

## Attention Users of Variation 1 for the Shipment of Hazardous Materials

There has been a change to the regulations within CFR 49 that will affect all shippers of hazardous materials that are using Variation 1 to ship various inner packagings that WERE NOT originally tested in the original certification. This change becomes effective OCTOBER 1, 2010.

Variation 1 can be found in section 178.601(g)(1) of the CFR 49. This is the variation that allows variations in inner packagings of a tested combination package without further testing of the package provided an equivalent level of performance is maintained and meets the criteria listed in 178.601(g)(1)(i)(A-F) and 178.601(g)(1)(ii).

The new paragraph (changes in red text) as of October 1, 2010 will read as follows: “Variations are permitted in inner packagings of a tested combination package, without further testing of the package, provided an equivalent level of performance is maintained **and, when a package is altered under Variation 1 after October 1<sup>st</sup>, 2010, the methodology used to determine that the inner packaging, including closure, maintains an equivalent level of performance is documented in writing by the person certifying compliance with this paragraph and retained in accordance with paragraph (1) of this section.**”

Essentially what this means is that if your company has a combination package that was tested and certified and that same package has various inner packagings that meet the requirements of 178.601(g)(1)(i)(A-F) and 178.601(g)(1)(ii), you will now be required to include, in writing, the methodology used to prove that the other various inner packagings (not tested within the original test report) maintains an equivalent level of performance as the inner packaging that were tested in the original certification.

Due to liability issues, the responsibility of meeting the requirements of this change to Variation 1 within 178.601(g)(1) will be the sole responsibility of the shipper of the hazardous materials and not Pro-Pack Testing Laboratory, Inc.

The shipper of the hazardous material will be required to provide to Pro-Pack, in writing, all such methodology used to ensure compliance with the new requirements of paragraph 178.601(g)(1) as of October 1, 2010. If such documentation is not provided, the test report will only certify compliance with the regulations for the actual inner packagings that were tested by Pro-Pack.

It can be said that this is the D.O.T's way of saying that you must test each and every possible inner packaging to be included within any given combination package. D.O.T. is not stating how a shipper should go about meeting this new requirement. I suppose the question will arise as to what will qualify as the proper methodology that could be used to show compliance with the new requirement. In my opinion, if anything other than some formal test results are not shown within the test report to show compliance with the new paragraph, then your company could be held liable for not meeting the new requirement and possibly subject to a fine from the D.O.T. It will be up to each shipper and user of Variation 1 to determine how they will comply with the new requirement. Remember, the proof of compliance with the new Variation 1 must be in writing from your company detailing how you feel you are meeting the new requirement. Please contact me if you wish to discuss further.

Manuel Rosa, Jr

President

Pro-Pack Testing Laboratory, Inc.