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Docket Operations
U.S. Department of Transportation
West Building, Ground Floor
Room W12-140 Routing Symbol M-30
1200 New Jersey Ave, SE W12-140
Washington, DC 20590-0001

Re: Docket No. PHMSA-2005-22356; Hazardous Materials: Enhanced Enforcement Authority Procedures; NPRM

To Whom It May Concern:

The Reusable Industrial Packaging Association (RIPA) is pleased to offer comments on the above cited Docket, which proposes new rules affecting, among other things, the inspection, opening, and closing of packagings suspected to be non-compliant with DOT regulations, or which could pose an imminent hazard in transportation.

RIPA represents North American reconditioners, manufacturers, and distributors of industrial packagings including steel, plastic, and fiber drums, as well as intermediate bulk containers. RIPA is a founding member of the International Confederation of Container Reconditioners (ICCR), which represents the reconditioning industry's interests in various international groups, including the UN Sub-Committee of Experts on the Transport of Dangerous Goods.

(1) Part 109.1 - definition of "freight container."

DOT proposes to define the term "freight container" as a package "configured as a reusable container that has a volume of 64 cubic feet or more, designed and constructed to permit being lifted with its contents intact and intended primarily for the containment of smaller packages (in unit form) during transportation."

Comment: RIPA believes there is no need to utilize volumetric capacity in the proposed definition of "freight container." If, however, DOT believes there is a need to include such a reference, 64 cubic feet is too low, since it would encompass some rigid and flexible IBC designs, as well as many "large packagings." RIPA offers the following definition for Agency consideration:

"Freight container" means a reusable container that is designed for mechanical handling and intended for the containment of unit packages. Freight containers are not designed for direct contact with hazardous loadings.

(2) Part 109.3 – inspections and investigations.

(a) Section 109.3(b)(4)(ii) would authorize DOT agents to open various packagings, except those in which the lading “is immediately adjacent to the hazardous materials....”

Comment: RIPA strongly supports this proposal as a means to ensure the safety of DOT agents responsible for carrying out their duties under this proposal.

(b) Section 109.3(b)(5) directs DOT agents to “assist in preparing [an opened] package for safe and prompt transportation, when practicable, by reclosing the package in accordance with the packaging manufacturer’s closure instructions...”, or use alternate closure methods developed and approved by PHMSA.

In addition, DOT would require its agents to “mark” and “certify” that the re-closed package was opened by an agency official, who would then return the package to the person from whom it was obtained, as soon as practicable.

Importantly, DOT limits an agents’ potential exposure to hazardous loadings by prohibiting the opening of a package that is “immediately adjacent” to the hazardous materials contained in the package.

Comment: RIPA supports DOT’s goal of ensuring that packages opened by its agents are re-closed suitably to ensure the safe resumption of travel. We are concerned, however, that the proposed regulation could cause problems by imposing unnecessary and possibly unachievable burdens on its own agents.

The proposed rule provides DOT agents two options when closing packages that have been removed from transportation, opened for inspection, and found to be suitable for reintroduction into transportation. These are: (a) follow the manufacturer’s closure instructions, or (b) use “an alternate method approved by PHMSA’s Associate Administrator for Hazardous Materials Safety.”

When an agent opens a freight container or, in some cases, an overpack, that is not covered by the Hazardous Materials Regulations (HMR), he will not have access to closure instructions, since none are required by DOT. In these cases, the agent will have no option but to close the package in accordance with an approved PHMSA method. To make this point more clearly, we suggest this paragraph 109(b)(v) be amended by adding a new second sentence, as follows:

If a package does not meet a DOT specification or UN standard, the agent shall close it using an approved PHMSA closure method.

However, when an agent opens a DOT specification or UN standard package, for example a combination packaging, unless otherwise directed by the Secretary, he is bound by 178.2(a)(2) to re-close the package in accordance with the manufacturer’s closure instructions, i.e. “Any person who performs a function prescribed in this part shall perform that function in accordance with this part.”

DOT could remedy this regulatory dilemma by eliminating the conflict between proposed Section 109.3 and existing Section 178.2. This can be accomplished by deleting provisions directing agents to close packages in accordance with closure instructions. By so doing, DOT agents would always close packages in accordance with an approved DOT procedure. The DOT procedure could direct agents to obtain and use closure instructions where feasible and practicable, while leaving open the option of closing a package with other DOT procedures.

RIPA believes this is a much more useful approach because –

- (a) Agents may have trouble matching individual packagings to the proper set of closure instructions. Hundreds of thousands of drums, boxes, etc. are sold annually not by the original manufacturer, but by distributors. Although many distributors send their customers the original manufacturer's closure instructions, this is not always the case, nor is there any requirement to do so. In addition, closure instructions are often updated to reflect changes – often subtle – in a given packaging design. As a result, agents may have difficulty knowing with certainty that a given set of closure instructions is the most recent version for the packaging in question.
- (b) Packaging designs may be confusing to agents. Two fiberboard IBCs, for example, may be made from different strength fiberboard, but look very similar to the untrained eye. Such a simple mistake could result in a manufacturer sending the wrong closure instructions to an agent.
- (c) Waiting for closure instructions may cause unnecessary delays in re-shipments. Manufacturers and distributors maintain closure instructions records in a variety of ways. As a result, agents may have to wait while a manufacturer or distributor locates the proper set of instructions. This could create problems for shipments of materials with limited life-spans.
- (d) Closure instructions cannot be sent by electronic means. In a recent DOT Letter of Interpretation (Ref. No. 07-0209) DOT held that “[W]ritten (i.e. hard copy) notification must be provided to meet the requirement in 178.2(c).” Thus, even if an agent wanted to close a package using the proper closure instructions, under the current rules he would have to wait for them to arrive by mail or another delivery option. DOT could solve this problem by requiring all agents to close packages in accordance with an approved PHMSA methodology, one aspect of which could be the use of closure instructions transmitted by electronic means.
- (e) DOT agents may not have the tools needed to properly close a packaging. Some closure instructions stipulate the use of specific equipment or materials, e.g., crimping tool, plastic mallet, tape, etc., to ensure proper closure. If an agent does not have the proper tools or equipment on hand, he will be unable to properly close a packaging.

(3) Liability.

RIPA is concerned that packaging manufacturers, reconditioners, and distributors may be subject to DOT enforcement actions or civil litigation in the event of a hazardous materials release from a package closed by an agent and returned to transportation. The Proposed Rule is silent on this issue, but it is unreasonable to expect any of the above referenced parties to bear any legal burden for closure-related releases of hazardous materials from packagings opened and then closed by a DOT agent.

Thank you for this opportunity to provide comments on this important proposal.

Sincerely,



Paul W. Rankin
President