



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Notice of Enforcement Discretion Regarding Continued Manufacturing of Performance Oriented Packaging (POP) Designs That Have Exceeded Their Periodic Retesting Date

Due to the Coronavirus Disease 2019 (COVID-19) public health emergency, the U.S. Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) has received several inquiries from members of the regulated community requesting an extension of periodic retest date requirements for packaging used in the transportation of hazardous materials.

The Hazardous Materials Regulations (HMR, 49 CFR Parts 171-180) prescribe that United Nations (UN) Performance Oriented Packaging design types be subjected to periodic retesting every twelve (12) to twenty-four (24) months, depending on the design type (see §§ 178.601(e), 178.801(e), 178.955(e), and 178.1035(e)). Periodic design testing is required to recertify the design type for continued production. Industry stakeholders state that, absent an extension of these periods, continued manufacturing of packagings that conform to tested designs would be inhibited, and a shortage of available UN Specification packagings may develop. Therefore, after careful consideration of potential impacts, PHMSA is providing temporary relief from enforcement action if packaging manufacturers are unable to conduct periodic design qualification retesting due to COVID-19 operational disruptions.

PHMSA gives notice that it will not take enforcement action against any company that continues to manufacture a UN performance oriented packaging conforming to a tested design that is not more than 90 days beyond its periodic retest date. Specifically, the relief applies to manufacturers of non-bulk packagings as well as intermediate bulk containers (IBCs), large packagings, and flexible bulk containers. This relief only applies to designs tested and certified for Packing Group (PG) II (Y-marked) or PG III (Z-marked) hazardous materials. PG I (X-marked) designs are not eligible for this enforcement discretion. Additionally, remanufactured and reconditioned design types are excluded from this relief.

Non-bulk packaging design types such as drums, jerricans, and pails, and IBCs, large packagings, and flexible bulk containers are subject to frequent quality control testing in production to verify conformance with design specifications. Additionally, all liquid-rated non-bulk packagings and IBCs as well as IBCs intended to be discharged under pressure are subjected to production leakproofness testing in accordance with HMR requirements prior to filling.

All production tests required under the HMR must still be met during the manufacturing process. As such, relief from production testing is not being granted. For example, the requirements in § 178.604 and § 178.813 for leakproofness testing of non-bulk packages and IBCs continue to apply.

The following packaging types are eligible for relief from the periodic retest requirement under this Notice of Enforcement Discretion:

- UN Specification non-bulk packagings manufactured in accordance with part 178, subpart L and M to PG II and III performance standards;
- UN Specification IBCs manufactured in accordance with part 178, subpart N and O to PG II and III performance standards;
- UN Specification large packagings manufactured in accordance with part 178, subpart P and Q to PG II and III performance standards; and
- UN Specification flexible bulk containers manufactured in accordance with part 178, subpart R and S.

Packaging manufacturers are expected to comply with the HMR to the maximum extent practicable. To qualify for this enforcement discretion, a manufacturer must document the reasons why compliance is not possible prior to manufacturing packagings which are not more than 90 days beyond the required periodic retesting date. The packaging manufacturer must maintain a copy of the document stating why compliance is not possible and the most recent test report (design qualification or periodic retest, as appropriate) until the packaging is again successfully retested. PHMSA expects manufacturers to complete missing tests in a timely manner as soon as testing capability is regained. No other relief from HMR requirements (e.g., production leakproofness testing) is provided in this notice.

This Notice of Enforcement Discretion is effective while the Department of Health and Human Services (HHS) January 31, 2020, determination that a public health emergency pursuant to Section 319 of the Public Health Service Act related to COVID-19 is in effect, or 90 days from the date of issuance of this Notice, whichever is sooner.¹

Issued April 20, 2020, in Washington, D.C.



William S. Schoonover
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for Hazardous Materials Safety

¹ This document is a temporary notice of enforcement discretion. Regulated entities may rely on this notice as a safeguard from departmental enforcement as described herein. To the extent this notice includes guidance on how regulated entities may comply with existing regulations, it does not have the force and effect of law and is not meant to bind the regulated entities in any way.