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November 28, 2017

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Docket No. DOT – OST – 2017 – 0069; “Notification of Regulatory Review”

On behalf of the members of The Reusable Industrial Packaging Association, I am pleased to offer comments on the referenced regulatory reform notice. RIPA is the U.S.-based trade association for businesses involved in the reconditioning, manufacturing, reuse and recycling of industrial containers such as steel drums, plastic drums, and composite intermediate bulk containers. RIPA’s membership includes companies that account for about 90% of the annual revenue derived from the reconditioning businesses in the U.S. The association also represents firms that supply parts and materials to these firms.

RIPA’s Interest in the DOT Review

Each year, approximately 25 million 55-gallon steel drums, 4.3 million 55-gallon plastic drums and 3.2 million composite intermediate bulk containers (IBCs) are reconditioned or reprocessed for transporting hazardous and non-hazardous materials in the U.S. and overseas. We estimate that approximately 50% of these containers are used for the transport of hazardous materials and, as such, are regulated under 49 CFR Parts 100 – 199. Within DOT, the Pipeline and Hazardous Material Safety Administration (PHMSA) – and more narrowly, the Office of Hazardous Materials Safety – is the Agency primarily responsible for regulating the manufacture and reconditioning of these packagings.

RIPA is pleased to have this opportunity to recommend regulatory revisions and actions that, if implemented, would result in significant savings to the industry while achieving equivalent and, in many cases, enhanced levels of safety.

RIPA recommends that DOT take the following actions:

1. Authorize in 49 CFR Part 178 Appendix B the use of ultrasonic sensing technology as an approved method for testing UN packagings for leakproofness.

2. Revise existing regulations that define the reconditioning process to reflect decades of industry practice by allowing small amounts of external coating materials and labels to remain on a processed metal drum.
3. Eliminate vehicle placard and shipping paper requirements for IBCs when they are shipped empty to a reconditioner (i.e. reprocessor).
4. Codify into the regulations Special Permit 16323 which authorizes the installation of new inner receptacles that have already been leakproofness tested by the manufacturer into composite IBC outer receptacles, without the need to perform a redundant leakproofness test.
5. Extend from one-year to five-years the periodicity of required design-type re-testing for non-bulk metal, plastic and fiber packagings, as well as intermediate bulk containers.

Packaging Leakproofness Testing with Ultrasonic Sensing

RIPA recommends codification into the Hazardous Materials Regulations (at 40 CFR 178 Appendix B) ultrasonic sensing as an approved method for testing UN packagings for leakproofness. RIPA submitted a petition for rulemaking (P-1703) with PHMSA on April 3, 2017 which details the operational controls, detection capabilities and the basic design specifications that ensure ultrasonic leakproofness sensing provides a greater margin of safety and is significantly more efficient than other leakproofness testing methods currently authorized by DOT.

In its petition, RIPA submitted data showing ultrasonic testing detected a known leak more frequently for a significant sample of drums than was the case with the approved (baseline) water submersion method. Additionally, the speed with which an ultrasonic tester can determine whether a leak exists is at least twice that of a pressure differential tester and as much as ten times faster than the water immersion test.

Ultrasonic sensing for leakproofness testing of hazardous materials packagings has been in use for several years under two Competent Authority Approvals (CA 2009050053; CA 2011040027). There have been no negative safety issues reported or observed.

RIPA estimates the potential annual savings to RIPA member companies, in labor costs alone, would be greater \$1,000,000.

Metal Drum Surface Preparation in Reconditioning

RIPA recommends changes to Section 173.28, which defines the processes required for, among other things, reconditioning metal drums, to relax an existing requirement that is literally not possible to meet. The current requirement in Section 173.28(c)(1)(i) regarding metal drum surface preparation in the reconditioning process requires the removal of "...any external coatings and labels..." down to the base material of construction. Unfortunately, some DOT inspectors have, in recent years, interpreted this text so stringently that even barely visible paint sheens and bits and

pieces of label adhesive that remain on a drum after the shot-blasting process, have resulted in a citation.

In a petition for rulemaking (P-1670) on December 21, 2015, RIPA has asked the Agency to adopt a more reasonable regulatory standard that ensures transportation safety and accounts for decades of industry practice. The petition seeks the following changes to the rule, which we hope the Secretary will support:

Section 173.28(c)(1)(i) should be revised to include a requirement that reconditioning of metal drums must encompass “[c]leaning to base material of construction, with all former contents, internal and external corrosion *removed*, and any external coatings and labels *sufficiently removed to expose metal deterioration which could adversely affect transportation safety*.”

Emptied IBCs Shipped for Reprocessing

On April 24, 2013, RIPA petitioned PHMSA for a rulemaking to allow emptied IBCs to be transported to a reconditioner (an IBC “reprocessor” under the Hazardous Materials Regulations) without the requirements for vehicle placards and shipping papers, as is currently authorized for emptied drums under 49 CFR 173.29(c).

For decades, DOT has recognized that companies emptying steel drums should, for safety and environmental purposes, be encouraged to send the emptied drums to a reconditioning facility where they can be safely cleaned, reconditioned and in most cases reused. This procedure has been extraordinarily successful both from a safety and environmental standpoint. Container reuse is environmentally superior to any alternative, including recycling.

However, years ago when most of the rules pertaining to industrial packaging reconditioning were written, the intermediate bulk container (30 liters to 3000 liters in size) had only just been introduced into the marketplace. This container is now widely used by thousands of industrial companies throughout the U.S. and, when empty, is regularly sent to a reconditioner for cleaning, reprocessing and reuse.

However, due merely to a definitional quirk, an IBC is considered a “bulk” packaging by DOT, like a tank truck or rail car. As such, the transport of such packagings when empty requires the use of placards and shipping papers, as well as the use of a hazmat CDL driver. The overwhelming majority of IBCs produced in the United States have liquid capacities between 275- and 330-gallons, which is the equivalent of five or six 55-gallon drums, respectively. Thus, an IBC is much closer in capacity to a 55-gallon drum than a tank car or tank truck, the liquid capacities of which often exceed 10,000 U.S. gallons, and are moved into and around manufacturing facilities like non-bulk packagings. As such, we believe these containers should be treated much the same as drums from a regulatory perspective.

To simplify the transportation process, RIPA is asking DOT to apply effectively the same empty container rules it uses for drums to empty IBCs. Doing so will not affect transportation safety and will in fact reduce the regulatory burdens associated with transporting these containers like tank trucks. We hope the Secretary will support this effort.

Codification of Special Permits – Special Permit 16323

RIPA recommends codification into the regulations of provisions that would authorize reconditioners to install new plastic inner receptacles that have been leakproofness tested by the manufacturer into composite IBC outer receptacles.

Special Permit 16323 was first issued to a reconditioner in 2015 and since that time, numerous companies have applied for and obtained “party-to” status. In the nearly three-years the SP has been in effect, there have been no transportation incidents reported involving these units. This exceptional safety record suggests that it is now time for the Agency to incorporate Special Permit 16323 into its regulations.

Extend Periodicity of Testing for a Design Type

The Hazardous Materials Regulations (HMR) require packaging manufacturers to retest each non-bulk single packaging design type and each intermediate bulk packaging design type at least once every 12 months. See §178.601(e) for non-bulk packagings and 178.801(e) for intermediate bulk containers. RIPA believes that annual retesting of design types is unnecessary from a safety perspective and imposes excessive direct and indirect costs on manufacturers (and remanufacturers) of these packagings.

RIPA recommends extending the retest period for single non-bulk packagings and intermediate bulk containers from one-year to a minimum of every three years.

The U.S. is one of the few countries that requires annual retesting of design types. Europe, for example, mandates an initial design test and then, if no substantive revisions are made to the design, companies are not required to retest unless requested to do so by regulatory authorities.

In the U.S., the existing design type testing requirements were implemented in 1990, with the adoption of HM-181, “Performance-Oriented Packaging Standards.”¹ Decades of transportation statistics compiled by DOT show that existing packaging designs are safe. Annual retesting of such designs is now a regulatory redundancy that does not improve safety and is very expensive, particularly for metal, plastic and fiber drums, and IBCs.

RIPA estimates the cost savings for a single, annual design-type re-test array to be about \$3000 - \$5,000. This figure includes the cost of the test, sample containers and transportation. As such, elimination of the annual design type re-test requirement would result in significant savings for many companies. RIPA is still developing a cost-savings estimate for the entire membership. However, we know that two of our larger members test in excess 375 design types annually, which would result in a single-year testing hiatus of between \$1,125,000 and \$1,875,000. A three-year extension would result in savings for these two companies of \$3,375,000 and \$5,625,000.

¹ FR 52402 et seq. Vol. 55, No. 246; December 21, 1990

About half of all RIPA members are classified by the U.S. Small Business Administration as “small businesses”, i.e. below \$7 million in annual revenue², therefore, even a firm that only re-tests a few design types annually would enjoy significant savings and free up resources to hire new employees and invest in business expansion.

Conclusion

RIPA appreciates this opportunity to comment on this Notice, and hope that DOT will support the de-regulatory and regulatory actions called we have recommended. Please contact RIPA with any questions or concerns.

Sincerely,

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

Paul Rankin

cc: Dan Burek
Brian Evoy
Rick Schweitzer

² SIC 7699: Repair Shops and Related Services, Not Elsewhere Classified (NEC). NAICS 811310: Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.