requiring shippers to be responsible for only the manufacturing functions they perform. RSPA concurs and paragraph (b) is revised accordingly.

## **Petitions Denied**

A petitioner claimed that RSPA's exemption policy for IBCs established in the final rule (59 FR 38040) is unworkable for every exemption IBC considered to be "equivalent" to IBCs already meeting UN standards. The petitioner said no exemption IBC could meet terms in option 2 permitting exemption IBCs to be certified as UN standard packagings if they already conform with subpart N and O requirements. The petitioner said, "A builder of existing exemption tanks would have had to predict the tests and their order in testing that DOT prescribes." The petitioner observed that the proposed testing differed from tests prescribed in the final rule. The petitioner asked RSPA to add a note to the table of IBC tests in § 178.803 allowing exemption IBCs to be marked to indicate compliance with subparts N and O but that they need not "be tested as prescribed in this section." However, the petitioner said such IBCs "must be capable of passing all the applicable tests.'

This request is denied. Exemption IBCs that meet new construction and performance testing standards in subparts N and O, under option 2, "may be remarked and certified as UN standard packagings." Under option 3, existing exemption IBCs developed under standards different from those adopted under subparts N and O "may be approved as a UN standard packaging" under the approval process provided in § 178.801(i) if they are shown to be equally effective and testing methods used are equivalent to UN standards. With respect to the petitioner's request, under option 3, manufacturers or users of IBCs differing from subpart O requirements in the way they were tested, including test sequences differing from the order of tests established in § 178.803, may demonstrate that IBCs developed under exemption are equally effective, including test methods.

Several petitioners requested indefinite use of exemption IBCs as long as they meet applicable periodic retest requirements. These requests are denied. Under the exemption policy stated at 59 FR 38040, an equivalent packaging may be approved by RSPA as a UN standard packaging under the provision in § 178.801(i).

A petitioner's request to revise § 173.35(b) to permit reuse of flexible IBCs is denied. As RSPA pointed out in

the preamble to the final rule in HM–181E (59 FR 38042), there is a lack of sufficient evidence "that fiberboard, wooden or flexible IBCs are designed to be, or are suitable for, reuse in hazardous materials service."

Two petitioners asked RSPA to amend paragraph (c) of §§ 173.240 and 173.241 by adding the phrase "rigid intermediate bulk containers " to the titles of these paragraphs. They requested revisions to § 173.240(c) to authorize "sift-proof non-DOT specification portable tanks, closed bulk bins and rigid intermediate bulk containers suitable for transport of liquids," and to § 173.241(c) to authorize "non-DOT specification portable tanks and intermediate bulk containers suitable for transport of liquids." The petitions are denied since a non-specification bulk packaging fitting this description currently is permitted by paragraph (c) of these sections. In effect, any rigid enclosed packaging that is strong and tight (but not a flexible IBC), and constructed so that its contents will not leak under conditions normally incident to transportation meets requirements for a "closed bulk bin" in § 173.240(c), a "sift-proof non-DOT specification portable tank" in § 173.240(c), or a non-DOT specification portable tank suitable for transport of liquids" in § 173.241(c).

Petitioners asked RSPA to authorize, under § 173.242, rigid plastic and composite IBCs for "Oxidizing substances, liquid, corrosive, n.o.s.," Packing Group II, and "Corrosive liquids, oxidizing, n.o.s.," Packing Group II. In the final rule, these materials are authorized in metal-only IBCs under § 173.243. The petitions are denied. RSPA believes there is an insufficient shipment history of these materials in a wide range of IBC design types to warrant broader IBC authorization.

RSPA is denying a petition to restore DOT 56 and 57 portable tank design and construction requirements in §§ 178.251 through 178.251-7, 178.252 and 178.253. The petitioner claimed that removal of these sections would lead to "unnecessary confusion and uncertainty" since new construction of these tanks is authorized through September 30, 1996. Removal of construction requirements for DOT Specification 56 and 57 portable tanks is consistent with removal of pre-HM-181 non-bulk packaging specifications four years prior to the date on which they were no longer permitted to be manufactured. For reference to DOT 56 and 57 specifications, manufacturers and users can retain the 1993 edition of

49 CFR Parts 100–199, as amended. However, RSPA encourages them to convert to the new standards as soon as practicable. A petitioner asked RSPA to add a "fusible" device to the pressure relief devices specified for metal, rigid plastic and composite IBCs in §§ 178.705(c)(2)(i), 178.706(c)(4) and 178.707(c)(3)(iv). This petition is denied as unnecessary. Fusible devices are currently permitted by the provision in each section that states pressure relief may be achieved by "other means of construction."

Petitions requesting revisions to §§ 178.706(c)(3) and 178.707(c)(3)(iii) to permit use of recycled materials for the construction of plastic and composite IBCs are denied. Although RSPA recognizes the benefits of recycling plastic waste, RSPA has not been provided with sufficient information to justify use of recycled plastic materials in the construction of IBCs.

Petitions to allow use of the "USA" mark on IBCs manufactured in other countries and intended for sale and use in the U.S. are denied. As clarified in § 178.3(b)(3) under Docket HM–215A (59 FR 67519, December 29, 1994), "the letters 'USA' may only be used to indicate that the IBC was manufactured in the United States." IBCs manufactured in a foreign country should conform to requirements of the competent authority of that country.

## **Clarifications and Corrections**

In other revisions to this final rule, RSPA corrects U.S. standard conversions relating to the upper capacity for IBCs authorized for Packing Group I solids in § 173.242(d)(2)(i) to read "53 cubic feet" and "106 cubic feet," respectively. Also in § 173.242(d)(2), "flexible" and "fiberboard" IBCs (inadvertently omitted in the final rule) are authorized. In § 173.243(d)(2)(i), Packing Group I solids are authorized for transportation in metal IBCs with capacities up to three cubic meters (106 cubic feet). In § 178.700(c)(1)(i), the volumetric capacity for the body of a receptacle is specified as not more than three cubic meters (3,000 liters, 793 gallons, or 106 cubic feet) and not less than 0.45 meters (450 liters, 119 gallons, or 15.9 cubic feet)

RSPA is correcting § 173.243(d)(2) by removing references to IBCs other than metal. Section 178.705(c)(2)(ii) is clarified to show that the pressure relief requirement for metal IBCs is measured in gauge pressure and not absolute pressure. Thus, reference to the subtraction of atmospheric pressure is removed and reference to measurement of gauge pressure of the hazardous