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RSPA-04-19388-1

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**Troxler Electronic Laboratories, Inc.**

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June 25, 2004

U.S. Department of Transportation  
Research and Special Programs Administration  
Attn: DHM-10  
400 7<sup>th</sup> Street, SW  
Washington, DC 20590-0001

Re: Petition for Rulemaking

Dear Sir or Madam:

Troxler Electronic Laboratories, Inc. is a leading manufacturer of portable nuclear gauges used to measure the density and moisture content of materials (e.g., soil, asphalt, and concrete) primarily in the construction industry. Portable nuclear gauges contain small quantities of special form radioactive material which produce very low radiation levels. The gauges are transported in shipping cases that are designed and tested to meet Type A package requirements.

Troxler is submitting this petition on behalf of all portable gauge operators in the U.S. The purpose of this petition is to request that 173.412(a) be revised to provide an exception to the requirement for a tamper-evident seal for Type A packages being transported by private carriers (not for hire). The proposed wording, including the exception, follows:

*173.412(a) The outside of the packaging incorporates a feature, such as a seal, that is not readily breakable, and that, while intact, is evidence that the package has not been opened. In the case of packages shipped in closed transport vehicles in exclusive use, the cargo compartment, instead of the individual packages, may be sealed. Packages transported by private carriers are exempted from this requirement.*

In general, a seal serves no useful purpose for packages transported by a private carrier since consignor, carrier, and consignee are one and the same. In the particular case of portable nuclear gauges used for making field measurements of the properties of materials, the requirement for placing a seal on the package places unnecessary burdens on the gauge operator (private carrier). In the course of a day the operator will transport the gauge and make measurements at numerous job sites. At each site the operator must unseal the shipping case, remove the gauge and make the measurement, and then reseal the gauge in the shipping case. This may be repeated many times over the course of each day. The time and cost of applying seals to the package is not warranted and provides no benefit. The shipping cases are already locked during transportation (although we have been advised by RSPA that a lock does not constitute a tamper-evident seal). There are tens of thousands of portable nuclear gauges in use throughout the U.S., most of which are owned by small businesses or small governmental jurisdictions. The burden of regulatory requirements on these gauge operators add up. This change would provide welcome relief from one unnecessary requirement that saps time and adds cost to their operations.

If you have any questions about this petition, please do not hesitate to contact me.

Sincerely,

Stephen A. Browne  
Manager, Radiation Safety