

operations should be directed to the appropriate EPA, OSHA, or ATF office.

The provisions of this final rule are explained in more detail in the following preamble discussion.

### III. Analysis of Comments

We received more than 120 comments on the NPRM. Commenters included representatives of individual shippers and carriers, industry trade associations, state and local governments, and the National Transportation Safety Board (NTSB). Most commenters express support for the goals of this rulemaking, but oppose many of the specific proposals in the NPRM. Generally, industry commenters express concern that the NPRM appears to contradict one of the major goals of Federal hazmat law—establishment of uniform national regulations for the safe transportation in commerce of hazardous materials. On the other hand, commenters representing state and local governments generally support the NPRM proposals. The comments are discussed in detail below.

Several commenters submitted comments that are outside of the scope of this rulemaking. For example, one commenter wants us to eliminate any regulation that allows shippers to prepare and load any hazardous material into a non-bulk fiber drum. This commenter also suggests that we develop a uniform hazardous materials shipping paper or bill of lading. Several other commenters recommend revisions to the current training requirements in Subpart H of Part 172. Other commenters suggest that we should provide special handling provisions applicable to the transportation and recycling of lead batteries. Because these comments are beyond the scope of this rulemaking, they are not addressed in this final rule.

#### A. Packaging Specifications

The NPRM proposed that Federal hazmat law and the HMR would continue to apply, as they do currently, to persons who manufacture, mark, maintain, recondition, repair, or test packagings or components thereof that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce.

Packaging integrity is critical to safe transportation of hazardous materials; therefore, it is imperative that DOT exercise jurisdiction over packaging requirements to the exclusion of state and local governments. Further, uniformity of packaging specifications assures the safe and efficient movement of hazardous materials across state lines

and international boundaries. Thus, consistent with the preemption provisions of Federal hazmat law, the Secretary's regulatory jurisdiction in this area must preempt state and local law. The NPRM noted that a packaging marked to certify that it conforms to HMR requirements must be maintained in accordance with applicable specification requirements whether or not it is in transportation in commerce at any particular time.

Commenters generally support this aspect of the NPRM. Commenters agree that the packaging requirements "directly affect packaging integrity and are specifically delineated in the enabling statute." (American Chemistry Council)

Three commenters express concern that the requirement to maintain a certified packaging in accordance with applicable specification requirements whether or not it is in transportation will impose a significant compliance burden. The commenters "purchase many containers, such as steel drums, which arrive with DOT or UN specification markings, but are used for purposes other than the transport of hazardous materials. Since DOT or UN specification markings are permanently affixed to such containers, and cannot be easily removed or covered, this requirement would require considerable effort to establish a separate supply chain \* \* \*" (Detroit Edison) Another commenter states, "Containers are used in facilities for a number of things from interim storage to waste receptacles. A facility should not be required to maintain the certification for a package if it is in any other use than for transportation." (Nuclear Energy Institute)

The specification markings on DOT or UN specification packagings certify that the packaging has been designed, tested, and maintained in conformance with all applicable HMR requirements. The NPRM proposed no change in the current applicability of the HMR to packagings that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. We recognize that many entities use DOT or UN specification packagings for temporary or permanent storage of hazardous materials. However, because a packaging that is used for storage one day may be used for transportation the next, it is critical to transportation safety that packagings represented as meeting DOT or UN specification requirements in fact do so.

A DOT or UN specification packaging that does not conform to the marked standard must be clearly identified by

the manufacturer or distributor as not conforming to the marked standard. Under the notification provisions of § 178.2(c) of the HMR, the manufacturer and each subsequent distributor of a non-conforming packaging must inform customers of all regulatory requirements not met at the time of transfer. For example, the manufacturer of a drum for which both conforming and non-conforming covers are offered may indicate as part of the notification requirement that, when fitted with the non-conforming cover, the drum does not conform to the marked standard. Covers must be marked or there must be a sufficient description in the notification for the user to readily distinguish between the conforming and non-conforming cover. In such cases, non-applicable standard markings should be covered, removed, or obliterated. We realize that this may not be practical, particularly for packagings with embossed markings. Provided sufficient information is provided to enable the user to identify packagings that do not meet all applicable regulatory requirements, the appearance of standard markings is not prohibited.

Persons who offer hazardous materials for transportation must assure that the packaging used for such transportation conforms to all applicable regulatory requirements. In the case of specification packagings, persons who offer hazardous materials for transportation must assure that the packaging conforms to the applicable specification in all respects and that it has been properly maintained and repaired. If a packaging shows evidence of damage such that its effectiveness as a container may be substantially reduced or if the packaging has been subjected to conditions or operating practices that could reduce its effectiveness, it must be inspected and repaired, in accordance with applicable requirements, before it can be filled with a hazardous material and offered for transportation.

In this final rule, we are reiterating that the HMR apply, as they do currently, to persons who manufacture, mark, maintain, recondition, repair, or test packagings or components thereof that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce.

#### B. Pre-Transportation Functions

In the NPRM, we proposed a new term—"pre-transportation function"—for activities performed prior to the transportation of a hazardous material and to which the HMR apply. As defined in the NPRM, a pre-