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March 24, 2015

Dr. Magdy El-Sibaie
Associate Administrator for
Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

**Re: Docket No. PHMSA-2013-0225 (HM-218H): Hazardous Materials
Miscellaneous Amendments; NPRM January 23, 2015**

Dear Dr. El-Sibaie:

The Reusable Industrial Packaging Association (RIPA) is pleased to offer comments on the above referenced notice of proposed rulemaking (NPRM). RIPA represents both reconditioners and manufacturers of reusable industrial packagings doing business throughout North America. The most common packagings handled by the industry are steel, plastic and fiber drums, as well as intermediate bulk containers (IBCs).

RIPA is concerned that proposed changes to Section 173.21 which would extend to trucks, trailers and rail cars the current prohibition on the transport of materials in certain kinds of freight containers or packaging that, if mixed, would likely cause an unsafe condition, are untenable.

Briefly, the current rules forbid the transportation of certain hazardous materials in the same packaging, freight container or overpack. These materials are those that, if mixed, would be likely to cause a "dangerous evolution of heat, flammable or poisonous gases or vapors, or to produce corrosive materials." It is the shipper's responsibility to determine if the hazardous materials shipped would meet the stated criteria.

The proposed extension is an extremely broad and unnecessary prohibition. As long as the materials are properly packaged and stowed, and segregated according to 177.848, and the

packagings are DOT-compliant, there is no reason to completely bar them from being on the same trailer or rail car.

This section of the HMR has not been previously extended to trucks or rail cars for several reasons, each of which retain their relevancy today. Unlike individual packagings and overpacks, the shipper does not retain total control over the preparation of the item for shipment. For obvious safety reasons, shippers would not purposefully mix incompatible hazardous materials in a single packaging or an overpack. Similarly, shippers would not knowingly load packagings containing incompatible materials into a freight container.

Shippers do not maintain control of their packagings after they have been loaded onto a common carrier or rail car. Indeed, it is a normal and customary practice in the less-than-truckload (LTL) environment that many smaller shipments of packaged hazardous materials are loaded into the vehicle.

Given that there are many hazardous materials that could be covered by this proposal – the exact number is nearly impossible to determine without actual testing – it is clear that a compatibility determination for mixed shipments would be all but impossible for a trucking company to ascertain in the daily course of business.

To make matters worse, new chemicals are introduced into the marketplace on a frequent basis. Without a perfectly updated list of newly minted hazardous materials, each of which would have to be tested with all other known chemicals “likely to cause” the evolution of a dangerous environment when mixed, LTL carriers would face a nearly impossible-to-resolve compliance burden.

Even if every carrier were to employ a chemist, as noted by the American Trucking Associations in their comments to the rule, perfect knowledge of the chemical market would be impossible to achieve. Consequently, carriers would be forced by liability concerns to limit the types of materials carried in a given movement, thereby substantially increasing costs to the shipping community.

The rule also makes no provision for the transportation of emptied packagings that previously contained hazardous materials. Shippers throughout the U.S. utilize common carriers to transport emptied packagings with very small amounts of residue to reconditioners, where the packagings are cleaned and often reused after reprocessing. Since the amount of material retained in emptied packagings is relatively small, the risk of a safety problem is correspondingly low.

Even if the Agency decides to move forward with this rule, we respectfully request that provision be made to except from the rule packagings that have been emptied and meet the empty packaging requirements of 49 CFR 173.29.

Given that RIPA members generally transport packagings with low levels of any residual materials, it seems overly broad to bar transporting any two non-bulk or bulk packagings (e.g., IBCs) if the combining of their residual materials could create the referenced environment. This is exactly what the segregation rule in 177.848 is designed to prevent, and that is where PHMSA should address this concern.

RIPA appreciates the opportunity to comment on this proposed rule and would be pleased to provide further clarification to the Agency as needed.

Sincerely,

A handwritten signature in black ink that reads "Paul Rankin". The signature is written in a cursive, slightly slanted style.

Paul W. Rankin
President

cc: R. Buckner
R. Schweitzer