Whereas First Party has been and hereby is designated by Second Parties as Unit Operator, and said First Party desires to assume all rights, duties, and obligations of Unit Operator.

Now, therefore, in consideration of the premises hereinbefore set forth and the premises hereinafter stated, the First Party hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of the Unit Agreement for the Development and Operation of the _____ Unit Area and the Second Parties covenant, and agree that, effective upon approval of this indenture by the Oil and Gas Supervisor, United States Geological Survey, First Party shall be granted the exclusive right and privilege of exercising any and all rights and privileges as Unit Operator, pursuant to the terms and conditions of said agreement; said agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

_____ _____
(First Party)

_____
(Witnesses)

_____ _____
(Second Party)

_____
(Witnesses)

I hereby approve the foregoing idenuture designating _____ as Unit Operator under the Unit Agreement for the Development and Operation of the _____ Unit Area, this _____ day of _____, 19____.

_____
*Oil and Gas Supervisor,*
*United States Geological Survey.*

**§ 226.17 Form for change in unit operator by assignment.**

Change in Unit Operator for the Unit Agreement for the Development and Operation of the _____ Unit Area, County of _____, State of _____, Department of the Interior Contract No. _____

This indenture, dated as of the _____ day of _____, 19____, by and between _____ hereinafter designated as "First Party," and _____ hereinafter designated as "Second Party."

Witnesseth: Whereas under the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended, (U.S.C. secs. 187, et seq.), the _____ on the _____ day of
(Identify approving Federal Official)
_____, 19____, approved the Unit Agreement for the Development and Operation of the _____ Unit Area, wherein the First Party is designated as Unit Operator; and

Whereas the First Party desires to transfer, assign, release, and quitclaim, and the Second Party desires to assume all the rights, duties, and obligations of Unit Operator under said agreement; and

Whereas for sufficient and valuable consideration, the receipt whereof is hereby acknowledged, the First Party has transferred, conveyed, and assigned all his/its rights under certain operating agreements involving lands subject to said agreement unto the Second Party:

Now, therefore, in consideration of the premises hereinbefore set forth, the First Party does hereby transfer, assign, release, and quitclaim unto Second Party all of the First Party's rights, duties and obligations as Unit Operator under the Unit Agreement for the Development and Operation of the _____ Unit Area; and

Second Party hereby accept this assignment and hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of said agreement to the full extent set forth in this assignment, effective upon approval of this indenture by the Oil and Gas Supervisor, United States Geological Survey; said agreement hereby being incorporated herein by reference and made a party hereof as fully and effectively as though said agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

_____ _____
(First Party)

_____
(Witnesses)

_____ _____
(Second Party)

_____
(Witnesses)

I hereby approve the foregoing indenture designated _____ as Unit Operator under the Unit Agreement for the Development and Operation of the _____ Unit Area, this _____ day of _____, 19____.

_____
*Oil and Gas Supervisor,*
*United States Geological Survey.*

It has been determined that issuance of these proposed revised regulations does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 852).

It is hereby certified that the economic and inflationary impacts of these proposed revised regulations have been carefully evaluated in accordance with OMB Circular A-107.

Dated: November 30, 1976.

WILLIAM L. FISHER,
*Assistant Secretary of the Interior.*

[FR Doc.76-36020 Filed 12-8-76;8:45 am]

[1] Where the designation of a successor Unit Operator is required for any reason other than resignation, such reason shall be substituted for the one stated.

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### [ 33 CFR Part 117 ]

[CGD 76 221]

### DRAWBRIDGE OPERATION REGULATIONS

### Harlem River, New York

At the request of the Consolidated Rail Corporation (ConRail), the Coast Guard is considering amending the regulations for the ConRail drawbridge across the Harlem River, mile 2.1, to require that the draw open on signal if at least six hours notice is given from 10 a.m. to 5 p.m. At all other times the draw need not open for the passage of vessels. This change is being considered because of a reduction in requests for openings (1973–153, 1974–146, 1975–67, first seven months 1976–12).

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Third Coast Guard District, Governors Island, New York, New York 10004. 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, Third Coast Guard District.

The Commander, Third Coast Guard District, will forward any comments received before January 11, 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 adding a new § 117.160(i) to read as follows:

**§ 117.160 Harlem River, N.Y., bridges.**

* * * * *

(i) The draw of the ConRail Park Avenue bridge (138th St.), mile 2.1, shall open on signal from 10 a.m. to 5 p.m., if at least six hours notice is given to the ConRail Chief Dispatcher. At all other times the draw need not open. However, the draw shall open as soon as possible for the passage of public vessels of the United States and New York City after such vessels have contacted the ConRail Chief Dispatcher.

(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 3, 1976.

R. D. HODGES,
*Captain, U.S. Coast Guard, Acting Deputy Chief, Office of Marine Environment and Systems.*

[FR Doc.76-36213 Filed 12-8-76;8:45 am]

### [ 33 CFR Part 117 ]

[CSD 76-205]

### DRAWBRIDGE OPERATION REGULATIONS

### Sandusky Bay, Ohio

At the request of the Ohio Department of Transportation, the Coast Guard is considering revising the regulations for the Route 269 highway bridge across Sandusky Bay, mile 8.2, to allow closed periods from 11 p.m. to 7 a.m. The draw is presently required to open on signal

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 (oan), 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 Danbury.* (1) The owner of 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.76-36214 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 Administartor in making administrative reviews of determinations that a school is or is not liable for an overpayment to a veteran or an elgible person. There is no right of appeal.

[FR Doc.76-36192 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 Cooperation 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-

fication 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, or 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 insure 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 identification 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 the 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 | | COMMON NAME—continued | |
|---|---|---|---|
| Adiponitrile | Ammonium fluoborate | Ammonium thiocyanate | Endrin |
| Aluminum sulfate | Ammonium hypophosphite | Ammonium thiosulfate | Ethion |
| Ammonium acetate | Ammonium iodide | Antimony potassium tartrate* | Ethylenediaminetetraacetic acid |
| Ammonium benzoate | Ammonium oxalate | Antimony tribromide | Aluminum fluoride |
| Ammonium bicarbonate | Ammonium pentaborate | Antimony trifluoride | Ammonium bifluoride* |
| Ammonium bisulfite | Ammonium persulfate | Antimony trioxide | Ammonium fluoride* |
| Ammonium bromide | Ammonium silicofluoride | Arsenic disulfide | Sodium bifluoride |
| Ammonium carbamate | Ammonium sulfamate | Arsenic trisulfide | Sodium fluoride* |
| Ammonium carbonate | Ammonium sulfite | Benzoic acid | Stannous fluoride |
| Ammonium chloride | Ammonium tartrate | Benzonitrile | Fumaric acid |
| Ammonium citrate, dibasic | | 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 ammoium 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 sulfate |
| | | Cupric sulfate, ammoniated | Nitrophenol |
| | | Cupric tartrate | Paraformaldehyde |
| | | Cuprous bromide* | Pentachlorephenol |
| | | 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 |
| | | Dichlone | 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, isopropanolamine 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 hydrosulfite | Zirconium oxychloride |
| Zinc nitrate | Zirconium sulfate |
| Zinc phenolsulfonate | |
| Zinc phoephide | |

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

| | |
|---|---|
| Acetylaminoflourene | 4-Nitrobiphenyl |
| Aminodiphenyl | N-Nitrosodimethylamine |
| Benzidine | beta-Propiolactone |
| 3,3'-Dichlorobenzidine (and its salts) | bis-Chloromethyl ether |
| 4-Dimethylaminoazobenzene | Methyl chloromethyl ether |
| alpha-Naphthylamine | Ethyleneimine |
| 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]

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## 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 passenger 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 this country. Together, these manufacturers produce approximately 25,000 passenger automobiles annually for sale in this 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(e) of the Act provides that, in making that 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 interpertation of section 502(c) which

leaves the establishment of the schedule to agency discretion. Section 502(c) provides, in pertinent part—

> (o)n application of a manufacturer who manufactured (whether or not in the United States) fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the application is made, the Secretary may, by rule, exempt such manufacturer from subsection (a). An application for such an exemption shall be submitted to the Secretary, and shall contain such information as the Secretary may require by rule.

The section makes no express provision regarding the schedule for the submission or disposition of petitions. The only express provisions regarding the petitions appear in the second sentence of section 502(c) and relate to the receipt and content of the petitions. The production limitation for the second preceding model year has no bearing on the schedule. The limitation is simply another condition, like the identical production limitation for the affected model year, to a manufacturer's being exempt in that model year.

Under this tentatively adopted interpretation and the proposal, the effect of a manufacturer's exceeding the production limitation for the second preceding model year would be to terminate the processing of its petition for the affected model year if it had not yet been granted. If the petition had already been granted, the exemption for that model year would be voided.

This agency considered a second interpretation of the production limitation for the second preceding model year which provides that the limitation is not only one of several conditions to a manufacturer's being exempt in an affected model year, but also specifies when the Administrator may grant a petition. Under this interpretation, the Administrator could not grant a petition until after the second preceding model year when the production figures for that model year are definitively known.

The proposed schedule for submitting petitions and making decisions regarding them was drafted to reflect the tentatively adopted or first interpretation because that interpretation permits the section 502(c) exemption procedure to contribute more than does the second interpretation to accomplishing the purposes of Title V; i.e., increasing average fuel economy. In drafting section 502(c), Congress could have simply provided for exempting manufactures without establishing alternative standards. The increases in the average fuel economy achieved by the exempted manufacturers would then have been determined by the plans, if any, developed by these manufacturers in response to market forces. However, Congress did not choose that course. It required that alternative standards be established, thus making the exempted manufacturers subject to substantial civil penalties for not improving their average fuel economy. Although the legislative history of section 502(c) does not speak to this issue, we assume that the purpose of requiring the promulgation of alternative standards was to ensure that low volume manufacturers, like the larger manufacturers, would supplement their voluntary efforts to improve average fuel economy.

The first interpretation would enable the agency to require low volume manufacturers to make greater improvements in their average fuel economy than would the second interpretation since the first would make it possible to provide the manufacturers with greater leadtime to achieve compliance with the alternative standards. The maximum leadtime that could be provided under the second interpretation is the 12-month period between the second preceding model year and the affected model year. Significant design or tooling changes generally cannot be made without more leadtime. A much longer leadtime could be provided under the first interpretation. The leadtime should be at least 18 months and could be longer, especially if the low volume manufacturers submit their petitions well in advance of the deadline for submitting them.

The first interpretation would provide greater leadtime also by enabling the agency to grant multiple year exemptions. The promulgation of alternative standards for a multiple year period would make the future constraints on the production plans of the exempted manufacturers more predictable for those manufacturers and thereby facilitate their planning. The second interpretation appears to preclude the granting of multiple year exemptions because it would require that a petitioner be able to demonstrate that his worldwide passenger automobile production in the second model year preceding each affected model year was less than 10,000. If a manufacturer were to submit a petition for a multiple year period, it could make that demonstration with respect to second model year preceding only the first affected model year in that period. Production figures for the second model years preceding the other affected model years would not yet be available.

Another distinction between the first and second interpretations that makes the former preferable is that the first interpretation does not create the possibility of minimal standards that would make attractive the establishment of new low volume manufacturing companies to produce passenger automobiles with relatively low fuel economy. Establishment of those companies may become inviting as the higher volume manufacturers modify the design and performance of their passenger automobiles to meet applicable average fuel economy standards. Under the second interpretation, which permits only short leadtime and thus gives the Administrator relatively limited ability to require the low volume manufacturers to increase their efforts to improve their average fuel economy, exemptions might tend to be licenses for new low volume manufacturers to produce relatively inefficient passenger automobiles in perpetuity.

*Duration of exemption.* Application could be made under the proposed regulation for one to three model years.

*Contents of petition.* The petitioner would be required to include in its petition all of its data, views, and arguments supporting the requested exemption from an otherwise applicable average fuel economy standard. The regulation would set forth minimum requirements regarding such material.

A petitioner would not be permitted to incorporate documents by reference unless they were submitted with the petition. This policy would facilitate public examination of the petitions. It would also facilitate this agency's analysis of petitions and consideration of requests for confidential treatment of data and information.

The first item of information that the petitioner would be required to submit in petitioning for exemption for model year 1978 or 1979 would be its actual figures for worldwide passenger automobile production for the second model year preceding each affected model year. In the case of petitions for exemption for model year 1980 and thereafter, the production figures would be projections.

A substantial amount of information would be required regarding the passenger automobiles that the petitioner plans to manufacture during each affected model year. To enable this agency to determine the average fuel economy that the petitioner expects to be able to achieve for an affected model year, the petitioner would be required to project its production mix and total production of those passenger automobiles, show the effect on fuel economy of other Federal motor vehicle standards, and provide vehicle configuration and model type fuel economy values and the average fuel economy for those passenger automobiles based on the projections. The petitioner would have to submit information to demonstrate the reasonableness of the projections, including information showing that they are consistent with the annual total production and production mix of the petitioner's passenger automobiles manufactured or expected to be manufactured in each of the four model years immediately preceding the affected model year, and with the petitioner's passenger automobile production capacity for the affected model year. The petitioner would also be required to show that the projections are consistent with its efforts to comply with the average fuel economy standard for passenger automobiles to be manufactured in the affected model year, and with anticipated consumer demand for passenger automobiles during that model year.

The fuel economy and average fuel economy figures would be calculated in accordance with EPA regulations in Subparts C and F of 40 CFR Part 600 (41 FR 38674, September 10, 1976). The fuel economy values for the vehicle configurations could be based upon tests conducted on the petitioner's passenger automobiles or upon analytical methods comparable to those permitted by EPA. Use of analytical methods would prob-

ably be necessary since passenger automobiles for the affected model year or years are not likely to be available for testing.

A petitioner would also be required to provide information to aid this agency in determining whether the average fuel economy figure the petitioner provides for an affected model year is the maximum feasible average fuel economy achievable by the petitioner in that model year. The petitioner would have to describe key technological features, especially those having a significant effect on fuel economy, of its passenger automobiles to be manufactured in the affected model year. This information would help this agency in making its own evaluation of those vehicles' potential fuel economy.

The balance of the required information relates to the level of effort made by the petitioner to improve fuel economy. The petitioner would be required to describe the technological means and marketing strategies it selected for increasing the average fuel economy of its passenger automobiles to be manufactured during each affected model year and each of the two model years immediately following the last affected model year. A description would also be provided of the petitioner's past and planned efforts to implement those means and strategies. To explain why the petitioner does not plan to achieve a higher average fuel economy in an affected model year, the petitioner would have to discuss why it did not adopt alternative or additional means and strategies that it considered and that would have resulted in a higher average fuel economy than that achievable by the selected means and strategies. If the petitioner is not considering means and strategies that would enable the petitioner to comply with the applicable average fuel economy standard, it would be required to explain the reasons for not doing so. Finally, a petitioner planning to make fuel economy improvements in either of the two model years immediately following an affected model year would have to set forth the reasons for not making those improvements in that affected model year.

*Processing of Petitions.* When the Administrator of this agency received a petition under this proposed regulation, he would publish notice of the receipt in the FEDERAL REGISTER and place in a public docket the portions of the petition for which confidential treatment was not granted. The notice would summarize the petition, announce the availability of nonconfidential portions of the petition in the public docket, describe the options available to the Administrator regarding the petition, and invite written public comment on the petition. If the petition did not contain the information required by the proposed regulation, the petitioner would be advised of the deficiencies in his petition and informed that his petition would not be processed further until the deficiencies were eliminated. At any stage during the processing of a petition, the Administrator might use his authority under Title V to obtain additional information from the petitioner. He would also consult whenever appropriate with EPA, FEA and other Federal agencies regarding the petition, usually by circulating before publication his proposed and final decisions and exemption petitions.

After considering the petition and other information available to him, the Administrator would publish in the FEDERAL REGISTER a notice of proposed rulemaking containing his preliminary determination of the maximum feasible average fuel economy level that the petitioner can attain. If the level were equal or greater than the applicable average fuel economy standard from which exemption was sought, the notice would propose that the petition be denied. If the maximum feasible average fuel economy attainable were less than the otherwise applicable standard, the notice would propose granting the petition and would propose an alternative standard equal to the petitioner's maximum feasible average fuel economy. The notice would invite written public comment on the proposal. Any interested person could, upon written request, meet informally with an appropriate NHTSA official to discuss the petition or the notice. Memoranda recording these informal meetings would be placed in the public docket.

A final decision would be published in the FEDERAL REGISTER, setting forth the grant or denial of the petition, the reasons for the decision, and, in the case of a decision to grant a petition, the alternative standard.

*Renewal and termination of exemptions.* There would be no limit on the renewal of exemptions. Renewal petitions would be required to be submitted in the same manner as original petitions and meet the same requirements. Further, the renewal petitions would be processed in accordance with the same procedures applied to original petitions.

The Administrator could, on his own motion or on petition by any interested person, initiate rulemaking under the informal procedures of 5 U.S.C. 553 to terminate an exemption or amend an alternative average fuel economy standard. Rulemaking procedures for Title V will be established soon in a new Part 522 to be added to Title 49 of the Code of Federal Regulations. Section 502(f)(1) expressly provides for amending alternative standards issued under section 502(c). A manufacturer's exemption would be terminated with respect to a particular model year if the maximum feasible average fuel economy achievable by the manufacturer were determined to be equal to or greater than that specified in the standard which would otherwise have been applicable to the manufacturer. Similarly, an alternative standard for a model year could be increased or decreased by amendment if the Administrator determined that the maximum average fuel economy achievable by the manufacturer subject to the standard were higher or lower than the level of average fuel economy specified in that standard. Both the termination of exemptions and the amendment of alternative standards to increase the level of required average fuel economy would be subject to the provision in section 502(f)(2) that standards cannot be amended to make them more stringent within 18 months of their effective date.

*Confidential information.* The proposed regulation would make special provision for the treatment of trade secrets and other confidential information submitted in support of a petition. The provisions of section 505(d)(1) of the Act regarding confidential information indicate that requests for confidential treatment of information should be very carefully scrutinized and public disclosure be made whenever possible. The agency expects that very little information will require confidential treatment. Section 505(d)(1) provides that:

> The Secretary and the EPA Administrator shall each disclose any information obtained under this part (other than section 503(d)) to the public in accordance with section 552 of title 5, United States Code, except that information may be withheld from disclosure under subsection (b)(4) of such section only if the Secretary or EPA Administrator, as the case may be, determines that such information, if disclosed, would result in significant competitive damage. Any matter described in section 552(b)(4) relevant to any administrative or judicial proceeding under this part may be disclosed in such proceeding.

The regulation would require the petitioner to segregate and identify any information that he requested to be withheld from public disclosure. The segregation of the material would facilitate placing the balance of the petition in the public docket and evaluating the confidentiality request. With respect to information and data claimed by the petitioner to fall within 5 U.S.C. 552(b)(4), it would be required to do the following: Show that the information and data fell within section 552(b)(4) and that its disclosure would result in significant competitive damage; indicate the period during which that damage would be incurred if the information and data were released; and show that an earlier release would result in that damage. If the Administrator denied a petitioner's request for confidential treatment, he would give the petitioner written notice of his denial before releasing the information and data to the public. If the Administrator granted confidential treatment of certain information and data, he would not later invoke his authority under section 505(d)(1) to release the information and data during an administrative or judicial proceeding under Title V without first giving written notice to the petitioner. In either case, the manufacturer would be given a reasonable time to respond to the Administrator's notice.

In consideration of the foregoing, it is proposed that a new Part 525, *Exemptions From Average Fuel Economy Standards*, be added to Title 49 of the Code of Federal Regulations as set forth below.

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevent material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Comment closing date: January 24, 1977.

Proposed effective date: Date of publication of final rule.

Issued on December 3, 1976.

JOHN W. SNOW,
*Administrator.*

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## PART 525—EXEMPTIONS FROM AVERAGE FUEL ECONOMY STANDARDS

Sec.


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AUTHORITY: Sec. 301, Pub. L. 94-163, 89 Stat. 871 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976).

### § 525.1 Scope.

This part establishes procedures under section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended, (15 U.S.C. 2002) for the submission and disposition of petitions filed by low volume manufacturers of passenger automobiles to exempt them from the average fuel economy standards for passenger automobiles and to establish alternative average fuel economy standards for those manufacturers.

### § 525.2 Purpose.

The purpose of this Part is to provide guidelines for low volume manufacturers of passenger automobiles which desire to petition the Administrator for exemption from applicable average fuel economy standards and for establishment of appropriate alternative average fuel economy standards and to give interested persons an opportunity to present data, views and arguments on those petitions.

### § 525.3 Applicability.

This Part applies to passenger automobile manufacturers.

### § 525.4 Definitions.

(a) *Statutory terms.* (1) The terms "fuel," "manufacture," "manufacturer," and "model year," are used as defined in section 501 of the Act.

(2) The terms "average fuel economy," "fuel economy," and "model type" are used as defined in 40 CFR 600.002-77.

(3) The term "automobile" means a vehicle determined by the Administrator under 49 CFR 523 to be an automobile.

(4) The term "passenger automobile" means an automobile determined by the Administrator under 49 CFR 523 to be passenger automobile.

(5) The term "customs territory of the United States" is used as defined in 19 U.S.C. 1202.

(b) *Other terms.* (1) The terms "base level" and "vehicle configuration" are used as defined in 40 CFR 600.002-77.

(2) The term "vehicle curb weight" is used as defined in 40 CFR 85.002.

(3) The term "interior volume index" is used as defined in 40 CFR 600.315-77.

(4) As used in this Part, unless otherwise required by the context—

"Act" means the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513), as amended by the Energy Policy and Conservation Act (Pub. L. 94-163);

"Administrator" means the Administrator of the National Highway Traffic Safety Administration;

"Affected model year" means a model year for which an exemption and alternative average fuel economy standard are requested under this Part;

"Designated seating position" means any plan view location intended by the manufacturer to provide seating accommodation while the automobile is in motion, for a person at least as large as a fifth percentile adult female, except auxiliary seating accommodations such as temporary or folding jump seats;

"Fifth percentile adult female" means a person possessing the dimensions and weight of the fifth percentile adult female specified for the total age group in Public Health Service Publication No. 1000, Series 11, No. 8 "Weight, Height, and Selected Body Dimensions of Adults;" and

"Production mix" means the number of passenger automobiles, and the percentage of the petitioner's annual total production of passenger automobiles, in each vehicle configuration which a petitioner plans to manufacture in a model year.

### § 525.5 Limitation on eligibility.

Any manufacturer that manufactures (whether or not in the customs territory of the United States) 10,000 or more passenger automobiles in the second model year preceding an affected model year or in the affected model year is ineligible for an exemption for that affected model year.

### § 525.6 Requirements for petition.

Each petition filed under this part must—

(a) Identify the model year or years for which exemption is requested;

(b)(1) In the case of a petition for exemption for model year 1978, be submitted not later than 3 months before the beginning of that model year;

(2) In the case of a petition for exemption for model year 1979, be submitted not later than 12 months before the beginning of that model year;

(3) In the case of a petition for exemption for model year 1980 or any subsequent model year, be submitted not later than 24 months before the beginning of that model year;

(c) Be submitted in three copies to: Administrator, Highway Traffic Safety Administration, Washington, D.C. 20590;

(d) Be written in the English language;

(e) State the full name, address and title of the official responsible for preparing the petition;

(f) Set forth in full data, views and arguments of the petitioner supporting the exemption and alternative average fuel economy standard requested by the petitioner, including the information and data specified by § 525.7 and the calculations and analyses used to develop that information and data. No documents may be incorporated by reference in a petition unless the documents are submitted with the petition;

(g)(1) Specify and segregate any part of the information and data submitted under this part that the petitioner wishes to have withheld from public disclosure.

(2) With respect to information and data requested to be withheld under 5 U.S.C. 552(b)(4), show that the information and data is within the scope of section 552(b)(4), show that disclosure of the information and data would result in significant competitive damage, specify the period during which the information and data must be withheld to avoid that damage, and show that earlier disclosure would result in that damage.

### § 525.7 Basis for petition.

(a) The petitioner shall include the information specified in paragraphs (b) through (f) of this section in its petition.

(b) The total number of passenger automobiles manufactured or likely to be manufactured (whether or not in the customs territory of the United States) by the petitioner in the second model year immediately preceding each affected model year.

(c) For each affected model year, the petitioner's projections, based on the average fuel economy standard for passenger automobiles from which an exempion is being sought, of its total production and of its production mix of all

base levels of its passenger automobiles to be manufactured in that model year, and all vehicle configurations within each of those base levels, and a discussion demonstrating that the projections are reasonable. The discussion shall include information showing that the projections are consistent with—

(1) The petitioner's annual total production and production mix of passenger automobiles manufactured or likely to be manufactured in each of the four model years immediately preceding that affected model year;

(2) Its passenger automobile production capacity for that affected model year;

(3) Its efforts to comply with that average fuel economy standard; and

(4) Anticipated consumer demand in the United States for passenger automobiles during that affected model year.

(d) For each affected model year, a description of the following features of each vehicle configuration of the petitioner's passenger automobiles to be manufactured in that affected model year:

(1) Maximum overall body width, overall length, and overall height, determined in accordance with Motor Vehicle Dimensions SAE J1100a (report of Human Engineering Committee, approved September 1973, as revised September 1975);

(2) Vehicle curb weight;

(3) Number of designated seating positions and interior volume index;

(4) Engine type, displacement, and SAE net horsepower;

(5) Fuel system;

(6) Drive train configuration and ratios; and

(7) Emission control system.

(e) For each affected model year, a fuel economy value for each vehicle configuration specified in 40 CFR(a)(2), base level, and model type of the petitioner's passenger automobiles to be manufactured in that affected model year calculated in accordance with Subpart C of 40 CFR Part 600 and based on tests or analyses comparable to those prescribed or permitted under 40 CFR Part 600 and a description of the test procedures or analytical methods.

(f) For each affected model year, an average fuel economy figure for the petitioner's passenger automobiles to be manufactured in that affected model year calculated in accordance with 40 CFR 600.510(e) and based upon the fuel economy values provided under paragraph (e) of this section and upon the petitioner's production mix projected under paragraph (c) of this section for the affected model year.

(g) Information demonstrating that the average fuel economy figure provided for each affected model year under paragraph (f) of this section is the maximum feasible average fuel economy achievable by the petitioner for that model year, including—

(1) For each affected model year and each of the two model years immediately following the last affected model year, a description of the technological means and marketing strategies selected by the petitioner for increasing the fuel economy of each vehicle configuration of its passenger automobiles to be manufactured in that model year or for increasing the average fuel economy of those passenger automobiles.

(2) A chronological description of the petitioner's past and planned efforts to implement the means and strategies described under paragraph (g)(1) of this section.

(3) A discussion of the effect of other Federal motor vehicle standards on the fuel economy of the petitioner's passenger automobiles.

(4) For each affected model year, a discussion of the alternative and additional means and strategies considered but not selected by the petitioner that would have enabled any vehicle configuration of its passenger automobiles to be manufactured in that affected model year to achieve higher fuel economy than is achievable with the means described under paragraph (g)(1) of this section or enabled those passenger automobiles to achieve a higher average fuel economy than is achievable with the strategies described under that paragraph.

(5) In the case of a petitioner which is not considering means or strategies that will enable it to comply with the applicable average fuel economy standard for each affected model year, an explanation of the petitioner's reasons for not doing so.

(6) In the case of a petitioner which plans to increase the average fuel economy of its passenger automobiles to be manufactured in either of the two model years immediately following an affected model year, an explanation of the petitioner's reasons for not making those increases in that affected model year.

### § 525.8 Processing of petitions.

(a) Notice of receipt of each petition containing the information required by this Part is published in the FEDERAL REGISTER. The notice summarizes the petition, describes the options available to the Administrator regarding the petition, and invites written public comment on the petition.

(b) If a petition is found not to contain the information required by this Part, the petitioner is informed about the areas of insufficiency and advised that the petition will not receive further consideration until the required information is submitted.

(c) The Administrator may request the petitioner to provide information in addition to that required by this Part.

(d) The Administrator publishes a proposed decision in the FEDERAL REGISTER. The proposed decision indicates the proposed grant of the petition and establishment of an alternative average fuel economy standard, or the proposed denial of the petition, specifies the reasons for the proposal and invites written public comment on the proposal.

(e) Any interested person may, upon written request submitted to the Administrator not later than 15 days after the publication of a notice under paragraph (d) of this section, meet informally with an appropriate official of the National Highway Traffic Safety Administration to discuss the petition or the notice.

(f) After the conclusion of the period for public comment on the proposal, the Administrator publishes a final decision in the FEDERAL REGISTER. The final decision is based on the petition, written public comments, and other available information. The final decision sets forth the grant of the exemption and establishes an alternative average fuel economy standard or the denial of the petition, and the reasons for the decision.

### § 525.9 Duration of exemption.

An exemption may be granted under this Part for not more than three model years.

### § 525.10 Renewal of exemption.

A manufacturer exempted under this Part may request renewal of its exemption by submitting a petition meeting the requirements of §§ 525.6 and 525.7.

### § 525.11 Termination of exemption; amendment of alternative average fuel economy standard.

(a) Any exemption granted under this Part for an affected model year does not apply to a manufacturer that is ineligible under § 525.5 for an exemption in that model year.

(b) The Administrator may initiate rulemaking either on his own motion or on petition by an interested person to terminate an exemption granted under this Part or to amend an alternative average fuel economy standard established under this Part. The rulemaking proceeding is conducted under Part 522 of this chapter.

(c) Any interested person may petition the Administrator to terminate an exemption granted under this Part or to amend an alternative average fuel economy standard established under this Part. The petition must meet the requirements of Part 522 of this chapter. The Administrator processes the petition under that Part.

### § 525.12 Public inspection of information.

Except as provided in § 525.13, any person may inspect available information relevant to a petition under this Part, including the petition and any supporting data, memoranda of informal meetings with the petitioner or any other interested persons, and the notices regarding the petition, in the Docket Section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this paragraph in accordance with Part 7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 7).

### § 525.13 Confidential information.

(a) Information made available under § 525.12 for public inspection does not include information for which confidentiality is requested under § 525.6(g) and is granted in accordance with sections

502 and 505 of the Act and section 552(b) of Title 5 of the United States Code.

(b) *Denial of confidential treatment.* When the Administrator denies a petitioner's request under § 525.6(g) for confidential treatment of information, the Administrator gives him written notice of the denial at least 10 days before making the information available for public inspection.

(c) *Release of confidential information.* After giving written notice to the petitioner and allowing a reasonable time for the petitioner to respond, the Administrator may make available for public inspection information that is relevant to a proceeding under this Part or the Act and that was granted confidential treatment by the Administrator pursuant to a request by the petitioner under § 525.6(g).

[FR Doc.76-36232 Filed 12-8-76;8:45 am]

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[49 CFR Part 533]

[Docket No. FE 76-3; Notice 2]

## NONPASSENGER AUTOMOBILES—MODEL YEAR 1979

### Average Fuel Economy Standard

*Correction*

In FR Doc. 76-34762, appearing at page 52087 in the FEDERAL REGISTER of Friday, November 26, 1976, the comment closing date on page 52094, column 2, is corrected to read January 10, 1977.

Dated: December 3, 1976.

JOHN W. SNOW,
*Administrator, National Highway Traffic Safety Administrator.*

[FR Doc.76-36233 Filed 12-8-76;8:45 am]

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# INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1100]

[Ex Parte No. 55 (Sub-No. 14)]

## REVISION OF APPLICATION FORMS OP-OR-9, OP-OR-11, OP-WC-10, OP-WC-20, AND OP-FF-10 FOR OPERATING AUTHORITY AND AMENDMENTS TO RULES 22, 49, 51, 57, 74, AND 247 OF THE GENERAL RULES OF PRACTICE

### Notice of Continued Proposed Rulemaking

• PURPOSE: The purpose of this document is to notify the public of the continuation of this rulemaking proceeding to explore the feasibility of requiring the filing of verified statements within time frames fixed as of the date of the publication of an application for operating authority in the FEDERAL REGISTER and of eliminating the order designating application proceedings for handling under the modified procedure. •

On July 7, 1975, the Interstate Commerce Commission announced the results of an unprecedented internal staff study of the Agency's operations. Among the recommendations of the "Blue Ribbon Staff Panel" was that the Commission take immediate and forceful steps to improve its case processing. To that end, the purpose of the rulemaking proceeding instituted herein were (1) to explore the feasibility and desirability of requiring applicants for operating authority to submit, at the time the application is filed, verified statements containing all the evidence upon which they intend to rely (the "case-in-chief" proposal), (2) to consider the requirement of a standardized format for verified statements submitted by all parties in proceedings involving applications for operating authority, and (3) to effect necessary changes in existing pertinent application forms as a result of amendments to the General Rules of Practice.

On November 7, 1975, a notice of proposed rulemaking in this proceeding was instituted proposing these changes in the rules and further proposing limitations on the use of discovery in cases handled under the modified procedure (49 CFR 1100.57) and on requests for extensions of time. After receipt of numerous representations from legal, carrier, practitioner, shipper, and governmental interests, the Commission issued a report in this proceeding, decided on November 16, 1976, at 125 M.C.C. 790 (1976). That report adopted rules pertaining to the above-mentioned format requirements, discovery, and extensions changes, and further required that applicants now submit with their applications a caption summary of the authority sought to serve as notice of the filing of the application and for publication in the FEDERAL REGISTER. The report rejected the "case-in-chief" concept.

One of the suggested alternatives to the "case-in-chief" concept, most notably advanced by the Association of ICC Practitioners, would obviate the problems which would have been caused by enactment of the "case-in-chief". This suggestion has been prepared as a new proposal.

The Commission, while rejecting the "case-in-chief" concept as unfeasible, is continuing to search for methods of reducing unnecessary delays encountered in the application process. To this end, and because it has been found that an inordinate delay attends the designation order, a new proposal is being advanced herein which would eliminate the order designating a proceeding for handling either under the modified procedure or at oral hearing and would automatically fix the time within which verified statements are due to be filed. The due dates for filing verified statements would be automatically fixed to occur from the date of the publication of the application in the FEDERAL REGISTER. This would, of necessity, require the filing of verified statements in all application proceedings (whether subsequently set to be handled at oral hearing or not).

The essence of the recommendations herein is embodied in the proposed amendments to Special Rule 247, which governs applications for operating authority pursuant to Sections 206 (except Section 206(a)(6)), 209, 211, 302(e), 303, 309, and 410 of the Interstate Commerce Act. Under the proposal, parties to an application proceeding would no longer wait for the service of an order designating the proceeding for handling under the modified procedure before filing their verified statements within time frames fixed by that order, but would be required to file their statements within time periods measured from the date the application is published in the FEDERAL REGISTER (60 days for applicant's initial vertified statements, 90 days for protestant's verified statements, and 110 days for the rebuttal). This proposal will eliminate the formal necessity for an early designation of the proceeding, permit a more well-informed judgment about designation after it is known how many parties will actively participate in the proceeding, and reduce the delay experienced by the parties in waiting for the service of the designation order. Parties will know far earlier in the proceeding exactly when their statements are due and will consequently not experience unexpected deadlines, thereby preventing extension requests. As postulated, the proposed amendment of Special Rule 247(e)(1) would provide for exceptions to the filing requirements for certain regulation route property and passenger applications. The continued rulemaking proceeding will also entertain questions as to whether there should be other specific exceptions for similar cause or explicitly stated waiver procedures for hardship situations and the like.

The proposed amendments to Special Rule 247 are designed to retain the present framework for oral hearing and should not result in a disadvantage for any party to the proceeding. Nor are they intended to shift the burden of proof in any way.

Where oral hearing is directed applicant will be afforded the alternative of relying solely on these previously filed statements or of presenting the same or additional evidence in testimonial form. Applicant may even continue to submit additional certifications of support, not to exceed twice the number of those originally certified, once the proceeding is designated, or reassigned, for oral hearing. It is thus not precluded from necessary and often unavoidable expansion of its case during the generally longer waiting period before the hearing commences. The presentation of protestant's case at oral hearing, of course, will not be altered in any respect by the proposed changes.

In addition to the changes in Special Rule 247 discussed above, minor rephrasing and some renumbering of subsections within that rule have been proposed. Certain modifications of General Rules 45, 49 and 51 (49 CFR 1100.45, 49, and 51), are also necessary so as to preclude interpretive problems. As is presently the case, the General Rules of Practice, including those rules which relate specifically to the modified procedure, are applicable to application proceedings unless Special Rule 247 provides otherwise.

Because this Commission desires to serve the public interest in the most efficient manner possible, while preserving constitutional safeguards of due process,