

manufacturer's instructions be authorized.

We agree that there may be cases in which certain deviations from the specific closing instructions provided by the manufacturer may be warranted, and note that certain changes are currently permitted under packaging variations in Subpart M of Part 178. We do not agree with revising the word "must" to "should." Where the manufacturer has specified closure instructions, those instructions may be critical to performance of the packaging in transportation. We understand the commenter's concerns that a shipper should be able to vary from the closure instructions if an equivalent level of safety is achieved and the procedure is documented. However, to the extent that such changes are not currently permitted and were not proposed in the NPRM, we consider them outside the scope of this rulemaking.

RIPA's concerns highlight the need for collaboration between packaging manufacturer and customer in the design, testing and use of packagings. There is a need for manufacturers of hazardous materials packagings to take into account the various conditions of transport that the packaging may experience. If a packaging has limited capability under specific conditions, then the manufacturer's instructions should indicate these limitations. Effective communication of the packagings' capabilities will serve to avoid the potential for a shipper to inadvertently use a packaging that was not intended for certain transport environments. The closure instructions should provide specifics relative to the packagings' capabilities when specific conditions of transport would impact the packagings' capability to contain hazardous materials.

RIPA commented that several different gasket configurations may need to be used dependent on the filling and transport conditions. If this is the case, and the different gasket configurations were taken into account in the packaging design qualification, the closure instructions should provide appropriate closure information with respect to all of the gasket configurations that were approved according to the design type testing.

Shippers should not be arbitrarily changing closure devices without coordination with the packaging manufacturer or conducting additional testing to verify that the packaging integrity has not been compromised. As specified in Subpart M of Part 178, the substitution of closures or gaskets (for example, changing from a metal bung closure to a plastic bung closure on a

closed head steel drum) may change the packaging design type for purposes of UN performance design qualification testing. Closure changes are permitted according to the selective testing variations in accordance with § 178.601(g)(1) and (g)(5). Only when the conditions of the selective testing conditions have been met (including the specified limited additional testing according to § 178.601(g)(5)), if applicable, may a different closure or gasket be used without the packaging being considered a new design requiring the full UN performance testing prescribed in Part 178. The regulatory text we are adopting in this final rule does not negate the ability of the shipper to use different closures consistent with the selective testing provisions.

The instructions provided by the manufacturer should indicate variations to closure procedures that would compensate for environmental conditions or conditions based on the types of materials that are contained in the packaging. To ensure proper closure of packagings and to avoid leaks in transport, shippers and manufacturers need to work in coordination to ensure that the closure methods used will provide an effective seal taking into account the various conditions involved during transport.

Additionally, RIPA commented that (b)(4) and (f)(1) should use consistent wording, and that the text in (f)(1) concerning the requirement for closures to be designed in a manner that make improper closure unlikely should be removed. We do not agree with RIPA's proposed editorial revisions that suggest adding wording such as "reasonable changes in temperature," "normal altitude variations" or "normal vibration ranges." We believe this wording is vague and will not enhance the clarity of either paragraph. We agree that the sentence, as proposed in the NPRM, requiring the closure device to be so designed that it is unlikely to be incorrectly or incompletely closed may not be realistic and may be subject to a range of interpretation. We are not, therefore, including the requirement in this final rule.

We believe that the amendments to this section will enhance safety by ensuring that adequate consideration is given to the effects of transportation conditions on packages and that packages are securely and effectively closed.

*Section 173.25.* In paragraph (a)(2), we are including the air eligibility marking as part of the marking requirements pertaining to overpacks.

*Section 173.27.* We are revising paragraph (e) and adding a new paragraph (i). Paragraph (e) is revised to require packagings with plastic and metal inner packagings to be packaged using absorbent material when Packing Group I or II liquids of Class 3, 4 or 8 or Division 5.1, 5.2 or 6.1 are offered for transport by passenger or cargo aircraft. Prior to this amendment, the requirement to use absorbent material applied to Packing Group I and II materials when offered for transport by passenger aircraft, and to Packing Group I materials when offered for transport by cargo aircraft. We are applying this requirement to Packing Group II materials offered for transport by cargo aircraft. Existing absorbent material requirements apply when inner packagings are constructed of glass or earthenware. Prior to this final rule, the absorbent material requirement did not apply to Division 5.2 liquids. The amendments are consistent with the 2003–2004 edition of the ICAO Technical Instructions.

We received four comments concerning the absorbent material requirement in paragraph (e). Two commenters suggested that we clarify or remove paragraph (e)(5), which provides an exception from the use of absorbent materials when the inner packagings are not fragile. Paragraph (e)(5) is existing text that was not proposed to be revised in the NPRM. However, we agree that this exception needs to be reconsidered and we have submitted a working paper to the ICAO Dangerous Goods Panel to address it. One commenter, addressing paragraph (e)(2), believes that one absorbent material requirement should apply to transportation by passenger and cargo aircraft. Because these are existing requirements that we did not address in the NPRM, the comment is beyond the scope of this rulemaking.

The Conference on Safe Transportation of Hazardous Articles (COSTHA) stated that the proposed regulatory text is broader than that contained in the ICAO Technical Instructions because it requires absorbent material for all liquid hazardous materials except Class 9. The commenter suggests that we align the paragraph with the wording in the ICAO Technical Instructions by specifically stating that the applicability of the requirement is for liquids in Classes 3, 4, 8 and Divisions 5.1, 5.2 and 6.1. It was not our intent to differ from the requirements of the ICAO Technical Instructions. We agree and are revising the regulatory text accordingly.

We are also adding a new paragraph (i) to refer the reader to new section § 172.321 for the air eligibility marking