



Shipping Container Institute

NEWS

September - October 2008

CONFERENCE NEWS

IPANA Fall Conference Program Set

More than sixty representatives from member firms of the Industrial Packaging Alliance of North America and its affiliated organizations will gather in Washington, D.C. October 27-28 for the group's annual fall conference.

A full slate of plenary sessions, networking events, and regulatory and technical meetings of IPANA's affiliates are scheduled over two days at The Westin City Center Hotel. The plenary sessions will feature a current economic snapshot and forecast of the manufacturing industry by David M. Huether, Chief Economist at the National Association of Manufacturers. Mr. Huether is a regular at this fall event, but this year, unlike in most recent appearances, he is expected to present a sobering report.

Also at our Newsmaker's Breakfast on October 28, we will take a close look at the race for the White House one week before the election. Our commentator and discussion leader for this popular event this year will be Chris Core, a 40-year veteran of the radio industry, who also now is featured on a new Washington televised talk show and has hosted the program POTUS (President of the United States, in Washington-speak) on XM Radio.

At the regulatory and technical meetings of IPANA's independent affiliates, discussions will focus on a broad range of challenging domestic and international issues.

REGULATORY NEWS

PHMSA Says "No" to Electronic Conveyance of Closure Instructions

The Office of Hazardous Materials Standards (OHMS) at the Pipeline and Hazardous Materials Safety

Administration has denied a packaging industry request seeking to utilize the electronic delivery of a manufacturer's closure and assembly instructions to customers as an approved alternative to "written notification" as currently required in the Code of Federal Regulations (CFR).

The Steel Shipping Container Institute, joined by IPANA, had informally requested a favorable ruling on the use of electronic delivery in an October 2007 request through the agency's Web portal. The agency encourages the use of the portal as a way of obtaining expedited responses on inquiries.

In its request, the SSCI noted that PHMSA and other governmental agencies today make extensive use of electronic communications in furthering their mandates to service and protect the public. The SSCI maintained that allowing dissemination of closure notification information via electronic means is in keeping with the Federal government's commitment to more efficient and informed governance.

The SSCI argued that the use of email and/or other electronic media for providing closure notification should be recognized as fulfilling the requirement that such information be required in "written" form. Moreover, it argued, that providing closure notification electronically while maintaining compliance with the one-year retention requirement on proof of delivery will foster greater awareness of the required information by those individuals best positioned to ensure its use in the proper closing of packagings for transport.

In its September reply, OHMS said that the current language of the HMR precludes the use of electronic media to provide container closure notification information. "In accordance with the notification provision in § 178.2(c), the manufacturer and each subsequent distributor of a United Nations (UN) packaging must provide written notification instructions

for all regulatory requirements not met at the time of transfer, and any closure notification necessary to properly assemble and close a packaging.” Consequently, an electronic format, such as an e-mail, [Web Site posting], or a CD Rom, may currently be used only as a supplement to the written notification.

OHMS’s letter concluded by noting that the agency is considering a revision to § 178.2(c) to allow, with certain restrictions, the manufacturer and each subsequent distributor of a UN packaging the option of providing a container closure notification in either written or an electronic format. “This issue will be addressed as a petition in a future rulemaking,” the agency said, without indicating any time frame for such action.

PHMSA Proposal Empowers Inspectors to Open Packages

The Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT, on October 2 published in the *Federal Register* a notice of proposed rulemaking innocuously entitled *Hazardous Materials: Enhanced Enforcement Authority Procedure*. In essence, the proposal, when adopted, will provide hazardous materials regulators with broad discretion to seize and open packagings that an inspector believes may be in transit as undeclared hazardous materials. The authority for this proposal emanates from provisions of the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)* which became law in 2005.

This authority, however, is not limited to undeclared hazardous material shipments. “If a shipment, whether or not it is a declared hazardous material, is found to be leaking; is improperly marked, labeled or packaged; or the shipping paper indicates a potential problem, a DOT inspector may invoke this authority to open and examine the shipment to determine the scope of the problem and potential hazard,” the PHMSA proposal explains.

DOT inspectors will not open single packagings, such as cylinders, portable tanks, cargo tanks, or rail tank cars, nor will they open the innermost receptacle of a combination packaging. The notice, however, does propose procedures under which an inspector may temporarily remove a package or shipment from transportation when he or she believes the package or shipment poses an imminent danger. All that is necessary for the inspector to invoke such authority is

for that individual to demonstrate “an objectively reasonable and articulable [sic] belief that the package may contain hazardous materials.”

The notice also proposes procedures under which an inspector will assist in preparing a package for safe and prompt transportation if, after a complete examination of a package initially thought to pose an imminent hazard, no imminent hazard is found. “If the package has been opened,” PHMSA explained, “the inspector will assist in reclosing the package in accordance with the packaging manufacturer’s closure instructions or an alternate closure method approved by PHMSA, marking the package to indicate that it was opened and reclosed in accordance with DOT procedures, and returning it to the person from whom it was obtained.”

Another element of the proposal establishes procedures for PHMSA and Federal agencies regulating air carriers, motor carriers, and railroads to issue emergency orders when a determination is made that a non-compliant shipment or an unsafe condition or practice is causing an imminent hazard. The emergency order may impose emergency restrictions, prohibitions, or recalls and may be issued for any type of shipment and for any unsafe condition posing an imminent hazard, not merely conditions related to packaging. Moreover, the emergency order may be invoked without notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard which precipitated it.

Among the implications of this proposal for packaging manufacturers is the authority invested in the Federal agencies to mandate a package recall or invoke an out of service order without a court order. Federal officials indicate that the discretionary power authorized in this proposal would be used sparingly, in only the most egregious circumstances.

Comments on the proposal are due at PHMSA on December 1.

PHMSA Proposes to Modify Security Plan Requirements

The Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT, published in the September 9 *Federal Register* a notice of proposed rulemaking aimed at modifying the agency’s current security plan requirements governing the commercial transportation of hazardous materials by air, rail, vessel,

and highway. Comments on the proposal must be filed with the agency by November 10, 2008.

New packaging manufacturers whose employees are required to have hazardous materials training are ensnared in the security plan requirements, albeit minimally, due to those training requirements.

In its latest proposal, PHMSA, based on an evaluation of the security threats associated with specific types and quantities of hazardous materials, proposed to narrow the list of materials subject to security plan requirements and reduce associated regulatory costs and paperwork burdens. The proposed rule, PHMSA noted, also would clarify certain requirements related to security planning, training, and documentation and incorporate and build on recent international standards governing hazardous materials security.

Addressing what it called some confusion associated with the security plan requirement, PHMSA noted that both the required security risk assessment as well as the security plan must be in writing and must be retained for as long as the plan remains in effect. Moreover, the risk assessment must include an assessment of specific risks that exist on specific routes or in specific locations.

Regarding the training requirements related to security plans, PHMSA noted that the in-depth training requirement was meant to apply only to hazmat employees who perform regulated functions related to transportation of the materials covered by the security plan or who are responsible for implementing the security plan. Its current proposal, PHMSA observed, clarifies the in-depth security-training requirement by specifying its application to hazmat employees who are directly involved with implementing security plans.

PHMSA also proposes that security plans be reviewed at least once each year and updated as necessary to reflect changing circumstances. The in-depth employee security-training must be conducted once every three years, or if the security plan is revised during the recurrent training cycle, within 90 days of implementation of the revised plan.

FMCSA Acts to Limit Issuance of HM Permits to Unsafe Truckers

The Federal Motor Carrier Safety Administration (FMCSA), DOT, has issued a notice of enforcement policy stating that it may not issue a hazardous materials

(HM) safety permit to a motor carrier that has a crash rate, driver, vehicle, or HM out-of-service rate in the top 30 percent of the national average. The agency acted pursuant to 49 CFR 385.407.

The safety permit requirement became effective on January 1, 2005, the date by which motor carriers were required to file a Motor Carrier Identification Report Form (MCS-50) in accordance with a schedule set forth at 49 CFR 390.19(a).

In announcing its action, FMCSA noted that it will consider preventability when a motor carrier contests the denial of a safety permit based upon a crash rate in the top thirty percent of the national average and presents compelling evidence that one or more of the crashes listed in the Motor Carrier Management Information System (MCMIS) was not preventable and thus not reflective of the motor carrier's suitability to transport the type and quantity of hazardous materials that require a safety permit.

Preventability, the agency noted, is determined by the following standard: If a driver who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable. FMCSA currently uses this standard in evaluating accident factors under its safety rating process.

The agency notice was published in the September 16 *Federal Register*.

INDUSTRY NEWS

RIPA to Conduct Design Qualification Tests on Lighter Gage Steel Drums

Facing a continuing decline in its feedstock of steel drums for reconditioning and, particularly, for remanufacturing of tight heads into open heads, the Reusable Industrial Packaging Association (RIPA) reportedly will conduct full design-type testing of two tight-head drum designs with nominal thickness of 1.1/0.8/1.1 and 1.0/0.8/1.0 bearing a performance mark of Y1.6/250.

The testing, to be supported by voluntary contributions of RIPA members, will be conducted in an

independent testing facility with the resulting certification reports shared among those members contributing to the effort.

In 2006, under the auspices of the Steel Drum Council (SDC), RIPA and the Steel Shipping Container Institute (SSCI) considered the idea of petitioning the Pipeline and Hazardous Materials Safety Administration (PHMSA) to lower the minimum thickness requirements in the Code of Federal Regulations that nominally equates to a 1.2/0.9/1.2 drum. With rising raw materials costs in recent years, new drum manufacturers have seen a steady shift by customers to lighter gage containers contributing to the feedstock shortage that affects RIPA members today.

The discussions, while productive in re-establishing the SDC forum, ultimately bore no fruit because RIPA members wanted a commitment from new drum manufacturers to produce lighter gage drums with an actual thickness of 1.0/0.9/1.0 rather than a nominal thickness of 1.0/0.9/1.0 (the drum that initially had been the focus of discussion). To meet the actual thickness assurance promoted by RIPA would have required new steel drum manufacturers to purchase a slightly thicker gage steel, thus increasing their raw material costs. Consequently, the issue was side aside without resolution.

TRAINING NEWS

Dangerous Goods Trainers Assn. Formally Launched

After two years of discussion, planning, and organizational meetings, the newly-created Dangerous Goods Trainers Association (DGTA) was formally launched in early October. The group will hold its first public meeting October 21 in conjunction with LabelMaster's 2008 Dangerous Goods Instructors' Symposium in Florida.

Dangerous goods trainers specialize in training personnel involved in preparing dangerous goods shipments and the national and international shipment of regulated substances for transport by road, rail, air, and sea.

"Training for these employees must be more than a 'check-the-box' event," says Rick Barlow, U.S. Manager of Logistics Compliance for LyondellBasell, one of the world's largest polymers, petrochemicals, and fuels companies, with headquarters in The Netherlands.

The mission of the new association is to enhance the professionalism of the hundreds of dangerous goods instructors around the world by promoting high standards of competency through education, communications, networking and a worldwide voluntary, independent instructor certification system. The development of the new certification program, tentatively titled Certified Dangerous Goods Trainer ® (CDGT®) is DGTA's primary initial objective.

"The only way to ensure that meaningful training is provided is to utilize knowledgeable, skilled trainers. The planned DGTA trainer certification will be an indication that a trainer will be able to supply this critical training," Mr. Barlow observed.

PHMSA, DGAC Agree to HM Training Guidelines

The Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT, and the Dangerous Goods Advisory Council (DGAC), an international, non-profit educational organization, have agreed to a final draft of the guidelines for the development of training programs for dangerous goods transport employees.

The guidelines are based on a first draft that was posted on PHMSA's website, taking into account comments received. PHMSA will post the final draft on its website and plans to expand it with further appendices giving detailed guidelines for particular responsibilities. Meanwhile, DGAC has made the draft available on its own website, along with other documents relating to the PHMSA/DGAC training partnership, at www.dgac.org.

OTHER NEWS

Bureau of Labor Statistics Releases 2007 Workplace Fatality Data

A preliminary total of 5,488 fatal work injuries were recorded in the United States in 2007, a decrease of 6 percent from the revised total of 5,840 fatal work injuries reported for 2006. Based on these counts, the rate of fatal injury for U.S. employees last year was 3.7 fatal work injuries per 100,000 employees, down from the final rate of 4.0 recorded for 2006, and the lowest annual fatality rate ever reported by the BLS fatality census.

"We are pleased to see both the number and rate of fatal work injuries continue to decline," said Assistant Secretary of Labor for Occupational Safety and Health Edwin G. Foulke, Jr. "These numbers show that OSHA's balanced approach to improving safety is working. However, we will continue to work to eliminate all fatalities since one fatality is one fatality too many." The final results for 2007 will be released in April 2009.

President Signs ADAAA into Law

On September 25, President Bush signed S. 3406, the ADA Amendments Act of 2008 (ADAAA), that will

greatly expand the provisions of the *Americans With Disabilities Act of 1990 (ADA)*.

The new law clarifies and broadens the definition of disability and expands the population eligible for protections under the ADA. The broader definition of disability offers protection for a greater number of workers including certain individuals with episodic impairments or impairments that are in remission, as well as those that are perceived to have a disability (even though none exists).

Employers and business owners are encouraged to carefully review the expanded law that takes effective on January 1, 2008, to see how they may be impacted.

CALENDAR OF EVENTS

OCTOBER 22 – 25

Reusable Industrial Packaging Association
67th Annual Conference
Tucson, Arizona

OCTOBER 26 – 28

Industrial Packaging Alliance of North America
Fall Conference
Washington, D.C.

NOVEMBER 5 – 7

Dangerous Goods Advisory Council
30th Annual Conference and HMT Exposition
Savannah, Georgia

DECEMBER 1 – 5

National Association of Chemical Distributors
37th Annual Meeting
Scottsdale, Arizona

2009

APRIL 26 – 29

Industrial Packaging Alliance of North America
7th Annual Meeting
Hilton Head Island, South Carolina

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