



Shipping Container Institute

NEWS

January – February 2009

IPANA NEWS

April 3: Deadline for IPANA Annual Meeting Reservations

Preliminary information on the 7th Annual Meeting of the Industrial Packaging Alliance of North America (IPANA) and its independent affiliates recently was mailed electronically to all members. The meeting is set for April 26-28 at the Marriott Hilton Head, Hilton Head Island, South Carolina.

Included in the electronic packet circulated to members were a preliminary schedule of events, instructions for making preferred accommodations at the Marriott Hilton Head, and forms for registering with IPANA for this meeting. **The deadline for advanced registration is March 27.** After that date, registration fees increase. **The deadline for making hotel reservations at IPANA's preferred rates is April 3.**

In addition to the usual workings sessions conducted by IPANA's independent affiliates at this meeting, two important plenary sessions are also scheduled. One plenary session will focus on pricing trends affecting raw materials such as steel, PE resins, and paper used in the manufacturing of industrial packagings. Also on this panel will be a specialist on transportation who will address the present and future availability of truck capacity and cost in these challenging times. Truck capacity is a critical conduit in the packaging industry's supply chain.

If, due to the present business climate, you are uncertain as to whether you will be attending the annual meeting, we would encourage you to make tentative plans now. Advance travel planning is very cost effective, and with the airlines just announcing significant fare reductions for travel this spring and summer, booking arrangements now could be advantageous.

SSCI NEWS

SSCI, RIPA Representatives Meet Under Auspices of Steel Drum Council

Representatives of the Steel Shipping Container Institute (SSCI) and the Reusable Industrial Packaging Association (RIPA) met in Chicago January 21 under the auspices of the Steel Drum Council (SDC) to discuss a range of issues common to both organizations. It was the first face-to-face meeting of the groups since November 2005, although between that time and the present a continuing dialogue has been maintained.

While RIPA and the SSCI failed to find common ground on the vexing issue of minimum thickness – a topic that was subject to extensive discussion in 2007, but remains unresolved – the groups, through the SDC, did discuss and reach agreement on several matters that now will be considered by the Directors of each group. In discussing issues related to packaging design testing and the over-marking of steel drums, the groups agreed that they would be well served if vapor pressure and specific gravity data on products to be transported could be more readily obtained. The groups agreed to advance a plan to achieve this objective, perhaps with the assistance of PHMSA and the Occupational Safety and Health Administration.

The SDC members also concluded to recommend to their respective Boards that they jointly develop a testing manual, similar to the SSCI's UN Testing Procedures Manual, to provide greater uniformity in hazardous materials testing of both new and reconditioned steel drums. Also, the groups agreed to develop a protocol for HM packagings testing at a producer's facility to guide such activity when requested to perform such tests by PHMSA enforcement officials.

Another area of focus was on closure and assembly instructions. It was noted that a factor in the failure of

some steel drums during testing involves improperly closed packagings. The groups agreed to propose to their respective Boards the joint development of a closure/assembly template that would bring greater uniformity to the structure of instructions provided to fillers. The template document would be designed to present the various closure/assembly instructions in a similar format so as to avoid confusion and assure that packagings are secured appropriately.

Finally, the SSCI offered to co-fund an update of RIPA's life cycle analysis study of steel drums that had been developed by Franklin Associates for the association in the late 1990s. RIPA had underwritten the original study with financial support from its international partners, SERRED and JDRA. The SSCI said it would explore reaching out to its counterparts at SEFA and AOSD/JSDA to join financially in bringing the study up-to-date.

Technical Projects Committee Makes Proposals to Board on Data, Marks

The SSCI's Technical Projects Committee (TPC) at its January 22 meeting in Chicago adopted two recommendations for Board consideration – one dealing with a survey to obtain more comprehensive steel drum production data and the other aimed at advancing efforts to reduce customer reliance on drum marks that their products do not warrant and they do not need.

In 2007, the SSCI renewed efforts to collect and aggregate steel drum production numbers from its manufacturer members. This effort resulted in the collection and aggregation of tight head and open head steel drum production for the years 2003 through 2006. The same generic data recently was collected for 2007 and will be available soon.

The TPC's most recent recommendation involves a broader data-gathering effort that would be used to establish a base line of the steel drums produced by UN mark and gage dimensions. The information would be collected and aggregated for analysis. This effort is important in establishing a clearer picture of the correlation between drum marks and gage. The data can serve as a means of measuring the SSCI's success in encouraging customers to modify their specifications away from unnecessary and unjustifiably high mark products to packagings that address the realistic packaging requirements of the products being transported. The template will be referred to the SSCI

Board for consideration with the strong endorsement of TPC members.

On the marking issue, the TPC supported a recommendation to the Board that the SSCI adopted a recommended mark of Y1.8/150 for 1.0/0.9/1.0 and 1.0/0.8/1.0 tight head drums. Previously, these gage combinations carried an SSCI recommended mark of X1/2/250.

Both the expanded data gathering effort and the reduction in marks are aimed at further reducing customer reliance on inappropriately rated packagings.

SSCI Runs Ad Series in *Lubes'n'Greases* Magazine

While the Steel Shipping Container Institute (SSCI) Board of Directors has scaled back the Institute's public relations/marketing activities in recent months due to the continuing decline in the economy, it did commit to placing full-page advertisements in the next three issues of *Lubes'n'Greases* magazine. The ads are designed to highlight the safety, security, and sustainability of steel containers.

Potomac Communications Group, the SSCI's partner in our public relations/marketing effort, recommended that the ads be placed in *L'n'G* based on customer pooling and focus group feedback that determined that the magazine is widely read by individuals who make or influence the package purchasing decision.

The SSCI Board at its January meeting concluded to reassess its commitment to this program at its April meeting in the hopes that the economic situation and the stock market would begin to stabilize. As the public relations/marketing effort is being supported by funds from the SSCI's investment reserve, careful scrutiny of the fund balance has to be maintained

REGULATORY NEWS

Cindy Douglass Named CSO, Acting Administrator at PHMSA

The change of Administrations on January 20 brought a change at the top of virtually every Executive branch agency in Washington as the tradition of officials appointed by the outgoing President submitting their

resignations to the new President was renewed. Among those departing their posts were Department of Transportation Secretary Mary Peters and Pipeline and Hazardous Materials Safety Administration head Carl Johnson. Mr. Johnson, who retired in 2007 as president of the Compressed Gas Association, had only been in his post about one year.

While Ray LaHood, a retired congressman from Illinois has been named to replace Ms. Peters, it may be a while before the Administration proposes to the Senate for approval a successor to Mr. Johnson. In the interim, Cindy Douglass, who returned to PHMSA as Chief Safety Officer on January 19, has been named acting administrator at the agency.

Ms. Douglass, a former Senate staffer and executive director of the Steel Shipping Container Institute (SSCI), returned to DOT from the Department of Labor where, since 2002, she served as the chief administrative judge of the agency's Arbitration Board, a body that adjudicates whistle-blower cases for various agencies. She also has prior experience with DOT having served as administrator of the former Research and Special Programs Administration (RSPA), a predecessor agency to PHMSA under President George H.W. Bush.

DOT'S OIG Investigating PHMSA'S Approvals and Special Permits

The Office of Inspector General (OIG) at the U.S. Department of Transportation has initiated an investigation focused on the Pipeline and Hazardous Materials Safety Administration's (PHMSA) approvals and special permits program. The investigation, reportedly, was initiated as a result of concerns raised by hazardous materials officials at the Federal Aviation Administration (FAA) about their lack of involvement in PHMSA's special permits and approvals review process for commodities authorized for transportation on aircraft.

The scope and nature of the OIG's investigation is not well known. However, the idea that such a review is underway is concerning due to the value that the special permits and approvals program holds for industry.

Separately, PHMSA officials reportedly have been asking questions about the administration of approvals that are applied for by trade associations on behalf of their members. Agency concerns were raised by a series of inspections of so-called nurse tanks at agricultural facilities in the Midwest that found numerous violations

of the special permit held by a Washington trade association for its members' benefit. At issue, evidently, is how and to what extent, trade associations holding PHMSA approvals and special permits assure compliance by members who use them.

Of concern is the possibility of the agency holding trade associations, to whom approvals are granted on behalf of members, accountable for compliance with the provisions of such documents.

Industry, for its part, has reminded the OIG and PHMSA that the issuance of special permits and approvals does not involve a diminution of hazardous materials safety because such requests must demonstrate a level of safety equivalent to that required in the HMR in order to be authorized by the agency. Moreover, the requests by trade associations for such authority precludes the prospect of the agency have to handle perhaps hundreds of individual requests from firms seeking their use.

Industry Effort to Improve Design Test Report Template Advances

About two years ago, the Pipeline and Hazardous Materials Safety Administration (PHMSA) initiated an effort to bring uniformity to the contents and structure of test reports associated with new packaging design types. One objective of this effort was to facilitate greater enforcement personnel familiarity with the test information through its uniform presentation. A second objective was the agency's interest in obtaining more detailed information in the reports relating to formulas used in connection with certain required tests so that its personnel would not be required to determine the methodology used in support of the data presented and proof its accuracy.

Initially, PHMSA imposed the design test report templates on third-party laboratories as part of certification process by which such businesses are officially sanctioned to conduct packaging testing. Moreover, the agency encouraged self-certifiers to voluntarily adopt the templates in their testing activities. PHMSA inferred that in the absence of broad-based use of the design templates by self-certifiers over the course of time, eventually, it would seek to have the templates incorporated into the HMR through rulemaking.

Last summer, at its periodic meeting with third-party laboratories as part of their certification process,

PHMSA authorized a further look at the report templates in the face of ongoing concerns of both labs and self-certifiers concerning the amount of information being requested as well as, in some circumstances, the proprietary nature of information being sought, e.g., resin composition in plastic drums.

A work group under was formed and outreach made to the Chemical Packaging Committee (CPC) in connection with this effort. Through the CPC, groups such as IPANA and its affiliated organizations, RIPA, and other packaging organizations, participated in at least six lengthy conference calls aimed at evaluating the design templates and recommending improvements to address the agency's needs while at the same time making them more palatable to self-certifiers and third-party labs.

It is expected that the work group will present its recommendations on the design test report templates to PHMSA later in the spring.

PHMSA, Fire Chiefs Develop ERG Training Video

The Pipeline and Hazardous Materials Safety Administration (PHMSA) and the International Association of Fire Chiefs (IAFC) have developed a training video to help explain the contents of the agency's Emergency Response Guide (ERG) 2008 and how to use it during an incident involving dangerous goods.

The video can be viewed directly on PHMSA's website at <http://phmsa.dot.gov> or downloaded from there or the IAFC website (www.iafctv.org). DVDs of the training program are also available free of charge from PHMSA.

PHMSA Issues Final Rule Harmonizing HMR With Most Orange Book Recommendations

The Pipeline and Hazardous Materials Safety Administration (DOT) recently issued final rules in Docket Nos. HM-215J and HM-224D, bringing the U.S. hazardous materials regulations (HMR) into conformance with the 15th revised edition of the UN Orange Book's *Model* Regulations as well as the 2009 editions of the IMDG Code and ICAO Technical Instructions.

PHMSA noted that some variations from the international recommendations have been allowed, of

which a number will be addressed in further rulemakings. The final rule also makes significant changes to the provisions relating to the transport of batteries and battery-powered equipment.

PHMSA All a "Twitter" Under New Administration

The following notice was recently circulated to the hazardous materials community. It is provided for your information.

HM Safety Assistance Team (HMSAT) Initiative

One of our objectives under President Obama and Secretary LaHood is to make government operations more transparent. To meet this objective we have now established a "Twitter" account under the username HMSAT. Our current plan is to "Twitter" updates to list daily outreach operations that are being presented by HMSAT members and other public information relevant to hazardous materials safety. The post will list the region conducting the event, a description, and it encourages people to attend if it is an "open" event such as a Multi-Modal training seminar.

If you wish to read our "Tweets" you may sign up at www.twitter.com. You will need to create a user account and then search for our user identity "HMSAT". Once you find our account you can sign up as a follower to HMSAT which will keep you updated. Our account was created late yesterday afternoon and last night our first member of the public signed up as a follower.

Please feel free to take a few minutes and check out the Twitter website, your suggestions are appreciated!

David L. Sargent, Director, Office of Hazardous Materials Initiative and Training, PHMSA. Voice: (202) 366-4449, FAX: (202) 366-7342
Website: <http://hazmat.dot.gov>

OSHA Orders \$400K Pay-Out to Fired Employee Who Raised Safety Concerns

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has ordered Southern Air Inc., a cargo airline headquartered in Norwalk, Conn., to pay more than \$400,000 in lost wages, back pay, damages and legal fees to compensate a flight crew member who was terminated for raising

safety concerns protected under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century(AIR21).

The employee was terminated in April 2008 after twice complaining to management about inadequate rest breaks and being required to work hours in excess of those allowed under Federal Aviation Administration (FAA) rules. The employee then filed a whistleblower complaint with OSHA's Boston Regional Office.

OSHA's investigation found merit to the complaint, and the agency has issued a Notice of Secretary's Findings and Preliminary Order to Southern Air that directs the air carrier to pay the complainant \$300,000 for loss of career wages, \$135,240 in compensatory damages, \$7,394.65 in attorney's fees and back pay of \$1,485 per week, plus interest, from April 7, 2008, through the date of payment. The company is also ordered to post the FAA whistleblower poster and an OSHA notice to employees about their whistleblower rights.

OSHA Highlights Successful Enforcement Year in 2008

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) continued to exceed enforcement goals during Fiscal Year (FY) 2008 according to data released recently. The agency's emphasis on identifying and eliminating serious safety and health hazards has resulted in an unprecedented 80 percent of all violations issued being in the most serious categories.

According to the agency, nationwide, it logged 87,687 violations of OSHA standards and regulations for worker safety and health, with 67,052 of these cited as "serious" violations. The proportion of those violations classified as endangering employees is at the highest level ever, and the Bush Administration has made more criminal referrals for wrongdoing under the Occupational Safety and Health Act than any previous one, including 12 in FY 2008 alone. Additionally, in FY 2008, OSHA conducted almost 39,000 worksite inspections, surpassing the agency's goal for the year by 2.4 percent. On average, 4,000 more workplace inspections were completed each year (38,515) between FY 2001–2008 as compared to the prior administration FY 1993–2000 (34,508).

"Workplace inspections and issuing citations are a critical part of OSHA's balanced approach to improving workplace safety, but the real test of success is saving

lives and preventing injuries," said acting Assistant Secretary of Labor for OSHA Thomas M. Stohler. "According to preliminary numbers for 2007, the workplace fatality rate has declined 14 percent since 2001, and since 2002, the workplace injury and illness rate has dropped 21 percent — with both at all time lows. This year's inspection numbers show that the strategic approach used by OSHA — targeting highest hazard workplaces for aggressive enforcement while also using education, training, and cooperative programs to improve overall compliance — can help achieve significant reductions in workplace injuries, illnesses and fatalities."

Recently Affirmed Truck Hours of Service Rules Challenged Again

For the third time, opponents are challenging the recent decision by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) that affirmed the agency's earlier decision allowing property-carrying commercial motor vehicle drivers to drive up to 11 hours within a 14-hour, non-extendable window, following at least 10 consecutive hours off duty. The agency's rule also provide commercial drivers to restart calculations of the weekly on-duty limits after a driver has at least 34 consecutive hours off duty.

The FMCSA's December ruling responded to a July 2007 by the U.S. Court of Appeals in a suit brought, for the second time, by numerous safety advocate organizations, the Teamsters Union, and an owner-operator drivers' organization.

Now, for the third time, these groups are seeking to have the FMCSA's rules thrown out. "The federal government should reconsider a seriously flawed regulation that can compel professional truck drivers to work and drive 19th century sweatshop hours," the groups said.

What is different this time is that, if the court remands the rules to FMCSA for reconsideration, again, there is a different team in place that, possibly, would be more sympathetic to amending the hours of service rules. Any changes now would further disrupt a trucking industry that already is reeling from the effects of the recession.

Moreover, in the several years that the revised hours of service rules have been in effect while under

challenge, highway deaths involving commercial motor vehicles have declined.

LEGISLATIVE NEWS

Ledbetter Pay Discrimination Legislation Signed into Law

President Barack Obama and Congress have taken their first step in fulfilling their promised expansion of federal civil rights laws covering employees by enacting the *Lilly Ledbetter Fair Pay Act*. Signed into law on January 29, 2009, the Ledbetter Act overrides a 2007 Supreme Court decision holding that the statute of limitations on pay discrimination claims runs from the date of the allegedly discriminatory act resulting in the discriminatory pay.

The Ledbetter Act provides that the limitations period runs from *the most recent date* on which the employee is affected by a discriminatory act, such as the date on which a paycheck tainted by the discriminatory act is received.

In the U.S. Supreme Court case that precipitated this legislation, *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), Lilly Ledbetter claimed that unfair poor performance evaluations directed at her because of her gender as many as 19 years before she filed her complaint resulted in her compensation falling far below the salaries of her similarly situated male colleagues. Ms. Ledbetter did not allege any discriminatory decisions during the applicable limitations period, but only that she received paychecks affected by the decisions.

In a 5-4 decision, the Supreme Court rejected Ms. Ledbetter's argument that her claim was timely because her receipt of paychecks during the limitations period that had been affected by those earlier decisions meant the discrimination "carried forward" to the time of her complaint.

INTERNATIONAL NEWS

2009 International Industrial Packaging Conference Set for Beijing Cancelled

The 2nd International Conference on Industrial Packaging (ICIP) scheduled for Beijing, China in September 2009 will not be held. It is expected that the

event, building on the successful initial ICIP held in San Francisco in July 2006, will be rescheduled for a future date.

This development resulted from concerns raised by several participating industrial packaging organizations from around the world, including SSCI, RIPA, SERRED, SEFA, and ICPP, about planning issues as well as the impact that the world-wide economic recession would have on global attendance and the success of the event.

Given the increasing likelihood that the current recession will extend well into the fourth quarter of 2009, if not beyond, these groups communicated their concerns about the timing of this event to the China Packaging Federation (CPF), host for the event.

The CPF, in January, circulated an initial circular on the ICIP that contained details about the hotel in Beijing, the sponsoring organizations, and the agenda for the event. However, conference themes, panel topics, and the names of tentative speakers, all still in development, were not included.

Given the planning challenges – and, particularly, the expanding impact of the global recession – the regional industrial packaging groups in North America and Europe supporting this event through their international organizations advised the CPF that they were withdrawing support in these difficult times.

UN COE Concludes Biennium; Sets Work Plan for 35th Session

Industrial packagings were not widely impacted by deliberations at the 35th session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods (COE) that concluded the latest biennium last December. However, there were several changes in the *Model Regulations* affecting intermediate bulk containers (IBCs).

The subcommittee defeated a proposal to remove a provision in Chapter 6 (construction of packaging) adopted at the June 2008 session addressing the issue of permeability in composite IBCs. The subcommittee at its July 2008 biennium adopted provisions in both Chapter 4 (use of packaging) as well as Chapter 6, proposed by the expert from Germany. The Chapter 4 provision states at paragraph 4.1.1.2(c): "Shall not allow permeation of the dangerous goods that could constitute

a danger under normal conditions.” A new Paragraph 6.1.4.0, in Chapter 6, states: “Any permeation of the substance contained in the packagings shall not constitute a danger under normal conditions of transport.”

In seeking subcommittee reconsideration its prior action adopting the provision in Chapter 6, the expert from the United Kingdom argued that the language of paragraph 6.1.4.0 conferred on the packaging manufacturer an indeterminate degree of responsibility that would be a source of confusion in the event of a dispute. The UK maintained that the new language in paragraph 4.1.1.2 is sufficiently comprehensive to address concerns about permeation in IBCs.

The UK proposal, however, was not adopted. The subcommittee concluded that both the manufacturer and the shipper have legal responsibilities for the proper selection of packagings. On this basis, the text contained in 6.1.4.0 was retained to make it clear that the manufacturer must ensure that their packaging is safe for transport with respect to permeation.

In development affecting IBCs, the subcommittee modified the Chapter 6 provision requiring that inner receptacles of composite IBCs be marked with the date

of manufacture. The change in paragraph 6.5.2.2.4 adds language allowing the use of a mark similar to the face of a clock, with an arrow within the face pointing to the month of manufacture. The mark shall be durable, legible and placed in a location so as to be readily visible when placed in the outer casing.

For the next biennium, beginning in June 2009, the subcommittee adopted a work plan that includes such items as updating the guiding principles for the *Model Regulations*, electronic data interchange, electric storage systems (including lithium batteries and ultracapacitors), global harmonization of TDG regulations with the UN *Model Regulations*, and various other matters. No specific non-bulk packaging or IBC issue is listed on the program of work, but the subcommittee may consider a proposal brought forth by a member at any time.

Also, for the next biennium, Bob Richard,

PHMSA’s Deputy Associate Administrator, was re-elected as chairman of the subcommittee, and Claude Pfauvadel, the expert from France, was re-elected vice chairman.

CALENDAR OF EVENTS

MARCH 15 – 17

Petroleum Packaging Council
Spring Meeting and Trade Show
The Woodlands, Texas

MARCH 29 – APRIL 1

Council on Safe Transportation of Hazardous Articles
Annual Forum and Expo
Long Beach, California

APRIL 26 -- 29

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

May 4 – 6

Chemical Packaging Committee
Full- and Sub-Committee Meetings
Litchfield Park, Arizona

AUGUST 9 – 11

Petroleum Packaging Committee
Fall Meeting
Long Beach, California

OCTOBER 28-30

Industrial Packaging Alliance of North America
Fall Conference
New Orleans, Louisiana

Reusable Industrial Packaging Association
68th Annual Meeting
New Orleans, Louisiana

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