



# Shipping Container Institute

# NEWS

November – December 2006

## SSCI NEWS

### **SSCI, IPANA Reach Accommodation On Management of Associations**

Under terms of an agreement reached in November between the leadership of SSCI and IPANA, John A. McQuaid will continue to serve as executive director of the two groups despite his relocation to California. This turn of events followed initial efforts of a joint IPANA/SSCI Search Committee to consider possible successors during the groups' October meetings in Washington, D.C.

In announcing this latest development, IPANA Chairman Bob Harding wrote to members saying, "As we initiated our search for John's replacement last month, it occurred to us that, in today's closely linked world, the idea of his possibly continuing to effectively manage our day-to-day activities from his new home should be explored. After John had an opportunity to think about it and, following some further discussions concerning our mutual expectations, he agreed to continue."

However, the leadership of both IPANA and SSCI noted that they will monitor and evaluate this arrangement over the next few months to insure that there is no adverse impact on the activities and interests of the groups. As things now stand, the plan is for John to travel to Washington about once a month or so. During these trips, John will continue to attend the so-called Interested Parties meetings to keep up-to-date on evolving legislative and regulatory events affecting new industrial packaging manufacturers and their suppliers. He will also continue to attend industry meetings as he has done in the past.

### **SSCI Files Comments in HM-231, Miscellaneous Packaging Amendments**

The Steel Shipping Container Institute (SSCI) on November 30 filed comments in proceeding instituted by the Pipeline and Hazardous Materials Safety Administration (PHMSA) designed to address certain miscellaneous packaging amendments affecting the agency's Hazardous Materials Regulations (HMR). Two of the items in the proceeding relate to petitions filed by the SSCI in the late 1990s. One relates to dual marking requirements on steel drums and the second to changes in the provisions applicable to the approval of selective testing of steel drums that differ in minor respects from a tested type of drum. The Institute also commented on a proposal relating to closure instructions.

The SSCI commented that it strongly supports PHMSA's proposal to revise provisions of Sections 178.3 and 178.503 to allow a lesser design standard on the side or top marking than that which is required on the bottom. The SSCI requested that the agency modify the marking requirements under Sections 178.3(2)(5) and 178.503(a)(10) for packagings with a gross mass of more than 30 kg (66 pounds) to allow the duplicate marking, when applicable, to a lesser design standard than is marked on the bottom of the package. The SSCI believes that this change would not impact safety and would allow drum manufacturers more flexibility when manufacturing and reusing drums.

Relating to the selective testing issue, the SSCI said it supports the proposed changes to provisions of Section 178.601(g)(8). The changes recommended by the SSCI

and proposed in the pending proceeding by PHMSA would allow drums with capacities of between twelve (12) and fifty (50) liters to be excepted from retesting design types required by this section.

Also concerning this section, PHMSA proposes a new provision (E) in §178.601(8)(xiii) that stipulates that changes in the width of lugs or extensions in a crimp/lug cover constitutes a different drum design type that would subject the packaging to design qualification testing and periodic retesting as required in the Hazardous Materials Regulations. In its comments, the SSCI observed that it was unable to identify in the background information or the summary section in the *Federal Register* notice in this proceeding the origin of this proposed addition to the regulations. The SSCI stated that minor modifications dealing with the width of lugs or extensions in a crimp/lug cover relate to making a package more user friendly and should not be considered a different design type so long as the package performance is repeatable as tested. The Institute requested that PHMSA provide further information concerning the origin of and necessity for the addition of new paragraph (E) in §178.601(8)(xiii).

Finally, on an issue related to closure instructions, the agency proposed to amend Section 178.2(©)(1)(ii) to clarify that closure instructions must provide for a “measurable and repeatable” means of closure consistent with the means of closure used for performance testing. The SSCI commented that it is “concerned that the agency is proposing to establish a requirement for closure instructions without defining the terms ‘measurable’ and ‘repeatable’ used in its proposed clarification.”

At a minimum, the SSCI observed, these terms need to be defined in the context proposed so that a filler can be assured of demonstrating compliance with this provision when closing a container.

## **REGULATORY NEWS**

### **PHMSA Issues Decision Harmonizing U.S. and International HM Rules**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has issued its latest decision harmonizing the U.S. Hazardous Materials Regulations (HMR) with current international standards. Among the major revisions are changes to proper shipping names, hazard classes, packaging groups, special provisions,

packaging authorizations, air transport quantity limitations, and vessel stowage requirements. The agency acted in Docket No. PHMSA-06-25476 (HM-215I) published in the December 29 *Federal Register*.

### **Changes Afoot at PHMSA’s OHME**

As reported previously, Ryan Posten has been named director of PHMSA’s Office of Hazardous Materials Enforcement (OHME) succeeding John O’Connell, who retired earlier this year. Additionally, Anthony Lima has been named to the new post of Packaging Program Manager within OHME, overseeing all matters related to the contract and testing conducted at Tobyhanna.

An agency spokesman at a recent industry meeting noted that OHME focuses its enforcement efforts on high hazard products based on risk and data. It also utilizes incident reports to channel its enforcement activities. He noted that under the new OHME leadership there will be greater enforcement testing aimed at combination packagings and intermediate bulk containers (IBCS), especially those that are reconditioned and remanufactured.

Also, OHME is exploring the feasibility of providing access to videos of its testing at Tobyhanna through a secure Web Site. The aim is to provide the videos on a timelier basis. Through the secure Web connection, videos could only be accessed by OHME staff and counsel as well as the manufacturer whose packagings were tested.

The OHME spokesman emphasized that its new management is open to visits by industry representatives and is receptive to working with the American Society for Testing and Materials (ASTM) in developing further package testing standards.

### **PHMSA Administrator Shares Vision at DGAC**

The recently-installed administrator of the DOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA), Thomas J. Barrett, VADM, USCG Ret., was the keynote speaker at 28<sup>th</sup> Annual Conference last month of the Dangerous Goods Advisory Council (DGAC). Adm. Barrett was sworn in as administrator this past summer.

In his remarks at the DGAC event, Adm. Barrett noted that his “values driven” management style is shaped by his Coast Guard experience. He observed that his message to PHMSA staff is that he expects integrity both in dealings with the agency’s constituencies and in its processes. He also strongly emphasized that he wants PHMSA representatives to be pro-active – he wants his folks “out there” and to do things right. The PHMSA leader also said that teamwork and respect are also virtues that he expects from agency personnel.

More broadly, he said that PHMSA, under his watch, will be a data-drive organization which will rely on broaden data acquisition and analysis using an intermodal approach. Systems risk management will also be an important PHMSA tool that will rely on an overview of the whole spectrum, not just incident analysis. Adm. Barrett said that partnerships will be important to the agency’s success. He wants to put tougher issues on the table for discussion with a view toward achieving practical solutions. This will not be a “Kumbaya” approach, he noted.

Finally, the PHMSA administrator said that he would emphasize transparency in the agency’s activities because it breeds self-corrective behavior. He pledged to communicate agency priorities with PHMSA’s constituencies and expects to develop by the spring a strategic plan and related business plans. The latter will focus on new metrics on regulations bearing in mind risk, legislative mandates, and achievability.

### **BLS Reports Record Low Injury, Illness Rates**

The rate of workplace injuries and illnesses in private industry declined in 2005 for the third consecutive year according to the Labor Department’s Bureau of Labor Statistics (BLS). Approximately 4.2 million injuries and illnesses occurred in 2005. the number translates to a rate of 4.6 cases per 100 full-time employees, slightly less than the 4.8 rate reported last year.

Labor Secretary Elaine L. Chao said that “the announcement of workplace injuries and illnesses in 2005 were at an all-time low is more good news for America’s workers and reflects the department’s effective work health and safety strategy: (1) compliance assistance; (2) health and safety partnerships

with labor; and (3) targeted, aggressive enforcement against bad actors.”

### **FMCSA Seeks Nominations to New Safety Advisory Panel**

The Federal Motor Carrier Safety Administration (FMCSA) has posted an announcement seeking nominees to a newly-formed Motor Carrier Safety Advisory Committee that was authorized by the SAFETEA-LU legislation of 2005. In a notice in the November 20 *Federal Register* the agency explained that the new panel will provide advice and recommendations to the FMCA Administrator on current safety programs and regulations.

The agency is soliciting up to 20 nominees representing the motor carrier industry, safety advocacy groups, and safety enforcement officials to serve two-year terms. Nominations must be submitted by January 4.

### **DOL Seeks Information, Comments On Family and Medical Leave Act**

The U.S. Department of Labor (DOL) recently announced that it is seeking information and comment from the public on the *Family and Medical Leave Act of 1993* (FMLA) and its implementing regulations. The request for information was published in the December 1 *Federal Register*. (<http://a257.g.akamaitech.net/7/257/2422/01jan2006180/0/edocket.access.gpo.gov/2006/pdf/06-9489.pdf>)

Some of the issues the DOL would like to address with the information received from businesses and others include:

- The *Ragsdale* and other court decisions addressing penalty provisions contained in the regulations;
- The definition of a “serious health condition.”
- What constitutes sufficient employee notice to trigger an employer’s obligation under FMLA;
- The impact of a light duty work assignment on an employee’s FMLA rights;
- How HIPAA (health information privacy regulations) impacts the receipt of employee medical information;
- Unforeseen, intermittent leave; and,
- Medical certification procedures.

Comments in the proceeding are due at the Department of Labor by February 2, 2007.

## **INTERNATIONAL NEWS**

### **PHMSA's Richard Elected UN COE Chair for Next Biennium**

At the recently-conclude 30<sup>th</sup> Session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods (COE), Bob Richard, was elected by the delegates as chairman for the biennium beginning in July 2007 succeeding Sergio Bernassai of Italy. Mr. Bernassai, who is retiring shortly, did not stand for re-election. Mr. Claude Pfauvadel, the expert from France, was elected vice chair.

Mr. Richard currently is deputy associate administrator of DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA). Previously he served as director of PHMSA's Office of Hazardous Materials International Standard where he headed U.S. delegations at several international hazardous materials safety forums. He has been involved in the development and implementation of hazardous materials safety regulations for more than 20 years during which time he held various positions or responsibility for a broad range of domestic and international efforts related to ensuring the safe transportation of hazardous materials by all modes of transportation.

### **UN COE Finalizes Regulations on Drop Test Platform, IBC Vibration Test**

At its 30<sup>th</sup> Session, in early December, in Geneva, the U.N. Sub-Committee of Experts on the Transport of Dangerous Goods (COE) adopted several provisions to its *Model Regulations* affecting intermediate bulk containers (IBCs).

The COE adopted a redraft of the French expert's recommendation concerning the construction of the target area used for drop testing of all packaging types. The original, tentatively adopted French proposal would have incorporated ISO 2248 in the construction of the target area platform for drop tests. In the revised provision presented by the expert from France at the meeting, the COE voted to approve the following:

#### 6.1.5.3.4 *Target*

The target shall be a non-resilient and horizontal surface and shall be:

- Integral and massive enough to be immovable,
- Flat with a surface kept free from local defects capable of influencing the test results,
- Rigid enough to be non-deformable under test conditions and not liable to become damage by the tests, and
- Sufficiently large enough to ensure that the test package falls entirely upon the surface.

While the adopted language is a substantial improvement over the prior French proposal, it still constitutes a change that many commenting parties said was unnecessary.

It is expected that a further effort will be made in the next biennium – beginning in July 2007 – to better define the target area. However, it has been speculated that such an additional proposal would not be supported by the chair.

Concerning vibration testing, the COE adopted language designed to address the challenge of vibrating an IBC during testing sufficiently enough to allow a shim to be passed under the packaging without the IBC going into resonance. The expert from Canada has strongly supported a requirement that a shim must pass along the entire length of an IBC during testing to pass. However, such a requirement in testing conducted cooperatively by IBC manufacturers and third-party labs periodically resulted in the packaging being tested going into resonance.

After observing such testing this fall, the expert from Canada revised the proposed wording on the shim requirement so that the provision now requires the shim to pass under the base of the packaging at a number of points without the IBC going into resonance.

In a related development, the COE, after a lengthy debate, adopted a condition for acceptance provision related to the IBC vibration test by one vote. The language of this provision stipulates as follows: "No leakage or rupture shall be observed. In addition, no breakage or failure of structural components, such as broken welds, failed fastenings, shall be observed."

The COE's work program for the 2007-2008 biennium, among other matters, is expected to focus on

packaging issues, including IBCs UV protection and limitation of permanent deformation under pressure, and the provision of routine maintenance and repair of composite IBCs.

## **OTHER NEWS**

### **Manufacturing Index Contracts For First Time in Three Years**

The Institute for Supply Management (ISM) recently reported that its November manufacturing index contracted for the first time in more than three years, falling to a reading of 49.5. The index, which measures U.S. manufacturing activity, fell from a reading of 51.2 in the prior month.

ISM indices are set where a reading of above 50 indicate growth and below 50 show contraction. The group's prices paid index rose to 53.5 in November from 47 in October. The October reading was the lowest since February 200. The new orders index, meanwhile, fell to its lowest level since April 2003, dropping to 48.7 from 52.1 a month before.

### **Economic Outlook for '07 Mixed**

According to a report by chief economist Ken Simonson at the Associated General Contractors of America (AGCA), a rash of recent reports suggests the economy may be cooling in areas beyond the already chilly housing and auto markets. In late December, the Census Bureau reported that seasonally adjusted U.S. factory orders (excluding semiconductor manufacturing) tumbled 4.7% in October, the steepest one-month decline since the manufacturing downturn of July 2000 and the third drop in four months. This is worrisome, Simonson noted, especially after the Institute for Supply Management (ISM) reported on December 1 that its monthly survey of purchasing executives at manufacturing firms said conditions had slipped below a breakeven reading in November.

Nevertheless, Simonson observed, factory orders tend to be volatile, especially for subcategories. A more reliable indicator is cumulative year-to-date orders. Total factory orders for the first 10 months of 2006 combined were up 6.4% from the same period of 2005, a modest gain given that the figures are not adjusted for inflation.

The ISM also surveys purchasing executives on activity in non-manufacturing sectors. In its latest report, ISM said that 11 of those sectors reported growth in

November, three were flat, and four, including construction, reported decreased activity.

One other recent survey is a set of informal soundings of businesses conducted by the 12 regional Federal Reserve Banks (referenced by their headquarters city) and compiled in the November 29 "Beige Book." This report, covering early October to November 20, found, "Most Federal Reserve Districts reported continued moderate growth since the last report....Despite continuing softness in automobile and housing-related sales, most Districts reported that consumer spending increased during October and early November, and the retail sales outlook for the holiday season was cautiously optimistic. According to most reports, growth in other service-producing industries remained generally solid. Manufacturing activity was positive overall, with the weakest reports concentrated among auto and housing-related producers. Reports on housing markets continued to indicate an overall decline in single-family home sales, and there were some reports of lower home prices."

### **IRS Increases Business Standard Mileage Rate for Next Year**

Effective January 1, 2007, the standard mileage reimbursement rate for all business miles increases to 48.5 cents-per-mile, an increase of four cents over the 2006 rate. The IRS noted that the increased rate for 2007 reflects, among other things, higher fuel costs.

The agency also noted that the standard mileage rate for moving and medical expenses also increases in 2007 to 20 cents-per-mile. However, the mileage rate for charitable deduction remains unchanged at 14 cents-per-mile.

The depreciation component of the business standard mileage rate also rises next year from 17 to 19 cents-per-mile.

## **CALENDAR OF EVENTS**

### **FEBRUARY 14 – 16**

Chemical Packaging Committee  
Sub-Committee Meetings  
Sarasota, Florida

### **MARCH 18 – 20**

Petroleum Packaging Council  
2007 Spring Meeting  
Las Vegas, Nevada

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