



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety Administration**

Office of  
Chief Counsel

1200 New Jersey Avenue, S.E.,  
PHC-10, Room E26-331  
Washington, D.C. 20590-0001  
Phone: (202)366-4400  
Fax: (202) 366-7041  
Email: joe.solomey@dot.gov

***Hazardous Materials Safety Law  
Division***

**LETTER OF INTERPRETATION**

August 16, 2013

Lawrence W. Bierlein, Esq.  
1101 30<sup>th</sup> Street NW  
Suite 500  
Washington DC 20007

Reference No.: CHI-13-001

Dear Mr. Bierlein:

On May 16, 2012, PHMSA issued PHMSA Interpretation No. 12-0056 (Interpretation) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) related to the repair of intermediate bulk containers (IBCs). Due to correspondences between yourself and this office, I thought it necessary to clarify PHMSA's interpretation of the HMR as it relates to the repair of IBCs. More specifically, this letter will cover the requirement to test, inspect, and durably mark damaged IBCs that have been repaired.

As stated in § 180.352(d)(1), damaged IBCs may be repaired and the inner receptacles of composite packagings may be replaced and returned to service provided: (i) The repaired IBC conforms to the original design type, is capable of withstanding the applicable design qualification tests, and is retested and inspected in accordance with the applicable requirements of this section; (ii) an IBC intended to contain liquids or solids that are loaded or discharged under pressure is subjected to a leakproofness test as specified in § 178.813 of this subchapter and is marked with the date of the test; and (iii) the IBC is subjected to the internal and external inspection requirements as specified in § 180.352(b).

In the interpretation 12-0056, PHMSA clarified that the HMR allow a company that repairs IBCs to rely on the leakproofness test and internal visual inspection of a replacement inner receptacle conducted by a third party. PHMSA also affirmed that the company relying on the third party

testing and inspection would need *evidence* to establish that the leakproofness test and internal visual inspection was performed in accordance with § 178.813 and the internal visual inspection was performed before the IBC is filled and offered for transportation (§ 180.352(g)). Furthermore, the letter stated that this evidence should be from the third party that performed the tests and inspections and identify the company as able to rely on that testing for the purposes of the repair.

It is the responsibility of the person that repairs the IBC to make sure these requirements are met before the IBC is filled and placed into transportation in commerce. If an inspector shows up at a company's facility and sees that it conducts repairs of composite IBCs by replacing the rigid inner receptacle, the company must provide *evidence* of leakproofness tests and internal visual inspections. If the testing and inspections are done on-site, this is generally done at the discretion of the inspector through a demonstration of the company's testing or inspection procedures. If the company relies on a third party to conduct the required testing and inspections, then the company must provide evidence of its reasonable and mutually acknowledged reliance.

In your correspondence dated August 24, 2012, you cited an email between William Schoonover, PHMSA's Deputy Associate Administrator for Field Operations, and Paul Rankin, the President of Reusable Industrial Packaging Association, as evidence that the Interpretation had been, in part, "retracted by the head of Field Operations as unnecessary". Specifically, you say that based on this email exchange a company does not need an individual letter addressed to it from a manufacturer. Furthermore, you proposed that this contradicts and therefore invalidates (at least in part) the Interpretation issued just three months earlier.

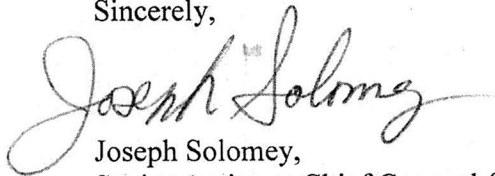
We would like to clarify that Mr. Schoonover correctly expressed the Agency position that a letter individually addressed to a company is not needed. However, this does not contradict the Interpretation. A company wishing to rely on a third party's leakproofness test and internal visual inspection in the circumstances described in the Interpretation is obligated to provide evidence of a mutually recognized arrangement between the two companies in the form of an acknowledgment of that arrangement. It need not be in a letter at all. Therefore, nothing from Mr. Schoonover in the exchange you cited contradicts the Agency guidance set forth in PHMSA Interpretation No. 12-0056.

Once a company replaces the rigid inner receptacle of a composite IBC, according to the HMR, it has conducted a repair. This triggers the requirement for a leakproofness test and an internal visual inspection as specified in §180.352(d)(1) on the rigid inner receptacle of a composite IBC. Additionally, in accordance with §180.352(d)(1)(iv), the person performing the tests must durably mark the month and year of the testing and inspections after the repair. If the inner bottle has been tested, inspected, and marked by a third party, the date durably marked must also reflect the date of repair. If the inner bottle is marked with the month and year prior to the date of repair, it would need to be re-tested in accordance with §180.352(d)(1).

Therefore, in response to your correspondence dated August 24, 2012, I am issuing this letter as a clarification and affirmation of PHMSA Interpretation No. 12-0056.

I hope this information is helpful. Please contact this office if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, reading "Joseph Solomey". The signature is written in dark ink and is positioned above the printed name and title.

Joseph Solomey,  
Senior Assistant Chief Counsel for  
Hazardous Materials Safety