

COMMENTS ON CCSB DOCKET 2014-2
SUBJECT 10: ITEM (RULE) 540

PRESENTED TO

COMMODITY CLASSIFICATION STANDARDS BOARD
FT. LAUDERDALE, FLORIDA
MAY 20, 2014

BY

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RIPA Comments on CCSB Docket 2014-2
Subject 10: Item (Rule) 540
Commodity Classification Standards Board
Ft. Lauderdale, FL
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Introduction

Good afternoon. My name is Paul W. Rankin and I am President of the Reusable Industrial Packaging Association (RIPA). I would like to thank the panel for providing me with the opportunity to speak with you today about Docket 2014-2, Subject 10; “Empty Shipping Packages Containing Hazardous Materials Residue.”

RIPA members recondition, manufacture, and remanufacture approximately 24 million 55-gallon steel drums and 4 million 55-gallon plastic drums each year. My comments today include these commonly used and transported industrial packagings, as well as other non-bulk packagings used to transport hazardous materials.

The proposal before the Board today is to add a new section to Item (Rule) 540, which would be patterned after the existing NOTE 41163. This NOTE refers to the classification of empty cylinders containing the residue of hazardous material. The Board proposes to effectively extend this concept to “empty shipping packages,” which includes all non-bulk packagings that bear no DOT or other commercial markings (e.g. material name, ID number, hazard warning, etc.), AND are excepted from certain Hazardous Materials Regulations (49 CFR) under Section 173.29. Put another way, non-bulk packagings that contain small amounts of hazardous residue that do not meet the above criteria would be classified as hazardous materials packagings, i.e. treated for purposes of transportation as if they were full.

RIPA opposes the proposed re-classification of hazardous materials packagings for the following reasons.

1. CCSB has offered the public no information regarding the potential economic impact of this proposed re-classification of non-bulk residue packaging.

RIPA estimates that approximately between 2.4 and 3.5 million packagings would be affected by this rule change. Such packagings include 55-gallon steel and plastic drums; 30- and 15-gallon drums, and a range of other smaller hazardous materials packagings that are used by shippers throughout the U.S.

It is not possible to estimate the precise number of shippers that would be impacted by the proposed rule, however, there is little doubt that the number would be in well into the thousands. Importantly, many of these firms would be smaller businesses that often use common carriers to transport small numbers of emptied hazmat packagings for refilling or reconditioning.

Given the lack of important economic data in the proposal, RIPA recommends CCSB undertake a study to quantify the number of packagings and shippers affected by the proposal, as well as the potential economic impact on shippers of varying sizes.

2. CCSB has provided no evidence that packagings containing small amounts of hazardous materials residue pose a hazard in transportation, which could be used to justify their classification in a manner equivalent to a packaging that is filled.

As noted above, RIPA believes that millions of packagings containing small amounts of hazardous materials residue are shipped every year as “empty”. To our knowledge, this transportation has been accomplished safely. Indeed, CCSB has offered no data to suggest this is

not the case. Therefore, we strongly suggest that CCSB conduct a study to determine the level of safety that exists under the current system of classification.

3. CCSB has offered no definition of the term “residue.”

CCSB proposes to classify as “empty” packagings that meet the DOT definition of “empty packagings,” which is found in Section 173.29 of 49 CFR. The pertinent provision states that to be empty a packaging must be “sufficiently cleaned or residue and purged of vapors to remove any potential hazard.” RIPA is concerned that since there is no definition of the term “clean and purge” some shippers may leave in or on containers small amounts of hazardous material which could create a safety hazard in transportation. The cleaning and purging process, no matter how thorough, is bound to leave some small amount of residue in or on a container. We ask CCSB to consider how they will deal with this matter.

4. The proposed CCSB rule change may result in a less safe transportation environment than exists today.

Under the current rules, non-bulk packagings that have been emptied but which still retain small amounts of residue are commonly shipped with their markings and labels in place and all openings closed. In order to be exempted from EPA’s hazardous waste rules (e.g. manifest requirements), these packagings must meet that Agency’s emptiness rule (40 CFR 261.7). This rule requires the shipper to empty packagings as fully as practicable and, if viscous materials are involved, ensure no more than 1-inch of residue remains in the container.

As noted in Point 3, the CCSB proposal would require all identifying marks and hazard warnings to be removed from a cleaned and purged packaging for it to be shipped as “empty.” In a perfect world, all shippers would comply with these requirements and residue containers would be thoroughly cleaned and purged and, thereby, be free of potential hazards. RIPA is concerned,

however, that some shippers may not fully understand the DOT clean and purge requirement, particularly given the fact that no exact definition of this activity exists beyond that provided in the regulatory text itself. As a result, the potential for misunderstanding and error is there, and this *could* lead to real-world safety problems for drivers and emergency responders who, potentially, might have to deal with a container that has been stripped of its markings and hazard warnings, but nonetheless presents or appears to present a hazard. No one, least of all commercial drivers, would want to face this kind of problem, but it most certainly could happen.

For this reason, we urge the Board to take a step back from this proposal and consider carefully all potential safety ramifications.

To summarize, RIPA is concerned that this proposal has been offered without the benefit of an economic justification or data substantiating the existence of a safety hazard. Moreover, CCSB has not considered the fact that even after cleaning and purging small amounts of hazardous material may still be in or on a packaging. Finally, we are deeply troubled by the fact that the proposal, if enacted, could lead to unintended safety hazards for drivers, emergency responders and the public.

For these reasons, we respectfully ask CCSB to withdraw or at least delay further progress of this proposal until the requested studies are completed and the safety issues we have raised are resolved to the Board's full satisfaction.

RIPA stands ready to assist the Board with any of the proposed work items. We thank you for this opportunity to present our views to you today.