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EXEMPTIONS & APPROVALS
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September 5, 1995

Ms. Suzanne Hedgepeth
Chief of Exemptions Branch
Office of Exemptions & Approvals
Department of Transportation
Washington, DC 20590

RSPA-1995-12674-1

Dear Ms. Hedgepeth:

This letter constitutes a Petition for Rulemaking pursuant to 49 CFR 106.31 of the Department of Transportation (DOT) Hazardous Materials Regulations. By filing this Petition, W.W. Grainger, Inc. seeks to either amend or repeal 49 CFR 173.22a, otherwise titled "Use of Packagings Authorized Under Exemptions," so as to exempt distributors or middlemen from certain requirements set forth in section 173.22a, subparagraph (b). That section reads, in part:

However, no person may use a packaging under the authority of this paragraph unless he maintains a copy of the exemption at each facility where the packaging is being used in connection with the shipment or transportation of hazardous material concerned.

W.W. Grainger, Inc. contends that the above-quoted requirement is unnecessarily broad because it includes distributors or middlemen within its ambit. Its requirements also pose an unreasonable burden and an economic hardship on this company and similar distributors. The requirement does not promote safety and efficiency or reduce the amount of paperwork, as contemplated by the Paperwork Reduction Act of 1980 (44 USCS sec. 3501 et seq.). It also unfairly shifts the burden of compliance with safety packaging laws to the distributor or middleman. That responsibility should fall squarely upon the manufacturer or supplier, from which the products, packaging and exemptions originate and enter the stream of commerce.

Background: W.W. Grainger, Inc. is a leading nationwide distributor of equipment, components and supplies to the commercial, industrial, contractor and institutional markets. Founded in 1927, the Company is headquartered in Skokie, Illinois.

The Company's core business, the Grainger Division, supplies maintenance, repair and operations products to commercial, industrial, contractor and institutional facilities nationwide. It publishes the Grainger Catalog, which offers more than 61,000 items for purchase to our customers. More than 1.2 million businesses were served in 1994, with 20.2 million transactions taking place during the year. Our employees handle roughly 55,342 sales transactions each day. In sum, Grainger Division conducts a huge amount of mail order business, virtually all of it at the wholesale level.

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Grainger Division has 338 branches and facilities throughout the United States and Puerto Rico. Each of those facilities takes mail orders and then ships to customers. Products come boxed or packaged by the manufacturer and Grainger Division resells them in their original packaging. Grainger branches do not unwrap, open or otherwise tamper with the original, exempted packaging provided by the manufacturer. Our company merely places a Grainger shipping label on the original packaging and ships the product to customers -- usually within 24 to 48 hours.

Among the thousands of products Grainger Division distributes are several for which the DOT has granted exemptions from DOT Hazardous Materials Regulations regarding packaging. These include propane and acetylene torches and disposable fuel cylinders. The exemptions were granted to the individual manufacturers of the products. These exempted products conceivably could be shipped from any of our 338 branch locations nationwide. Keeping copies of the exemptions at a central location, such as our corporate headquarters, would prove less burdensome.

Amendment: W.W. Grainger, Inc. proposes the following amendment to 49 CFR 173.22a(b): After the word "However" in sentence one, delete the phrase "no person may" and add the phrase "a manufacturer may not." At the end of the paragraph, add the following line: "Distributors or other middlemen are exempt from the requirements of this paragraph if they ship hazardous materials in their original, exempted packaging provided by the manufacturer, as outlined in the exemption. In lieu of keeping copies of exemptions at each facility, a distributor may, at its discretion, keep copies at a central location, such as a corporate headquarters or other principal place of business."

Discussion: Keeping copies of exemptions from DOT Hazardous Materials Regulations at each of our branches is a logistically impractical and costly way to conduct business. Under the present regulations, our company is required to keep copies of the exemptions at each branch and include them with each shipment of product. Taking into account the number of transactions our company conducts each day and the number of locations from which sales and shipments originate, the current regulations are extremely burdensome. It is virtually impossible for Grainger sales personnel to ensure that exemptions go out with shipments and to keep track of their continued validity.

They require local managers and sales people to be familiar with each item that qualifies for an exemption and to ensure the proper paperwork is included with each shipment. Photocopies of the various exemptions must be kept on hand at all times, and computer copies are not acceptable because a signature is required.

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In addition, employees must be trained to recognize exempted items when ordered and to ensure the proper paperwork is included and provided with shipping papers. Drivers also must have the paperwork handy if they are stopped by DOT inspectors, even though the exemptions may be included already within the packaged items.

For a company of W.W. Grainger, Inc.'s size, it adds up to an extremely onerous and costly procedure. If our company, at its discretion, were allowed to keep copies of the extensions at a central location, such as our corporate headquarters, it would ease the burden while upholding the spirit of the regulation because distributors would still be aware of the packaging restrictions. Manufacturers would still bear the burden of proper packaging and labeling pursuant to the exemption, and they would be responsible for shipping items with the appropriate paperwork. As it stands, such tasks are being duplicated needlessly by those businesses that may come in contact with the exempted packaging before it reaches the eventual consumer.

The changes proposed by Grainger would be consistent with the spirit, if not the letter, of the Paperwork Reduction Act of 1980, which states that one of its purposes is "to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons." 44 USCS sec. 3501(1).

Our company seeks to reduce the amount of paperwork that it is required to accumulate, store and disseminate under the current mandates of 49 CFR 173.22a(b). Those requirements are benign in purpose, but are quite burdensome and costly in practice.

I thank you for your time and consideration in this regard. If you have any questions or concerns, please do not hesitate to contact me at (708) 913-7431.

Very truly yours,



Peter J. Veiguela
Non-Staff Attorney

xc: D. Giza
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