J. RILEY,
Captain, U.S. Coast Guard, Acting
Chief, Office of Marine
Environment and Systems.

[FR Doc. 76-38214 Filed 12-8-76; 8:45 am]

VETERANS ADMINISTRATION

[38 CFR Part 21]

EDUCATION ALLOWANCE OVERPAYMENTS

Charging of Entitlement; Review Board Made Permanent

The following regulatory changes are made to clarify and update existing provisions.

Section 21.1045 is amended to provide proper rules for charging entitlement for overpayments, the collection of which is barred by a discharge of the debtor in a bankruptcy proceeding.

Section 21.4009 is amended to indicate that the Central Office ad hoc review board is renamed and made a permanent body.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, D.C. 20420. All relevant material received before January 10, 1977, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), during the mentioned 30-day period and for 10 days thereafter. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that records are available for inspection only in Central Office and furnished the address and the above room number.

The Veterans Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Notice is also given that it is proposed to make these changes effective date of final approval.

Approved: December 3, 1976.

By direction of the Administrator.

ODELL W. VAUGHN,
Deputy Administrator.

1. In § 21.1045, paragraph (f) is revised to read as follows:

§ 21.1045 Entitlement charges.

(f) *Overpayment cases.* Entitlement will be charged for an overpayment in educational assistance allowance only if the overpayment is discharged in bankruptcy or waived and is not recovered. The charge will be at the appropriate rate for the elapsed period covered by the overpayment.

2. In § 21.4009, paragraphs (d), (g), (h) and (i) are revised to read as follows:

§ 21.4009 Overpayments; waiver or recovery.

(d) *Field station committees.* the field station regional committee having jurisdiction over the area in which the school is located is authorized to find:

(1) Whether recovery may be waived as to the veteran or eligible person.

(2) Liability of the school or liability of both the school and the veteran or eligible person.

(g) *Administrative reviews.* A request for an administrative review will be forwarded to Central Office where it will be considered by the Central Office School Liability Administrative Review Board convened for that purpose. The Board's decision will serve as authority for instituting collection proceedings, if appropriate, or for discontinuing collection proceedings instituted on the basis of the original decision of the field station committee in any case where the Board reverses a finding made by the committee that the school is liable.

(h) *Review and modification.* The Central Office School Liability Administrative Review Board may review and modify its decision upon submission of new and material evidence. The field station committee will forward such evidence with its recommendation.

(i) *Finality of decisions.* The Central Office School Liability Administrative Review Board has authority to act for the Administrator in making administrative reviews of determinations that a school is or is not liable for an overpayment to a veteran or an eligible person. There is no right of appeal.

[FR Doc. 76-38192 Filed 12-8-76; 8:45 am]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Parts 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189]

[Docket No. HM-145]

ENVIRONMENTAL AND HEALTH EFFECTS MATERIALS

Advance Notice of Proposed Rulemaking

In issuing this advance notice of proposed rulemaking, the Materials Transportation Bureau (MTB) is giving notice that it is considering whether new

or additional transportation controls are necessary for classes of materials presenting certain hazards to humans and to the environment and which are not generally subject to the existing Hazardous Materials Regulations (HMR). The MTB is particularly interested in receiving views on the practicality and need for transportation controls on materials whose potential release during or incident to transportation may result in an unreasonable risk to property, the environment, or to human health and safety as has been determined through exposure in the work place or exposure by environmental accumulation.

This action is in response to recommendations from other organizations who have expressed a desire for the MTB to take more effective steps to deal with certain unregulated materials.

Comments by: March 14, 1977.

Addressed to: Docket Section, Office of Hazardous Materials Operations, Department of Transportation, Washington, D.C. 20590. Comments should reference Docket No. HM-145. It is requested that comments be submitted in five copies.

BACKGROUND

A number of public and private organizations and environmental agencies have expressed to MTB the view that the MTB should consider establishing transportation controls to deal with materials which are not regulated or are only partially regulated by the U.S. Department of Transportation's (DOT) HMR, transportation of which may pose certain hazards that the DOT previously has not formally recognized. The Natural Resources Defense Counsel, the General Electric Company, the National Tank Truck Carriers, the National Maritime Safety Association, the U.S. Environmental Protection Agency (EPA), and the Occupational Health and Safety Administration (OSHA) of the Department of Labor have expressed various concerns with the transportation of materials that may cause or contribute to the incidence of cancer, birth defects, genetic changes, environmental damage, and other effects, some poorly understood, and which in the past have been regulated, if at all, primarily because of other more easily recognized hazard characteristics. Such materials are referred to herein as "environmental and health effects materials." The MTB is considering the development of rules to deal with the transportation of a variety of environmental and health effects materials, to incorporate a systematic approach to identification of the kinds of hazards that might require attention, identification of materials that pose such hazards, and evaluation of the appropriateness of regulating such materials in transportation. Any such action would be based on Section 104 of the Hazardous Materials Transportation Act of 1974 (Pub. L. 93-633, 88 Stat. 2156) which authorizes the Secretary of Transportation to designate as a hazardous material any material the transportation of

which in a particular quantity and form "may pose an unreasonable risk to health and safety or property."

EXISTING DOT REGULATIONS

Historically, the DOT has established its regulatory control upon properties of materials that pose a significant potential hazard to humans from acute exposures. The program to minimize this hazard has been primarily directed at controlling the handling of the materials and was further confined to the circumstances of the hazardous materials transportation activity. This philosophy has led to the development of a series of regulations found in Title 49 of the Code of Federal Regulations. These regulations define the classes of hazardous materials and list materials contained in the classes (49 CFR 172.101).

Present DOT definitions of classes of materials regulated as hazardous are found in 49 CFR Part 173. Definitions dealing primarily with toxic effects, found in Subpart H therein, include those of Poison A (§ 173.326), Poison B (§ 173.343), Irritating materials (§ 173.381), Etiologic agents (§ 173.386) and Radioactive materials (§ 173.389). The existing definitions are generally limited in scope by reliance on testing criteria that may not provide adequate consideration of the risks that transporting some materials may have on health or environmental effects. Some of these limitations in the transportation regulations can be recognized as: (a) Not listing as HMR, those materials which when directly exposed to man over a prolonged period of time (month to years) effect his health; (b) not listing as HMR, those materials which when discharged into the environment pose imminent and substantial danger to public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines and beaches, or (c) not listing as HMR, those materials which when found in man's food, water, or air may endanger his health. These risks have been addressed to some extent by agencies outside this Department.

ACTIONS OF OTHER AGENCIES

In connection with possible modification of existing MTB classification criteria, the MTB may consider partial or full adoption of criteria, and lists of materials identified thereunder, which have been developed for specific purposes by other agencies. This approach has been employed in this Department's definition of etiologic agents, 49 CFR 173.386, which rely on identification of such agents by the Department of Health, Education, and Welfare.

The EPA has proposed rules under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) which identify 306 materials as hazardous substances, based upon their toxicity to aquatic, mammalian, and plant organisms, as well as their potential for entering the navigable waters of the United States (see Appendix A).

The OSHA of the Department of Labor has published a list of materials it considers to be human carcinogens (see

Appendix B). The selection criteria used recognizes effects of chronic occupational exposure which may be quite remote in time from the onset of exposure. OSHA has also proposed rules governing occupational exposure to asbestos (see Appendix B), which would include controls on asbestos handling incident to transportation. The Inter-governmental Maritime Consultative Organization is actively concerned with possible hazards associated with health effects of asbestos particles released during transportation.

The Organization for Economic Co-operation and Development has issued a decision of the Council on Protection of the Environment by Control of Polychlorinated Biphenyls (PCB's), which was adopted at its 315th meeting in Paris, France, February 13, 1973, and which recommended that member countries require labeling and specification packaging for the transport of PCB's. Both the EPA and the U.S. Department of State have indicated concern over the health effects of these materials founded, in part, upon the PCB's levels found in the fisheries of the Great Lakes, certain foodstuffs, and in the milk fat of nursing mothers in several States. In Section 6 of the Toxic Substances Control Act (Pub. L. 94-469, October 11, 1976) Congress has directed EPA to prescribe methods of marking and disposal of PCB's and has completely banned manufacture and distribution of these materials within two and one-half years of the effective date of the Act, subject to exception by the EPA Administrator.

LEGISLATION

Additional mechanisms, either existing or in development, which address health or environmental effects of various materials, may exist at both the Federal and State level. Such programs as can be identified may be considered by the MTB in evaluating any action it may take. State programs pertaining to the transportation of materials called hazardous wastes are of particular interest.

Recent Federal legislation includes the previously mentioned Toxic Substances Control Act which provides EPA with authorization to require pre-market evaluation of new chemicals, as well as evaluation of some presently known materials. Although full implementation of this Act by EPA is some time off, activities of EPA and industries regulated under the Act may provide a great deal of information concerning environmental and health effects materials.

Title III of the Resources Conservation and Recovery Act of 1976 (Pub. L. 94-580, October 21, 1976) directs the EPA Administrator to develop criteria for identifying hazardous wastes and a list of such wastes to be subject to EPA regulatory control. Any proposed or existing hazardous waste transportation control activities using specific packaging, labeling, and shipping documents are of interest in the MTB's evaluation of environmental and health effects materials.

REQUEST FOR COMMENT

To assist the MTB in its examination of the possible need for further identi-

PROPOSED RULES

creation and control of environmental and health effects materials moving in commerce, comments on the following subjects would be useful:

1. Whether or not additional regulation of environmental and health effects materials in transportation is needed and why. If so,

2. What sort of human health effects should be considered.

3. What sort of environmental effects should be considered.

4. What criteria should be used to ascertain effects and identify materials. The MTB is concerned that duplication of research efforts carried out by other agencies be avoided as far as possible and is interested in the suitability of considering lists of materials identified by other agencies as having adverse environmental or health effects.

5. Whether modifications to existing DOT hazardous material classifications, establishment of new classes, would best accommodate the identified environmental and health effects materials.

6. What sort of transportation controls may be needed for identified environmental and health effects materials. Presently available controls include specification of the physical containment necessary for transportation of a hazardous material, as well as systems to assure adequate communication of information on the material and its hazards to persons handling the material while it is in transportation or in storage incidental to transportation and to persons responding to an emergency. Degree of control generally reflects the intensity of a given hazard. Should packaging controls be necessary, performance standards rather than specification standards may be considered.

7. With regard to hazardous waste, what classification system may be used to clearly identify mixtures as opposed to single compound materials; what packagings may be appropriate for transportation; and how existing transportation documentation can be used to cover transport of hazardous wastes from the generator (shipper) to the disposer (consignee).

8. Should new or additional transportation controls be necessary, what the impact on affected industries may be, and what a reasonable implementation schedule would be. The MTB is specifically concerned with avoiding costs which are not essential to the maintenance of transportation safety, and obtaining cost data to determine whether an inflation impact statement will be required.

9. Should new or additional transportation controls be necessary, whether the preparation of an environmental impact statement will be required.

10. Any other matters relevant to the certification and control in transportation of environmental and health effects materials, or to the need therefore, including the need for uniformity in the applicability of such safety regulations as might be developed under this docket to various modes of transportation.

PROGRAM PLAN

If rulemaking is determined appropriate, under this docket, the MTB may consider a limited revision of the hazard classification; develop a list of substances; and provide a discussion for the basis of their selection. In addition, this effort may include consideration of regulatory requirements pertaining to communications, packaging, handling, and personnel training.

The MTB will be reviewing any comments received to answer questions outlined above and with a view to establishing selection criteria and rationale which would indicate specifically: (a) What types of toxicological data are meaningful; (b) in what context should these data be used; and (c) what degree of risk may be viewed as acceptable under what given conditions. Certain testing requirements may be established by the MTB to address: (a) The potential biological threat of a material; and (b) the probable occurrence of that threat during transportation.

The materials included in the EPA Hazardous Substances List and the OSHA list of carcinogenic chemicals, which are not presently regulated by the MTB in the Code of Federal Regulations, Title 49, are contained in Appendix A and B of this advance notice. These lists are provided as example lists of materials only and interested parties may wish to include in their comments specific reference to these listed materials as appropriate.

If sufficient interest is expressed in comments, an informal hearing on this subject will be held in Washington, D.C., no earlier than February 7, 1977. The time, location, and agenda of the hearing, if required, will be published in the FEDERAL REGISTER.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 (e) and paragraph (a)(4) of Appendix A to Part 102)

Issued in Washington, D.C., on December 6, 1976.

DR. C. H. THOMPSON,
Acting Director, Office of Hazardous Materials Operations.

APPENDIX A—U.S. ENVIRONMENTAL PROTECTION AGENCY PROPOSED HAZARDOUS SUBSTANCES

(40 FR 59960—December 30, 1975)

MATERIALS NOT SPECIFIED BY U.S. DOT 49 CFR 172.101

NOTE: * Means Materials not Regulated in all Transport Modes.

COMMON NAME

Adiponitrile	Ammonium fluoride
Aluminum sulfate	Ammonium hypophosphite
Ammonium acetate	Ammonium iodide
Ammonium benzoate	Ammonium oxalate
Ammonium bicarbonate	Ammonium pentaborate
Ammonium bisulfite	Ammonium persulfate
Ammonium bromide	Ammonium silicofluoride
Ammonium carbamate	Ammonium sulfamate
Ammonium carbonate	Ammonium sulfite
Ammonium chloride	Ammonium tartrate
Ammonium citrate, dibasic	

COMMON NAME—continued

Ammonium thiocyanate	Endrin
Ammonium thiosulfate	Ethion
Antimony potassium tartrate*	Ethylene diamine-tetraacetic acid
Antimony tribromide	Aluminum fluoride
Antimony trifluoride	Ammonium bifluoride*
Antimony trioxide	Ammonium fluoride*
Arsenic disulfide	Sodium bifluoride
Arsenic trisulfide	Sodium fluoride*
Benzoic acid	Stannous fluoride
Benzonitrile	Fumaric acid
Beryllium chloride	Guthion
Beryllium fluoride	Heptachlor
Beryllium nitrate	Hydroxylamine
Cadmium acetate	Ferric ammonium citrate
Cadmium bromide	Ferric ammonium oxalate
Cadmium chloride	Ferric chloride*
Calcium hydroxide	Ferric fluoride
Calcium oxide*	Ferric nitrate
Captan	Ferric sulfate
Carbaryl*	Ferrous ammonium sulfate
Chlordane	Ferrous chloride
Chloroform*	Ferrous sulfate
Ammonium chromate	Kelthane
Calcium chromate	Lead acetate
Chromic acetate	Lead fluoborate
Chromic sulfate	Lead fluoride
Chromous chloride	Lead iodide
Lithium bichromate	Lead stearate
Lithium chromate	Lead sulfide
Potassium chromate	Lead tetraacetate
Sodium bichromate	Lead thiocyanate
Sodium chromate	Lead thiosulfate
Strontium chromate	Lead tungstate
Zinc bichromate	Lindane*
Cobaltous bromide	Malathion*
Cobaltous fluoride	Maleic acid
Cobaltous formate	Maleic anhydride
Cobaltous sulfamate	Mercuric nitrate
Cupric acetate	Methoxychlor
Cupric chloride*	Mevinphos
Cupric formate	Naled
Cupric glycinate	Naphthenic acid
Cupric lactate	Nickel ammonium sulfate
Cupric nitrate	Nickel formate
Cupric oxalate	Nickel hydroxide
Cupric subacetate	Nickel nitrate
Cupric sulfate	Nickel sulfite
Cupric sulfate, ammoniated	Nitrophenol
Cupric tartrate	Paraformaldehyde
Cuprous bromide*	Pentachlorophenol
Coumaphos	Polychlorinated biphenyls
Cresol	Propyl alcohol
Cyanogen chloride	Pyrethrins
2,4-D (acid or esters)*	Quinoline
Dalapon	Resorcinol
DDT*	Selenium oxide
Dicamba	Sodium bisulfite*
Dichlobenil	Sodium selenite
Dichlorone	Sodium hydrosulfide
Dichlorvos	Sodium hypochlorite
Dieldrin	Sodium phosphate, dibasic
Diquat	Sodium phosphate, monobasic
Disulfoton	Sodium phosphate, tribasic
Diuron	Styrene
Dodecylbenzenesulfonic acid	2,4,5-T (acid)
Dodecylbenzenesulfonic acid, calcium salt	2,4,5-T (esters)
Dodecylbenzenesulfonic acid, isopropylamine salt	Trichlorfon
Dodecylbenzenesulfonic acid, sodium salt	TDE
Dodecylbenzenesulfonic acid, triethanolamine salt	Toxaphene*
Dursban	Trichlorophenol
Endosulfan	Uranium peroxide
	Uranyl acetate
	Uranyl sulfate
	Vanadium pentoxide
	Vanadyl sulfate
	Xylenol
	Zectran

COMMON NAME—Continued

Zinc acetate	Zinc potassium chromate
Zinc ammonium chloride	Zinc silicofluoride
Zinc borate	Zinc sulfate
Zinc bromide	Zinc sulfate, monohydrate
Zinc carbonate	Zirconium acetate
Zinc fluoride	Zirconium nitrate
Zinc formate	Zirconium potassium, fluoride
Zinc hydrosulfide	Zirconium oxychloride
Zinc nitrate	Zirconium sulfate
Zinc phenolsulfonate	
Zinc phosphide	

APPENDIX B—U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CANCER SUSPECT AGENTS

(29 CFR 1910.1003 through 1910.1016, except 1910.1005)

MATERIALS NOT SPECIFIED BY DOT 49 CFR 172.101

CHEMICAL NAME

Acetylaminobenzene	4-Nitrophenyl
Ambodiphenyl	N-Nitrosodimethylamine
Benidine	beta-Propiolactone
3,3'-Dichlorobenzidine (and its salts)	bis-Chloromethyl ether
4-Dimethylaminoazobenzene	Methyl chloromethyl ether
alpha-Naphthylamine	Ethylenimine
beta-Naphthylamine	

PROPOSED CANCER HAZARD

(40 FR 47652—October 9, 1975)

MATERIALS NOT SPECIFIED BY DOT 49 CFR 172.101

asbestos, or chrysotile, amosite, crocidolite, tremolite anthophyllite, actinolite

[FR Doc.76-36237 Filed 12-8-76; 8:45 am]

National Highway Traffic Safety
Administration

[49 CFR Part 525]

[Docket No. FE76-04; Notice 1]

AVERAGE FUEL ECONOMY STANDARDS

Proposed Regulations Regarding Petitions for Exemptions

This notice proposes a new regulation setting forth the requirements applicable to the submission of petitions by low volume manufacturers of passenger automobiles for exemptions from average fuel economy standards. An exemption would be available only if the otherwise applicable average fuel economy standard were more stringent than the maximum feasible average fuel economy level which the petitioning low volume manufacturer could attain. The notice also describes the procedures that the National Highway Traffic Safety Administration (NHTSA) would follow in acting on the petitions.

Background. Part A of title III of the Energy Policy and Conservation Act (Pub. L. 94-163) amended the Motor Vehicle Information and Cost Savings Act (referred to hereafter as "the Act") by adding a new title V. That title (15 U.S.C. 2001 et seq.) requires the Secretary of Transportation to implement a program for improving the average fuel economy of new automobiles "manufactured" in the United States; i.e., produced or assembled in or imported into the customs territory of the United States. Authority

to administer the program was delegated by the Secretary to the Administrator of the NHTSA (41 FR 25015; June 22, 1976). Section 502(a)(1) of the Act establishes average fuel economy standards for passenger automobiles of 18 mpg, 19 mpg, and 20 mpg, for model years 1978, 1979, and 1980, respectively, and 27.5 mpg for model year 1985 and subsequent model years. Under a new Part 523 that the NHTSA is considering proposing for addition to title 49 of the Code of Federal Regulations, passenger automobiles would be station wagons built on a passenger car chassis, sedans, coupes, and sports cars and other motor vehicles classified as passenger cars under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.) and implementing regulations at 49 CFR 571.3. The standards for passenger automobiles manufactured during the intervening model years, 1981-1984, are required by section 502(a)(3) to be promulgated by the Administrator. The penalty for a manufacturer's violating the standard for any model year is a civil penalty equal to \$5.00 for each tenth of a mile per gallon by which the average fuel economy of the manufacturer's passenger automobiles for that model year failed to meet the standard, multiplied by the number of those passenger automobiles.

Section 502(c) of the Act provides for exempting low volume manufacturers of passenger automobiles from the standards with which higher volume passenger automobile manufacturers must comply. To be eligible for an exemption, a manufacturer must produce (worldwide) fewer than 10,000 passenger automobiles in a model year for which an exemption is sought (an "affected model year") and fewer than 10,000 passenger automobiles in the second model year preceding the affected model year.

Congress authorized these exemptions in apparent recognition of the special circumstances of the low volume manufacturers and the extremely minor role that these manufacturers can play in increasing the average fuel economy of all passenger automobiles manufactured annually. Low volume manufacturers differ from higher volume manufacturers in several important respects. The former group of manufacturers typically produces a much narrower range of model types. Thus, they are less able to balance passenger automobiles with high fuel economy against passenger automobiles with low fuel economy. Further, their model types tend to be concentrated in the luxury market. Since the fuel economy of luxury vehicles is now generally lower than that of less expensive vehicles, the average fuel economy of the low volume manufacturers is also generally lower than that of higher volume manufacturers. Finally, the low volume manufacturer is relatively limited in his ability to make technological improvements by limited financial resources, small engineering staffs, and longer model type redesign cycles.

Although the number of low volume manufacturers is large, the total passen-

ger automobile production of these manufacturers is very small. There are approximately 25 low volume manufacturers which either produce passenger automobiles in this country or produce them abroad and import them into the country. Together, these manufacturers produce approximately 25,000 passenger automobiles annually for sale in the country and elsewhere. This is about one-quarter of one percent of all new passenger automobiles sold in this country annually. The fuel consumption of this group of passenger automobiles is slightly more than one-quarter of one percent of the consumption of the latter group.

If the Administrator determines, by rule, that the level of average fuel economy specified in the standard for an affected model year is higher than the maximum feasible average fuel economy achievable by a low volume manufacturer for its passenger automobiles to be manufactured in that model year, he may grant an exemption. Section 502(c) of the Act provides that, in making the determination, the Administrator shall consider:

- (1) Technological feasibility;
- (2) Economic practicability;
- (3) The effect of other Federal motor vehicle standards on fuel economy; and
- (4) The need of the Nation to conserve energy.

If the Administrator grants an exemption, he must also establish an alternative standard for the petitioner at the level of the petitioner's maximum feasible average fuel economy for its passenger automobiles to be manufactured in the affected model year. Instead of establishing a separate standard for the total passenger automobile production of each exempted manufacturer, the Administrator could either set a single standard or several class standards for the passenger automobiles of all exempted manufacturers.

SCHEDULE FOR THE SUBMISSION AND DISPOSITION OF PETITIONS

The proposed regulation provides that manufacturers desiring to petition for exemptions would be required, with certain exceptions, to submit their petitions to this agency not less than 24 months before the beginning of the affected model year. The exceptions relate to model years 1978 and 1979. In view of the relatively limited time remaining before those model years, petitions for model year 1978 would be required to be submitted not less than 3 months before that model year and petitions for model year 1979, not less than 12 months before that model year. Comments are requested on whether the agency should have discretion to accept late petitions and, if so, under what circumstances. No deadline would be established for the granting or denying of petitions. However, this agency anticipates that decisions on most petitions would be made not later than 18 months before the affected model year.

This proposed schedule reflects an interpretation of section 502(c) which

determine cost impact on consumers, businesses, markets and federal, state, and local government; effect on productivity of wage earners, businesses, or government; effect on competition, and effect on supplies of important products or services. In statement to transition team OSHA said actions have been taken to continue requirements of order by establishing agency procedures to make IIS an integral part of standards development without delaying rulemaking process. It is important to continue this sort of analysis whether the Executive Order expires or is extended, the statement noted. AFL-CIO has objected to IIS requirement in standard making procedure, ("N & N" Sept. 1976).

In addition to comment on inflationary impact statements, OSHA spoke to "slow rate " at which health standards have been issued commenting, "rulemaking procedures are necessarily lengthy in order to conform to the administrative procedures set forth in the Act and in order to develop an adequate record of rule-making on which to promulgate each standard." Paper said OSHA is actively seeking suggestions for new approaches which will more adequately address difficulties in setting new standards, especially where existing or new exposure limits are being evaluated. Problems involved in compliance with standards were also spoken to. If change in approach to standards - setting is to be made, it was advised, such "change should be made as soon as possible to avoid unwarranted investments and to forestall loss of agency creditability from both labor and industry over the slow rate of standards development and the unwieldy nature of the regulations." What changes in OSHA procedures and personnel may take place in new Administration remains to be seen.

N.J. Report Recommends Ban of Carcinogenic Chemicals -- New Jersey State Senate Committee report issued Dec. 30 recommends legislative ban of 16 specified carcinogenic chemicals in program to reduce state cancer incidence, highest in nation. Asbestos is included on list. This is first known instance that a state has been requested by legislative committee to ban rather than regulate suspected carcinogens. In asserting that healthy environment was more important than jobs, committee chairman, State Sen. John M. Skein, also said if it proved necessary to shut down industries by law to keep carcinogens out of air and water, it should be done. John Horn, Acting Commissioner of Labor and Industry for N.J., responded to report by saying outright ban on manufacture of carcinogens would have disastrous economic impact.

Asbestos and Talc -- Health Research Group (HRG), a public interest organization, charged in letters dated Dec. 13 to OSHA, NIOSH and Consumer Product Safety Commission that R. T. Vanderbilt Co. succeeded in persuading OSHA to change its definition of asbestos fibers so that it would not cover talc mined by

Vanderbilt in St. Lawrence County, N. H. According to HRG, this action was taken in Nov. 1974 over objections of NIOSH. OSHA's Field Memorandum #74-92 issued Nov. 21, 1974 prescribed, in regard to tremolite and talc, that only particle samples having a 5 or more to 1 length to width ratio would be considered asbestiform or fibrous. Tremolite is included with five other minerals (chrysotile, amosite, crocidolite, anthophyllite and actinolite) in OSHA definition of asbestos. Standard specifies that asbestos fiber is a particulate form of asbestos with a length-to-diameter ratio of at least 3 to 1. HRG contended that Assistant Secretary of Labor (OSHA) Morton Corn's predecessor, John Stender, allowed Vanderbilt to avoid having to comply with asbestos standard by certifying "without providing scientific evidence" that talc is free of asbestos, and urged OSHA to retract field memorandum and "investigate the personnel and procedures which allowed such an illegal series of events to occur and persist for so long."

In Dec. 16 news conference, Corn said results of National Bureau of Standards (NBS) study are awaited to settle dispute over whether Vanderbilt's talc is subject to OSHA's asbestos standard. NBS was requested in Nov. to analyze 80 different samples of talc from various locations "so that we can tell not just Vanderbilt but all the producers which (talc) are fibrous and which aren't," Corn said. Results of NBS study are due Mar. 1.

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→ DOT Considering Transportation Controls for Asbestos-- Advance notice of proposed rulemaking in Federal Register, Vol. 41, Dec. 9, advises Department of Transportation (DOT) is considering whether new or additional transportation controls are necessary for certain materials whose potential release during or incident to transportation may result in an unreasonable risk to property, environment, or to human health and safety as has been determined through exposure in workplace or environmental accumulation. Transport of asbestos fiber is item under consideration by DOT. Comments may be submitted to Docket Section, Office of Hazardous Materials Operations, Department of Transportation, Washington, D. C. 20590 (five copies) by Mar. 14 to aid in assessment of need for developing and issuing a packaging standard for asbestos. Federal Register notice available on request.

Constitutionality of OSHA -- U.S. Supreme Court heard arguments on constitutionality of OSH Act enforcement procedures on Nov. 29. Court limited its review to issue whether OSHA enforcement procedures deny employer right to jury trial as guaranteed by Seventh Amendment in civil cases. McNeill Stokes, general counsel for American Subcontractors Association, argued Seventh Amendment guarantees right of jury trial whenever a proposed government penalty exceeds \$20. Solicitor General, Robert H. Bork, argued