relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.609 is amended by:

i. Removing "Aspirated grain fractions" in paragraph (a)(1) in the table;

ii. Adding alphabetically the following commodities to the table in paragraph (a)(1); and

iii. Revising the entries for Cattle, meat byproducts; Goat, meat byproducts; Horse, meat byproducts; and Sheep, meat byproducts in the table in paragraph (a)(2).

The amendments read as follows:

§ 180.609 Fluoxastrobin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * *	* *
Corn, sweet, forage	13
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	10
Grain, aspirated grain fractions	60
* * *	* *
Wheat, bran	0.15
Wheat, forage	7.0
Wheat, hay	17
Wheat, straw	11

(2) * * *

Commodity	Parts per million
* * *	* *
Cattle, meat byproducts	0.20
* * *	* *
Goat, meat byproducts	0.20
* * *	* *
Horse, meat byproducts	0.20
* * *	* *
Sheep, meat byproducts	0.20

* * * * *

[FR Doc. 2010–24575 Filed 9–29–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 173, and 178

[Docket No. PHMSA–06–25736 (HM–231)]

RIN 2137–AD89

Hazardous Material; Miscellaneous Packaging Amendments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: On February 2, 2010, the Pipeline and Hazardous Materials Safety Administration published a final rule amending the Hazardous Materials Regulations to: Revise several packaging related definitions; add provisions to allow more flexibility when preparing and transmitting closure instructions, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new language that allows for a practicable means of stenciling the United Nations (UN) symbol on packagings; and clarify a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or may be considered a variation of a previously tested design. The February 2 final rule also incorporated requirements for the construction, maintenance, and use of Large Packagings. This final rule responds to one petition for reconsideration and four appeals submitted in response to the February 2 final rule and also corrects several errors that occurred in that rulemaking.

DATES: *Effective Date:* October 1, 2010.

Voluntary Compliance Date: Compliance with the requirements adopted herein is authorized as of September 30, 2010. However, persons voluntarily complying with these regulations should be aware that appeals may be received and as a result of PHMSA's evaluation of these appeals, the amendments adopted in this final rule correction may be revised accordingly.

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson, Office of Hazardous Materials Standards, (202) 366–8553, or Ben Moore, Office of Hazardous Materials Technology, (202) 366–4545; Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey

Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On February 2, 2010, PHMSA published a final rule under Docket No. PHMSA–06–25736 (HM–231) (75 FR 5376) to: Revise several packaging related definitions; add provisions to allow more flexibility when preparing and transmitting closure instructions, including conditions under which closure instructions may be transmitted electronically; add a requirement for shippers to retain packaging closure instructions; incorporate new language that allows for a practicable means of stenciling the "UN" symbol on packagings; and clarify a requirement to document the methodology used when determining whether a change in packaging configuration requires retesting as a new design or may be considered a variation of a previously tested design under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). The February 2 final rule also incorporated requirements for the construction, maintenance, and use of Large Packagings harmonizing these packaging requirements with those issued under the United Nations Recommendations on the Transport of Dangerous Goods. This final rule corrects several errors in the February 2 final rule and also responds to four appeals and one petition for reconsideration. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary.

II. Petition for Rulemaking and Appeals to the Final Rule

In response to the February 2 final rule, PHMSA received one petition for rulemaking from the International Vessel Operators Dangerous Goods Association (IVODGA), and four appeals to the final rule from the following companies or organizations: American Promotional Events, Inc. (APE); Association of American Railroads (AAR); Dangerous Goods Advisory Council (DGAC); and the Reusable Industrial Packaging Association (RIPA). All object to certain requirements adopted in the February 2 final rule. Specifically, they request that PHMSA: (1) Eliminate the minimum thickness requirements for remanufactured steel and plastic drums; (2) reinstate the previous definition for "bulk packaging" to retain the phrase "no intermediate form of containment;" (3) revise the compliance date for maintaining closure instructions to align with a packaging's retest date; and (4) eliminate the vibration testing requirement for UN standard Large Packagings.

A. Bulk Packaging Definition

The February 2 final rule removed the phrase "no intermediate form of containment" from the introductory language of the bulk packaging definition contained in § 171.8. PHMSA developed this definition as a modification of the definition for bulk packagings proposed in the Notice of Proposed Rulemaking (NPRM; September 1, 2006 (71 FR 52017)) to clarify that Large Packagings that contain inner packagings are considered bulk packagings under the HMR. This change placed a greater emphasis on packaging design and volumetric capacity, and was developed in part based on a petition from the Monsanto Company (P–1173). In the NPRM, the definition for a bulk packaging was proposed to read a "Bulk packaging means: (1) Any specification cargo tank, tank car, or portable tank constructed and marked in accordance with Part 178 of this subchapter; (2) Any DOT Specification 3AX, 3AAX or 3T cylinder constructed, marked and certified in accordance with Subpart C of Part 178 of this subchapter; or (3) Any industrial Packaging, Type A, Type B, Intermediate Bulk Container [IBC], Large Packaging, or non-specification packaging that has a volumetric capacity of greater than 450 L (119 gallons)."

The DGAC, AAR, and IVODGA object to this definition as adopted in the February 2 final rule stating that the adopted language was not proposed in the NPRM; therefore, interested parties had no opportunity to comment on the proposal, which is contrary to the Administrative Procedure Act (APA). They also state under the revised definition that a transport vehicle (*e.g.,* a railroad box car, dry goods truck, or semitrailer) containing non-bulk hazardous materials packages may be considered a bulk packaging.

The September 1, 2006 NPRM definition for "bulk packaging" did not include the phrase "no intermediate form of containment." Therefore, interested parties were given an opportunity to comment in response to the NPRM on the possible effect the removal of this phrase would have on the proposed bulk packaging definition. Further, in response to the petition for reconsideration and four appeals, we are clarifying that a Large Packaging with one or more inner packagings or articles is also a bulk packaging. Thus, in § 171.8 we are reinstating the phrase "no intermediate form of containment" in the bulk packaging definition, and permitting Large Packagings that contain articles or inner packagings to be defined as bulk packagings. We may consider amendments to this definition in a future rulemaking.

B. Non-Bulk Packaging Definition

PHMSA proposed in the NPRM to revise the non-bulk packaging definition to eliminate the maximum capacity, gross mass, and water capacity limits for non-bulk packagings. Specifically, the NPRM proposed to define the term as follows: A "Non-bulk packaging means (1) any packaging constructed, marked, tested and certified as meeting the standards specified in Subparts L and M of Part 178 of this subchapter; (2) except for Specifications 3AX, 3AAX and 3T, any Specification cylinder constructed, marked and certified in accordance with subpart C of part 178 of this subchapter; and (3) any Industrial Packaging, Type A, Type B, Intermediate Bulk Container, Large Packaging, or non-specification packaging that has a volumetric capacity of 450 liters (119 gallons) or less." In response to the NPRM, the DGAC and APE request PHMSA remove the definitions for bulk and non-bulk packaging from the HMR. The DGAC states the delineations were arbitrary and the terms no longer served a useful purpose in regulation. The APE states in its experience these terms were no longer used in international regulations, were detrimental to the United States (U.S.) transportation industry, and offered no safety benefits. Other commenters to the NPRM found the removal of the volumetric requirements from the definitions more confusing for determining the application of markings, labels, and placards, and were concerned the absence of this information may present a hazard communication problem for emergency responders in that it may interfere with them discovering a large amount of hazardous material during an incident. These commenters were also concerned that the removal of the volumetric requirements may possibly cause the distinction between IBCs and drums to disappear. For example, IBCs and drums have distinctly different handling requirements. IBCs, by definition, require mechanical handling for movement, which is not the case for non-bulk packagings such as drums. Changes in the volumetric capacities of these packagings may result in compromises in handling safety. Therefore, PHMSA did not adopt in § 171.8 the non-bulk packaging definition as proposed in the NPRM.

In its appeal to the February 2 final rule, the APE requests PHMSA define a non-bulk packaging for solids based on

a net mass limit of 400 kg and without the 450 L limitation. The APE states this packaging is an undefined category—neither bulk nor non-bulk, but there is no safety basis for excluding its use, and this packaging was already authorized under PHMSA approval number CA 2006030023. The APE also states such packagings are common for transporting consumer fireworks; an example would be a fiberboard box with a low net mass of 75 kg but with a capacity in excess of 450 L. Further, the APE states this size packaging issue does not arise in the UN Recommendations on the Transport of Dangerous Goods (UN Recommendations).

PHMSA agrees with the appellants that (1) the HMR do not define packagings for solids with a net mass of 400 kg or less (non-bulk) but a net capacity that exceeds 450 L, and packagings with a net mass that exceeds 400 kg (bulk) but a net capacity that does not exceed 450 L; (2) that many of the international requirements for bulk and non-bulk packagings do not contain these quantity limits; and (3) packagings that meet the HMR's performance standards should be considered authorized packagings. However, we also recognize that many factors concerning these size limits serve an important function in delineating packaging types and performance testing in the U.S. Design and testing of packages that fall within these sizes may not adequately account for the handling characteristics that such large and heavy packagings may require.Therefore, we are not revising the definition in § 171.8 for a non-bulk packaging at this time, but will consider this issue more fully for a future rulemaking.

C. Compliance Date for Package Closure Instructions

The February 2 final rule revised § 178.2(c) to require a packaging manufacturer or other person certifying a packaging's compliance with 49 CFR Part 178, and each subsequent distributor of that packaging, to notify each person the packaging is transferred to of all the requirements regarding the packaging that are not met at the time of transfer. Each person who receives these written instructions must retain a copy for 365 days from the date of issuance. This notification may be in writing, stored electronically, including e-mail transmissions or on a CD or similar device. Federal hazmat law defines a "person" as including "a government, Indian tribe, or authority of a government or tribe that—(i) offers hazardous material for transportation in commerce; (ii) transports hazardous material to further a commercial enterprise; or (iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous materials in commerce * * *." *See* 49 U.S.C. 5102(9); *see* also 49 CFR 171.8.

The DGAC states PHMSA misconstrued DGAC's comments to the NPRM concerning closure instructions. In its appeal, the DGAC states packagings may require retesting or updated test reports to ensure closure instructions are consistent and repeatable with the manner in which these packagings were closed when tested. It also states completing packaging retesting before the October 1, 2010 effective date of the final rule could be costly and time consuming. The DGAC recommends adopting a two-year transition period for retaining closure instructions to align with the current two-year periodic retesting required for combination packagings and a one-year transition period for single packagings.

We agree with the appellant that adopting a closure instruction retention period that aligns with the periodic retesting requirements for the packaging would make it easier for the manufacturer and each subsequent distributor of the packaging to comply with this requirement. We also agree that making this change is appropriate given that this requirement was intended to provide additional flexibility to packaging manufacturers. Therefore, in this final rule, we are revising the amount of time required for retaining packaging closure instructions prescribed in § 178.2(c)(1)(ii) to align with a packaging's periodic retest date. We are also clarifying language in § 173.22(a)(4) to clearly state that additional requirements concerning closure instruction retention, including the time period required, are prescribed in § 178.2(c).

D. Minimum Thickness Requirement for Remanufactured Steel and Plastic Drums

PHMSA added the phrase "or remanufactured for reuse" to the third sentences in § 173.28(a) and (f), respectively, which require steel and plastic drums to meet the minimum thickness requirements for reusable packagings. In their appeals, the DGAC and RIPA object to this revision stating that Part 178 specification requirements for steel or plastic manufactured or remanufactured drums do not include minimum thicknesses and reconditioning, which is a form of reuse that has not applied to remanufactured packagings for many years. They also state a remanufactured drum is much like a new drum marked for single use in that it must be tested, regardless of thickness, to demonstrate compliance with the applicable performance requirements for its design, and it cannot be reused or reconditioned. The appellants also state if this provision were to go into effect, remanufactured drums not meeting minimum thickness requirements will have to be taken out of service and scrapped, which would cause the premature disposal of packagings that are still otherwise useful.

We agree with the appellants that this change may be misleading. PHMSA recognizes the current HMR minimum thickness requirements apply to packagings for reuse and reconditioning, and not to remanufactured packagings. We also recognize a remanufactured packaging, regardless of thickness, must be tested to demonstrate compliance with performance requirements. This differs from the requirements for reuse and reconditioning where the packaging is not subject to performance requirements as a new design type before reuse or reconditioning. Therefore, in this final rule, PHMSA is revising § 173.28(a) and (f) to remove the phrase "or remanufactured for reuse" to clarify that this requirement does not apply to remanufactured packagings.

E. Vibration Testing for Large Packaging

PHMSA added a vibration performance test in § 178.985 for UN standard Large Packagings to promote the integrity of these packagings in transportation. The DGAC and APE object to this provision in their appeals. Both state that PHMSA erroneously stated Large Packagings would contain hazardous materials without an intermediate packaging, but Large Packagings are designed to contain inner packagings, making them essentially combination packagings that should comply with § 173.24a(a)(5). The appellants state that PHMSA provided no safety justification for the additional test, and that this change decreases harmonization with international standards as the vibration test is not included in international standards for these packagings. The appellants also question why PHMSA would submit a paper to the UN Committee of Experts to permit hazard class Division 1.1D, 1.4G, and 1.4S explosives in Large Packagings but not take this into account when preparing the Docket No. PHMSA–06–25736 (HM–231) final rule.

On its own initiative, PHMSA added the vibration test for Large Packagings, other than for flexible Large Packagings, in the final rule because, as PHMSA stated in the final rule, the similarity of the Large Packaging's design to an IBC subjected it to similar packaging design stresses and opportunities for failure. Further, PHMSA believes, based on historical experience with the vibration test, that the test is an essential component for assessing the integrity of an IBC packaging. Therefore, the test is equally valid for assessing the integrity of a Large Packaging, regardless of whether the Large Packaging is used as a single or combination packaging. In addition, the NPRM's regulatory language did provide for the placement of articles or inner packagings in Large Packagings. However, these provisions were erroneously omitted in the February 2 final rule. Therefore, we are revising the language in § 178.985(a) regarding the vibration test for Large Packagings to state these packagings must be capable of passing the vibration test, and clarifying that Large Packagings that contain inner packagings are bulk packagings.

PHMSA agrees with the appellants that the vibration test is not currently required internationally for Large Packagings. In December 2006, PHMSA submitted a proposal (No. 2006/98) to the 30th session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods (Sub-Committee) (the proposal is available at: *http://www.unece.org/trans/doc/2006/ac10c3/ST-SG-AC10-C3-2006-98e.pdf*) to incorporate into the UN Recommendations U.S.-issued competent authority approvals that permit Division 1.4G (UN 0336) and Division 1.4S (UN 0337) consumer fireworks to be transported in fiberboard and wood Large Packagings. This proposal was based on the existing test provisions for these packagings. PHMSA's intent in this proposal was to add a Large Packaging authorization, not to amend the Large Packaging test requirements. At that time, the vibration test was not yet required for IBCs, but we were working with the Sub-Committee during that session to add the vibration test for composite IBCs (*see* Canadian paper (2006/78); the proposal is available at: *http://www.unece.org/trans/doc/2006/ac10c3/ST-SG-AC10-C3-2006-78e.pdf*). PHMSA's intent was to add the vibration test to the composite IBC packaging first, and then consider what other packaging types it should apply to.

PHMSA withdrew the proposal before it was considered by the Sub-Committee and decided not to pursue it further at a future meeting because we believed the information we received initially from industry in support of the proposal was not sufficiently complete and may be inaccurate. After further review, we also decided the proposal as written at that time was not appropriate as a regulation to be made available for general use by incorporating it into the UN Recommendations. Therefore, the Sub-Committee never considered a proposal from the U.S. to add a Large Packaging authorization for identification number UN 0336 and UN 0337 fireworks. The Sub-Committee document noting this withdrawal is available at: *http://www.unece.org/trans/doc/2006/ac10c3/UN-SCETDG-30-INF01e.pdf.*

Finally, on April 1, 2010, the U.S. submitted a working paper (No. ST/SG/AC.10/C.3/2010/32) for the consideration of the UN Committee of Experts entitled "Vibration test for large packagings" that asks the Committee to add the vibration testing for all Large Packaging intended to contain liquids. A copy of this paper is available in the docket for this final rule at *http://www.regulations.gov.*

F. Minimum Puncture Resistance for UN 50G Fiberboard Large Packagings

The February 2 final rule added two puncture-resistant construction requirements under § 178.930 for rigid fiberboard UN 50 Large Packagings. The first, in § 178.930 (b)(1)(i), states the walls of the packaging, including the top and bottom, must have a minimum puncture resistance of 15 Joules (11 foot-pounds of energy) measured according to the testing standards prescribed in the International Organization for Standardization (ISO) 3036–1975(E) Board—Determination of Puncture Resistance, which is incorporated by reference in § 171.7 of the HMR. The second, in § 178.930 (b)(1)(ii), includes a requirement that metal staples used to fasten a Large Packaging be formed or protected so that any inner lining cannot be abraded or punctured by them. PHMSA added these requirements to reduce the likelihood that sharp or protruding objects will puncture these packagings.

The APE opposes the ISO standard of puncture resistance for fiberboard Large Packagings, stating the 15 Joules puncture-resistance requirement introduces significant additional costs that foreign competitors, who may import fireworks into the U.S. in packagings of comparable mass and volume, are not required to comply with. The APE also states heavier fiberboard would be needed to satisfy this requirement, and this additional weight may reduce the amount of material that can be placed in a packaging on a truck. The APE also states PHMSA in the past issued an approval, CA number not provided, that required a 5 Joules puncture resistance for fiberboard packagings and requests that this standard be applied to the fiberboard Large Packaging as well. We believe the commenter may be referring to Competent Authority Approval number CA 2006030023. This competent authority permits APE to offer for transportation Division 1.4G (UN 0336) and Division 1.4S (UN 0337) fireworks in UN 50G Large Packagings that conform to the UN Recommendations construction standards for these packagings except that the walls, including the top and bottom of the packaging, must pass a puncture resistance of 5 Joules instead of 15 Joules required for all other packagings of this type. Additional packaging requirements also apply. A copy of the approval is available under the "Approvals Search" link at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a/approvals.* Finally, the APE asserts that PHMSA did not adequately consider its concerns pertaining to this requirement in its comments to the NPRM.

We agree with the appellant that the reduction in puncture resistance from 15 to 5 Joules the appellant is requesting for fiberboard UN 50G Large Packagings is adequate for the hazard class, weight, and type of the hazardous materials permitted under this approval. However, we disagree that this provision should be applied to all Large Packagings in other types of hazardous materials service. For example, the ability of a fiberboard packaging to resist further tearing when punctured may be crucial to its survivability when it contains materials that are heavier than fireworks, which typically are lightweight when compared to their volume, or when it contains materials that can disperse easily, such as those in grain or powder form, or liquids in inner packagings. Therefore, we will continue to authorize fiberboard Large Packagings that pass a 5 Joule puncture-resistance test under the terms of an approval based on our determination of its ability to transport a specific type of hazardous material safely in transportation. To determine whether other types of hazardous materials may be safely transported in a 5 Joule puncture-resistant fiberboard Large Packaging, we may consider this issue and the possibility of allowing the use of this type of packaging under the

terms of a Special Provision prescribed in § 172.102 in a future rulemaking.

E. Miscellenous Corrections

1. Editorial Corrections for Large Packagings

In the February 2 final rule, PHMSA added standards for constructing and testing Large Packagings, represented by the code designation "UN 50" (rigid) or "UN 51" (flexible), but did not consistently revise the references in the HMR to reflect this change. In this rulemaking, we are revising the definition in § 171.8, and the references in § 173.197 to correctly identify that the Large Packaging standards and testing provisions in the HMR are now prescribed in 49 CFR Part 178, Subparts P and Q. These corrections will clarify that an approval from the Associate Administrator for Hazardous Materials Safety is no longer needed to construct and test a UN 50 or UN 51 Large Packaging.

2. Section Numbers

PHMSA renumbered several sections pertaining to Large Packagings in the February 2 final rule to consolidate these requirements into sections that occur in the "§ 178.900" series, beginning with § 178.900 and ending with § 178.985. However, we did not discuss this change in the preamble. In addition, several section numbers that appeared in the final rule's regulatory text were not revised to reflect these changes, and some existing sections numbers were referenced incorrectly. These editorial changes are summarized below.

Section 178.503(e)(1)(i) was incorrectly referred to as § 178.3(e)(1)(i) in § 178.503(e)(1)(ii)(D) in the February 2 final rule. This error is corrected in this final rule.

Section 178.902 was renumbered § 178.905; § 178.903 was renumbered § 178.910; § 178.905 was renumbered § 178.920; § 178.906 was renumbered § 178.925; § 178.907 was renumbered § 178.930; § 178.908 was renumbered § 178.935; § 178.909 was renumbered § 178.940, § 178.1001 was renumbered § 178.950 in the February 2 final rule.

In § 178.910, the reference in paragraph (a)(1)(ii) containing the identification codes for a Large Packaging design type was incorrectly described in the NPRM and February 2 final rule as § 178.901. This section was designated as § 178.902 in the NPRM, and renumbered § 178.905 in the February 2 final rule. Therefore, in § 178.910(a)(1)(ii), the reference to § 178.901 is renumbered § 178.905. Also in § 178.910(a)(1)(ii), the reference to the section containing the general requirements for testing Large Packagings was incorrectly described in the NPRM and February 2 final rule as § 178.1001. Therefore, § 178.1001 is renumbered § 178.955 in this final rule.

In § 178.915(e), the "p" in packaging was placed erroneously in lower case. In addition, the bottom- and top-lift testing sections for Large Packagings were renumbered § 178.970 and § 178.975, respectively, in the February 2 final rule but were incorrectly described in § 178.915(e) as § 178.1004 and § 178.1005. These errors are also being corrected in this final rule.

In the February 2 final rule, the sections that prescribe rigid plastic and flexible Large Packaging standards were renumbered § 178.925 and § 178.940, respectively, but were incorrectly described in § 178.955(c)(5)(ii) as § 178.906 and § 178.909. Also, in the February 2 final rule, § 178.1001 was renumbered § 178.955, § 178.1002 was renumbered § 178.960, and § 178.1015 was renumbered § 178.980. However, the references in § 178.965(a) and (b) to § 178.955 and § 178.960 were incorrectly described as §§ 178.1001 and 178.1002, respectively, and the reference in § 178.980(d) to § 178.980(c) was incorrectly described as § 178.1015(c).

These errors are being corrected in this final rule.

Section 178.1019 was renumbered § 178.985 in the February 2 final rule.

3. Punctuation Errors

In § 178.601(g)(8)(xiii)(C), the comma placed erroneously before the parenthetic phrase is removed, and the quotation mark used as a symbolic representation for the word "inches" after the numbers 0.625 was replaced with the word "inches." In § 178.601(g)(8)(xiii)(D), the period placed erroneously after the word "thickness" is replaced with a comma.

V. Rulemaking Analysis and Notices

A. Statutory/Legal Authority for this Rulemaking

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This final rule responds to one petition for reconsideration and four appeals, and corrects several errors in the February 2, 2010 final rule. The petition and appeals are available for review in the public docket for this rulemaking.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a non-significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the February 2, 2010 final rule.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and the President's memorandum on "Preemption" published in the **Federal Register** on May 22, 2009 (74 FR 24693). This final rule preempts State, local, and Indian tribe requirements, but does not impose any regulation with substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items 1, 2, 3, and 5 above. This rule preempts any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the

same" as the Federal requirements. This final rule is necessary to incorporate changes to the final rule in response to one petition for reconsideration and four appeals, and to make corrections to the February 2, 2010 final rule that without this rulemaking will become effective on October 1, 2010.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This effective date of preemption is 90 days after the publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. The corrections and revisions contained in this final rule are minor and will have little or no effect on the regulated industry. While maintaining safety, it relaxes certain requirements. Many of the amendments in this rulemaking are intended to correct or clarify regulatory requirements specific to the February 2, 2010 final rule concerning the construction and use of non-bulk and bulk packagings and do not impose any additional costs on small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. The changes in this final rule will enhance safety, and I certify that this proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

This final rule imposes no new information collection requirements.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act (NEPA), §§ 42 U.S.C. 4321–4375, requires federal agencies to analyze regulatory actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b). In the February 2, 2010 final rule, we developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. The requirements in this rulemaking will reduce confusion and enhance voluntary compliance, thereby reducing the likelihood of deaths, injuries, property damage, hazardous materials release, and other adverse consequences of incidents involving the transportation of hazardous materials. We have determined there will be no significant environmental impacts associated with this final rule.

J. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or it is available at: *http://www.dot.gov/privacy.html.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Chapter I, subchapter C as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.8, the following changes are made:

■ a. The definition for "bulk packaging" is amended by revising the introductory text; and

■ b. The definition for a "Large packaging" is amended by revising paragraph (5) to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment. A Large Packaging in which hazardous materials are loaded with an intermediate form of containment, such as one or more articles or inner packagings, is also a bulk packaging. Additionally, a bulk packaging has: * * *

* * * * *

Large packaging * * *

(5) Conforms to the requirements for the construction, testing and marking of Large Packagings as specified in subparts P and Q of part 178 of this subchapter.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 4. In § 173.22, paragraph (a)(4) is amended by adding three new sentences at the end of the paragraph to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(4) * * * A person must maintain a copy of the manufacturer's notification, including closure instructions (*see* § 178.2(c) of this subchapter) unless permanently embossed or printed on the packaging. When applicable, a person must maintain a copy of any supporting documentation for an equivalent level of performance under the selective testing variation in § 178.601(g)(1) of this subchapter. A copy of the notification, unless permanently embossed or printed on the packaging, and supporting documentation, when applicable, must be made available for inspection by a representative of the Department upon request for the time period of the packaging's periodic retest date, *i.e.,* every 12 months for single or composite packagings and every 24 months for combination packagings.

* * * * *

■ 5. In § 173.28, in paragraph (a), the third sentence is revised and, in paragraph (f), the third sentence is revised to read as follows:

§ 173.28 Reuse, reconditioning, and remanufacture of packagings.

(a) * * * Packagings not meeting the minimum thickness requirements prescribed in paragraph (b)(4)(i) of this section may not be reused or reconditioned for reuse.

* * * * *

(f) * * * Drums or jerricans not meeting the minimum thickness requirements prescribed in paragraph (b)(4)(i) of this section may not be reused or reconditioned for reuse.

■ 6. In § 173.197, the first sentence in paragraph (c), introductory paragraph is revised to read as follows:

§ 173.197 Regulated medical waste.

* * * * *

(c) *Large Packagings.* Large Packagings constructed, tested, and marked in accordance with the requirements specified in subparts P and Q of part 178 of this subchapter and conforming to other requirements of this paragraph (c) may be used for the transportation of regulated medical waste, provided the waste is contained in inner packagings conforming to the requirements of paragraph (e) of this section. * * *

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 7. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.45, 1.53.

■ 8. In § 178.2, paragraph (c)(1)(ii) is revised to read as follows:

§ 178.2 Applicability and responsibility.

* * * * *

(c) * * *

(1) * * *

(ii) Retain copies of each written notification for the amount of time that aligns with the packaging's periodic retest date, *i.e.,* every 12 months for single or composite packagings and every 24 months for combination packagings; and

* * * * *

■ 9. In § 178.503, paragraph (e)(1)(ii)(D) is revised to read as follows:

§ 178.503 Marking of packagings.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(D) The letters "u" and "n" appear exactly as depicted in § 178.503(e)(1)(i) with no gaps.

* * * * *

■ 10. In § 178.601, paragraphs (g)(8)(xiii)(C) and (g)(8)(xiii)(D) are revised to read as follows:

§ 178.601 General requirements.

* * * * *

(g) * * *

(8) * * *

(xiii) * * *

(C) Closure ring style including bolt size (*e.g.,* square or round back, 0.625 inches bolt); and

(D) Closure ring thickness,

* * * * *

■ 11. In § 178.910, paragraph (a)(1)(ii) is revised to read as follows:

§ 178.910 Marking of large packagings.

(a) * * *

(1) * * *

(ii) *The code number designating the Large Packaging design type according to § 178.905.* The letter "W" must follow the Large Packaging design type identification code on a Large Packaging when the Large Packaging differs from the requirements in subpart P of this part, or is tested using methods other than those specified in this subpart, and is approved by the Associate Administrator in accordance with the provisions in § 178.955;

* * * * *

■ 12. In § 178.915, paragraph (e) is revised to read as follows:

§ 178.915 General large packaging standards.

* * * * *

(e) Large Packaging design types must be constructed in such a way as to be bottom-lifted or top-lifted as specified in §§ 178.970 and 178.975.

§ 178.930 [Corrected]

■ 13. In § 178.930, in the second sentence of paragraph (a) introductory text, remove the word "large", and add the word "Large" in its place.

■ 14. In § 178.955, paragraph (c)(5)(ii) is revised to read as follows:

§ 178.955 General requirements.

* * * * *

(c) * * *

(5) * * *

(ii) A rigid plastic Large Packaging, which differs with regard to additives used to comply with § 178.925(b) or § 178.940(b);

* * * * *

■ 15. In § 178.965, paragraphs (a), (b), and the last sentence in paragraph (c) are revised to read as follows:

§ 178.965 Drop test.

(a) *General.* The drop test must be conducted for the qualification of all Large Packaging design types and performed periodically as specified in § 178.955(e) of this subpart.

(b) *Special preparation for the drop test.* Large Packagings must be filled in accordance with § 178.960.

(c) * * * Large Packagings conditioned in this way are not required to be conditioned in accordance with § 178.960(d).

* * * * *

■ 16. In § 178.980, paragraph (d)(1) is revised to read as follows:

§ 178.980 Stacking test.

* * * * *

(d) Periodic retest.

(1) The package must be tested in accordance with § 178.980(c) of this subpart; *or*

* * * * *

■ 17. In § 178.985, paragraph (a) is revised to read as follows:

§ 178.985 Vibration test.

(a) *General.* All rigid Large Packaging and flexible Large Packaging design types must be capable of withstanding the vibration test.

* * * * *

Issued in Washington, DC, on September 22, 2010, under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2010–24336 Filed 9–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska

CFR Correction

In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2009, on page 663, in § 100.24, remove the second paragraph (a)(3).

[FR Doc. 2010–24662 Filed 9–29–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States

CFR Correction

In Title 50 of the Code of Federal Regulations, Parts 600 to 659, revised as of October 1, 2009, on page 639, in § 648.92, remove the second paragraphs (b)(1)(iv) and (b)(1)(v).

[FR Doc. 2010–24660 Filed 9–29–10; 8:45 am]

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