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November 12, 2019

Mr. William Schoonover  
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: Petition for Rulemaking P-1720; Docket No. PHMSA-2018-0083: Application of the "USA" Mark**

Dear Mr. Schoonover:

The Reusable Industrial Packaging Association (RIPA) is pleased to offer comments on the above referenced petition for rulemaking (P-1720), which asks the Pipeline and Hazardous Materials Administration (PHMSA) to amend the Hazardous Materials Regulations to allow US-based testing laboratories to assign the "USA" mark to manufacturers of packagings located outside the United States.

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).

The petition in question (P-1720) was filed with PHMSA by HAZMAT Safety Consulting, LLC on July 24, 2018. It asks that DOT "recognized" laboratories "...be allowed to assign a specification marking that includes "USA" and the "+" designation regardless of where [a packaging] is manufactured." To accomplish this, HSC asks that DOT amend several provisions in the Hazardous Materials Regulations (HMR), all of which deal with the application of marks on packagings intended for hazardous materials usage.

The HSC petition does not specify on whose behalf it is seeking this authorization, however. As a result, the arguments made in the petition are completely hypothetical, and any assertions of harm to U.S. or foreign manufacturers or other entities under the current regulatory requirements are unsubstantiated.

HSC argues that the “USA” mark may only be applied to a packaging “...manufactured and marked in the United States,” and this requirement “...is not consistent with the...UN Model Regulations.” Indeed, the Model Regulations only require a packaging mark to include identification of “The State authorizing the allocation of the mark...” and do not stipulate where such packagings may be tested. However, it should be noted that national regulations are not expected or required to track each and every provision in the Model Regulations because national governments need latitude to create regulatory structures that reflect their own, often unique, operating environments. In fact, the packaging requirements in the Hazardous Materials Regulations do vary from the Model Regulations. For example, the HMR permits the use of plastic packagings for more than five years (60 months), which is the time-of-use limit imposed on these packagings in the Model Regulations. See 173.28 et seq. The HMR also contain a number of selective testing variations that are not found in the Model Regulations. See 178.601(g) et seq.

HSC argues that because PHMSA has “greater jurisdictional reach over US companies...by broadening the application of the “USA” mark, PHMSA would be enhancing its ability to hold those certifying and marking packages with “USA” accountable.” However, since companies that might take advantage of this broadened authorization would, by definition, be foreign-based, it is not at all clear how DOT could hold a foreign firm “accountable” during the manufacturing process.

HSC states that foreign manufacturers are at a “disadvantage” because they are not allowed to apply the “USA” mark. HSC does not elaborate on this assertion. Presumably, a packaging manufacturer operating outside the U.S. would already have access to a test laboratory with authority to authorize use of that nation’s mark and other appropriate identification information.

HSC argues that “third-party labs are designated agents of PHMSA and are the subject of significant oversight by DOT enforcement personnel.” While it is true that PHMSA does designate and oversee some procedures of certain “third-party” test laboratories, these labs are not the only ones authorized to conduct legitimate, DOT-recognized tests on packagings intended for use with hazardous materials. Indeed, there are a large number of such labs operating today in the U.S. and, in addition, there are many other companies that certify their own packagings (“self-certification”). The amendatory language suggested by the petitioner does not differentiate between any of these labs. HSC only asks that the “USA” mark be authorized for use “...if the packaging is manufactured, marked, or tested and certified in the United States.” Conceivably, this language would be broad enough to allow testing laboratories other than those designated by DOT to issue a “USA” mark to a foreign manufacturer.

HSC states that test reports produced by DOT-certified labs “...are more comprehensive” than those produced by foreign labs....” This is certainly an arguable point. For example, one might question if a US third-party lab report is more comprehensive than a report issued by, for example, Germany’s *Federal Institute for Materials Research and Testing* (BAM), which is well known for its excellent packaging testing work.

Moreover, adoption of the petitioner's proposal would expand PHMSA's regulatory reach to require evaluation and supervision of foreign manufacturers and testing laboratories. Notwithstanding the question of whether PHMSA has the legal authority to conduct such oversight, the agency's limited resources for regulation and enforcement are already stretched thin under its current operations. If PHMSA is expected to oversee foreign manufacturers and testing laboratories in addition to its domestic responsibilities, the agency will be less capable of fulfilling its obligations in the United States.

For these reasons, the Reusable Industrial Packaging Association respectfully opposes P-1720. We would be pleased to answer any questions about our comments at the Agency's convenience.

Sincerely,

A handwritten signature in black ink that reads "Paul Rankin". The signature is written in a cursive style with a large initial "P" and "R".

Paul Rankin

cc: Brian Evoy  
Mike Bank