



United States

Department of Transportation

Joint Operations Manual for 49 CFR Part 109 Enforcement and Administrative Authorities

Federal Aviation Administration

Federal Motor Carrier Safety Administration

Federal Railroad Administration

Pipeline and Hazardous Materials Safety Administration

PART I – GENERAL PROVISIONS

SECTION 1 – INTRODUCTION

Section 1.1 – Background. The Federal hazardous materials transportation law and regulations regulate the safe and secure transportation of hazardous materials (hazmat) in commerce. The controlling statutory and regulatory framework consists of the Federal Hazardous Materials Transportation Law (HMTA), 49 U.S.C. § 5101 *et seq.* and the implementing regulations, the Hazardous Materials Regulations (HMR), 49 CFR Parts 171 – 180. Enforcement of the Federal hazardous materials transportation law and regulations has been delegated to designated Department of Transportation (DOT or Department) officials within four Operating Administrations (OA): the Pipeline and Hazardous Materials Safety Administration (PHMSA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), and Federal Aviation Administration (FAA).

Congress, perceiving a need to enhance the OAs' enforcement authority and ability to address imminent hazards presented by the transportation of hazardous materials, enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144, August 10, 2005. SAFETEA-LU authorized officers, employees or agents of the Department the authority to:

1. Access, open, and examine a package;
2. Remove a package from transportation;
3. Order transportation of a package for analysis;
4. Permit a shipment to resume in transportation;
5. Authorize qualified people to assist in the performance of a regulated function; and
6. Issue emergency orders.

The HMR have been amended to include these new enforcement and administrative tools (new Part 109).

Section 1.2 – Purpose. The purpose of this manual is to establish a baseline of standard operating procedures to be used by the OAs when exercising the enhanced authority granted by SAFETEA-LU and implemented in the HMR under Part 109. The guidance provided by this manual will help to ensure that each of the OAs are exercising the enhanced authority in a consistent and uniform manner. Additionally, the information in this manual will inform the

regulated community on the guidance and procedural steps associated with the new enhanced authority.

Section 1.3 – Limitations. Nothing herein shall be construed as a limitation upon any of the OAs in the exercise of their existing authorities or the new enhanced authority. For example, a modal agent, as defined in Part 109, has considerable discretion in carrying out his/her enforcement duties. As such, each OA has existing standard operating procedures and guidance on how its enforcement personnel are to exercise its enforcement authority. This manual sets minimum standard operating procedures for the new enhanced enforcement authority in Part 109 and will be used by the OAs when exercising any of the new enhanced enforcement authority.

Nothing in this operations manual should be construed as creating or implying any substantive or procedural duties, rights, or benefits. The information in this document provides internal guidance and does not provide any basis for a private party to challenge any OA’s exercise of enforcement discretion in any particular case. Any guidance, interpretations, or policies contained in this document shall not be construed as a modification, alteration, or revision of any existing regulations. The OAs, by joint agreement, may revoke or modify the contents of this document at any time and without prior public notice.

SECTION 2- APPLICABILITY

The guidance in this manual only applies to authority exercised under 49 CFR Part 109 and therefore does not extend to the exercise of authority pursuant to any other law or regulation currently authorized or as authorized in the future. Specifically, the areas addressed in this manual are:

1. Stop;
2. Opening;
3. Removal;
4. Closing and Reintroduction;
5. Transport for Analysis;
6. Assistance from Qualified Personnel; and
7. Emergency Orders.

SECTION 3 – DEFINITIONS

For purposes of this manual, all terms are given the meanings found in 49 CFR §109.1 or 49 CFR §171.8. If a word or phrase found in 49 CFR §109.1 is prescribed a meaning at odds with a

definition found in 49 CFR §171.8, or elsewhere in the HMR, the meaning provided in 49 CFR §109.1 shall be limited in applicability to this document.

- *Authorizing Official* – Any person, as designated by each OA, who may authorize or deny an agent’s request to open a package or issue a removal order, make a request for issuance of an emergency order and who may perform any other function designated by his/her OA.
- *Emergency Contact Official* – The person, as designated in each emergency order, who will answer questions from any person who is affected by an outstanding emergency order. Each OA should make sure that this person, or an alternate, is available at any time an emergency order is pending.
- *Temporary Removal (Hold) Order* – An order issued by an agent, after consultation with the authorizing official, which removes a package, and if necessary related packages, from transportation, or that otherwise prevents a package from being placed in transportation.
- *Transport Conveyance* – Intermodal containers, transport vehicles, unit load devices, or other methods to secure one or more packages that are not considered overpacks or outer packagings.

SECTION 4 – GENERAL

This section highlights important guidance information of general applicability throughout this manual. Subsequent sections include the operational guidance specific to the topic of the section.

- The order in which the sections appear within this guidance document does not mean that the exercise of one authority is in any way dependent upon the exercise of another.
- At all times an agent, or other person exercising an authority addressed in this manual, should follow all applicable OA safety and other guidelines and/or standard operating procedures.
- The Department recognized that an OA’s existing inspection and investigation authority and the enhanced authorities addressed in this manual may overlap when an agent is performing routine enforcement functions. The agent should refer to this manual for guidance when exercising one or more of the enhanced authorities.
- When confronted with a package that is in transportation, the agent should exercise his/her discretion in limiting the movement of the package and should be limited to what is needed to complete the inspection.

- Prior to opening a package, an agent or other authorized person should try other methods of determining compliance.
- Whenever this document provides that an agent may perform a function based on his/her own authority or without prior approval, an OA may still require prior approval. Therefore, the agent should always check Part II – Modal Specific Considerations of this manual to confirm the position of his/her OA regarding the need for prior approval.

SECTION 5 – DELAYS ASSOCIATED WITH ROUTINE INSPECTIONS AND INVESTIGATIONS

Section 5.1 – In General. Each OA provides its agents with guidance concerning how and when an agent is authorized to conduct hazmat inspections and investigations. Conducting routine inspections and investigations can lead to delays in the transportation of hazmat shipments. It is important to understand that delays associated with routine inspections and investigations may be necessary and unavoidable. Generally, these delays do not rise to the level of a Part 109 Stop and are not considered an exercise of authority under Part 109 (see Section 6 below).

Section 5.2 – Gaining Access to Inspect Hazmat Packages. The goal of a hazmat inspection or investigation is to ensure the safe transportation of hazardous materials by verifying that hazmat shipments are in compliance with the HMR. The first step towards realizing this goal is by gathering the information concerning the nature of the material being transported and the hazard presented. This may include gaining access to packages or contacting the original offeror to clarify conflicts in information or communications related to the hazardous material.

Section 5.3 – Making the Transition From a Typical Inspection Delay to a Stop. When conducting a hazmat inspection, an agent moves from the necessary and unavoidable delay associated with a routine inspection and to a ‘Stop’ under Part 109 when he/she moves beyond the collection of information that is readily available at the inspection site or from the original offeror. A stop may also include incidents when an agent exercises one of the enhanced authorities addressed in this manual.

SECTION 6 - STOP

When an agent has a reasonable and articulable belief that a package or transport conveyance contains a hazardous material and that the package does not otherwise comply with the HMR the agent may stop the movement of the package or transport conveyance.

Key Points to remember about stopping the movement of a package or transport conveyance to exercise this authority are:

- A stop under Part 109 refers to limitations on, or prevention of, the continued movement of the package and/or transport conveyance and does not refer to the physical stopping of a transport conveyance.
 - A stop under Part 109 may result in more than the necessary and unavoidable delays associated with a routine compliance inspection. The agent should refer to guidance from his/her OA concerning how to conduct a routine inspection/investigation.
- A stop includes preventing a package from entering into transportation. Therefore, an inspection in a warehouse under the general authority to gather information may not implicate a stop. However, if the package is staged but not yet offered, the inspection may become a stop.
- When conducting a hazmat inspection, a stop should be limited in time to the duration required for the agent to assess compliance.

SECTION 7 – OPENING

Section 7.1 – In General. The agent may open a package if it is not immediately adjacent to the contents, when he/she has an objectively reasonable and articulable belief that a package may contain a hazardous material and that it is otherwise not in compliance. After opening the package, the agent may examine the inner packaging and/or packaging components to determine compliance with the Federal hazmat law and the HMR.

Key Points to remember about package opening are:

- The agent should not open a package that appears to be leaking.
 - The agent should follow his/her OA guidelines for notification and actions.
- If possible, the agent should ask the entity with custody and control to open the package.
 - If the entity with custody opens the package, it retains custody.
 - If the entity with custody refuses to open the package, the agent may still open it after completing the required documentation (see Section 7.2) and should proceed in accordance with the applicable guidance in this section.
- Prior to opening a package, the agent should try other methods of obtaining the information he/she needs to determine compliance.

- The agent should not open primary packaging or closures.
 - This includes closures on intermediate bulk containers or bulk packagings.
 - This does not include testing secondary closures for tightness (even bulk packagings).
- The agent takes custody of the package during the opening of the package.
- After opening the package, the agent may be required to close the package (See Section 9 for details).

Section 7.2 – Documenting Information to be Considered by Authorizing Official – Package in Transportation. When a package is in transportation the agent should not open the package unless he/she has contemporaneously documented in a written instrument or form, as established by his/her OA, the following:

- A. The reason the agent believes a hazmat is present. This should include the specific hazmat believed to be present and whether the hazmat is perishable;
- B. How the package is “otherwise not in compliance”;
- C. The type of packaging – include a description of the package and all markings contained on the package;
- D. What the agent expects to find and how the agent believes this will further his/her investigation;
- E. How/why opening the package is necessary to make a determination of, or learn, the nature and contents and/or showing of non-compliance;
- F. How the agent expects to reclose the package;
- G. What materials or resources are available to the agent for reclosing the package; and
- H. Whether the agent was successful in contacting the original offeror of the package, the steps taken to contact the original offeror, and any details of the contact.

Section 7.3 – Documenting Information – Package not in Transportation. Prior to opening a package that is not in transportation an agent is required to write down his/her objectively reasonable belief that the package contains a hazardous material and why the agent believes it is not otherwise in compliance.

Section 7.4 – Authorization. **When a package is in transportation** – The agent, after completing the required documentation (see Section 7.2), but prior to opening a package, should provide the documented information to the authorizing official. **When a package is not in transportation** – The agent, after completing the required documentation (see Section 7.3), may open the package without requesting authorization, unless the agent’s OA requires prior authorization.

7.4.1 – Responsibilities of Authorizing Official for Package Opening. When an agent requests authorization to open a package, the authorizing official, at a minimum, should document:

- A. The information provided by the agent, unless the agent is able to transmit an exact copy of his/her completed form to the authorizing official;
- B. The date and time the request was made;
- C. The name of the agent and the location of the inspection/investigation; and
- D. The authorizing official’s final decision (e.g. Approved, Denied).

Section 7.5 – Notification When a Package is Opened.

Section 7.5.1 – To Person With Custody of the Package. Upon receiving authorization to open a package and prior to its opening, the agent should, where practicable, give verbal notification to the person who has custody of the package.

Section 7.5.2 – To Original Offeror. If the person with custody of the package is not the original offeror, reasonable measures should be made to notify the original offeror of the delay caused by the opening of the package.

NOTE: Notification of the original offeror is required.

Section 7.6 – Opening The Package. The agent should follow guidance or procedures from his/her OA concerning how to open and document the opening of the package. However, at a minimum, the documentation required by the OA should be consistent with Section 7.6.1.

Section 7.6.1 – Documenting the Package. While opening the package, the agent should document the following:

- A. Any observations concerning the original closure method of the package (e.g. width of tape on a fiberboard box);

- B. A description of any additional package materials (e.g. fiberboard dividers), absorbent materials, or other items observed inside the outer packaging; and
- C. A description of the inner packaging components, including dimensions, markings, labeling, etc.

Section 7.6.1.1 – Recommended Procedure. Where practicable and consistent with the guidance of the OA, an agent should supplement any written observation report with photographs that show the condition of the outer packaging, along with all markings; and all inner packaging components (e.g. dividers, absorbent material, etc.) before and after removal from the outer packaging.

SECTION 8 – REMOVAL

Section 8.1 – In General. When the agent has an objectively reasonable and articulable belief that a package *may* pose an imminent hazard, he/she may remove the package and/or related packages in a shipment from transportation.

NOTE: in most situations a removal is limited to 48 hours.

Key Points to remember about a removal are:

- The agent may remove other packages that are related to the package believed to pose an imminent hazard.
 - Related does not necessarily mean any package from the same transport conveyance.
 - A related package is one for which the agent can articulate a nexus to the package believed to pose an imminent hazard. For example, the shipping paper lists 10 packages from the same offeror and the 10 packages are listed as containing the same material – these 10 packages are related and they may all be removed upon a determination that one of them may pose an imminent hazard.
- Custody of the package remains with the person in possession – neither the Department nor the OAs take custody when a package is removed from transportation.

Examples of Situations When an Agent May Want to Consider a Removal.

- **Example 8.1 - Requesting an Emergency Order.** An agent has conducted an investigation and believes that a package may pose an imminent hazard. Upon review, the authorizing official agrees. In this situation, the OA’s decision to issue an emergency order will likely not be immediate. Therefore, an agent should remove the

package and/or related packages pending the OA's decision. This action will allow the rest of a shipment to continue in transportation.

- The OAs do not take possession of a package when a removal order is issued. Rather, the order places the person in possession on notice that the package has been removed. In a situation where the package is part of a larger shipment it is the responsibility of the person in possession of the package to determine how best to proceed.
- **Example 8.2 - More Information or Testing is Needed.** An agent discovers a hazmat that is declared and shipped as a class 8 hazardous material. However, the agent's investigation also reveals information indicating that the material has a subsidiary 6.1 classification.
 - If the material is truly a Poison-Inhalation Hazard (PIH) (6.1) it may pose an imminent hazard. However, if this material is correctly classified or is a non-regulated material it may not pose an imminent hazard. The only way to know for sure may be to transport the material to a facility that is capable of analyzing the material to determine its proper classification.
- **Example 8.3 - Need Qualified Assistance.** To determine whether an imminent hazard is present an agent needs the assistance of a qualified person in order to perform a function. If the assistance is not readily available or the person in possession of the package has qualified personnel but refuses to provide such assistance, the agent could request authorization to issue a Removal Order until a qualified person becomes available. This action allows the rest of the shipment (unrelated packages) to continue in transportation while stopping the suspected package(s) that may pose an imminent hazard.

Section 8.2 – Documenting Information to be Considered by Authorizing Official. The agent should document in a written instrument or form established by the OA:

- A. The agent's objectively reasonable belief why he/she believes the package might pose an imminent hazard if allowed to enter into, or continue in, transportation;
- B. The reason or purpose for the removal (e.g. requesting an emergency order), including the reason why/how the removal will assist in determining if the package poses an imminent hazard;

- C. The evidence and facts that support the agent’s belief that the package may pose an imminent hazard;
- D. If a package was opened prior to making a request for removal, any observations related to the opening of the package and recorded pursuant to Section 7.6.
- E. Whether the agent was successful in contacting the original offeror of the package, the steps taken to contact the original offeror, and any details of the contact.

NOTE: photographs or photocopies may be the best evidence. The agent should attach photographs or similar evidence to the document in support of his/her belief.

Section 8.3 – Authorization. After completing the documentation and prior to removing a package from transportation, the agent should provide the documented information to the authorizing official.

Section 8.3.1 – Responsibilities of Authorizing Official in Removal Process. When an agent requests authorization to remove a package, the authorizing official, at a minimum, should document:

- A. The information provided by the agent, unless the agent is able to transmit an exact copy of his/her written instrument to the authorizing official. This should include a statement as to why the agent believes the package might pose an imminent hazard if allowed to enter into, or continue in, transportation;
- B. A summary of the evidence and facts that support the agent’s belief, unless the agent attaches photographs or similar evidence to the document, in which case the document need only reference the attachments;
- C. The expiration date of the Removal Order; and
- D. The authorizing official’s final decision (e.g. Approved, Denied).

Section 8.3.1.1 - Removal to Apply for Emergency Orders. If the authorizing official agrees that the evidence is sufficient to request an emergency order, the authorizing official should contact his/her OA’s designated contact person for issuance of an Emergency Order (see Section 12).

Section 8.4 - Effectuating the Removal. After receiving approval from the authorizing official, the agent should:

- A. Issue a written Order (Removal Order) to the person with custody and control of the package; and
- B. Consistent with any guidance from the agent’s OA, place a removal sticker on the package or related packages.

Section 8.5 – Notification. A removal requires that the appropriate party receive immediate notification of the removal action.

Section 8.5.1 – To Person With Custody. Generally, the removal order and the sticker the agent affixes to the package or packages pursuant to Section 8.4 is adequate notification. However, when practicable, the agent should provide to the person with custody of the package copies of the documentation and evidence used to obtain the removal.

Section 8.5.2 – To Original Offeror. If the person with custody and control of the package is not the original offeror, the agent should immediately take reasonable measures to notify the original offeror of the removal. In addition, reasonable measures should also be taken to supply the original offeror with copies of any documentation that was provided to the person with custody and control of the package.

NOTE: Notification of the original offeror is required.

Section 8.7 – The Removal Order. At a minimum, a removal order should contain or have attached thereto:

- A. A copy of the documentation set forth under Sections 8.2 and 8.5.1;
- B. The name and contact information of the authorizing official;
- C. The reason and purpose for the removal;
- D. The effective date and the expiration date of the removal order;
- E. When a subsequent order is issued (see Section 8.8):
 - 1. Clearly state “Second (Third) Removal Order” on the top; and
 - 2. In place of the authorizing official, provide the name and contact information for the person authorizing the order.

Section 8.8 - Subsequent Order. An agent may remove a package for up to 48 hours, which can be extended by the OA Administrator, or designee, when a material is being transported for examination or analysis. However, in some situations due to circumstances beyond the agent’s

or the OA's control, the information needed to determine if the situation requires an emergency order will not be able to be obtained before the original emergency order expires.

Section 8.8.1 – Who May Issue a Subsequent Order. When the purpose for a removal cannot be achieved within the time frame allowed, the original authorizing official may request a subsequent order. However, only the OA's Administrator, or person designated to issue an emergency order may issue a subsequent Removal Order.

Section 8.8.2 – Prior Notice. Where practicable, the OA should provide affected parties with notice prior to issuance of a subsequent order.

Section 8.8.3 - Authorizing official. To request a subsequent removal order the person who authorized the original removal should make a written request to the person designated by the OA to issue an emergency order.

Section 8.8.3.1 – Documenting Information to be Considered by Person Issuing Subsequent Order. When requesting a subsequent order, the written request, at a minimum, should include:

- A. A copy of all documentation listed under Sections 8.2 and 8.3.1; and
- B. A statement concerning why the deadline could not be met.

Section 8.8.4 – Limit on Number of Subsequent Orders. No more than 3 removal orders (original and 2 subsequent orders) should be issued to a person for the same package when based upon the same set of facts arising from an investigation.

SECTION 9 – CLOSING AND REINTRODUCTION

Section 9.1 – In General. If a package was opened by an agent under the enhanced authority, the agent may be required to assist in preparing the package for safe and prompt transportation. This may include reclosing the package in accordance with the packaging manufacturer's closure instructions.

Section 9.2 – When Does an Agent Not Need to Assist in the Reclosing of a Package.

Section 9.2.1 – Noncompliant Package. If an agent opens a package and it is found not to be in compliance, the agent is not required to reclose the package and/or bring the package into compliance.

Section 9.2.2 – Agent Believes that the Package Poses an Imminent Hazard. After opening a package, if the agent believes the package may pose an imminent hazard and the authorizing official agrees, the agent is not required to reclose the package.

NOTE: In the above situations, upon a finding of non-compliance or a request for an emergency order, custody of the package reverts back to the person from whom the agent took custody in order to open the package.

Section 9.3 – When Should an Agent Assist in the Reclosing of a Package. An agent may be required to assist in reclosing the package in accordance with the packaging manufacturer’s closure instructions.

Section 9.3.1 – Package that is In Compliance and/or Does not Pose an Imminent Hazard.

After an agent has opened a package and determines that the package does not contain a hazardous material, is in compliance with the regulations, and/or does not pose an imminent hazard, the agent should assist in the reclosing of the package. If the inspection was at the offeror’s facility and all materials are present to properly reclose the package, the agent may request the assistance of the offeror in reclosing the package. In this case, the agent does not need to document the reclosing (see Section 9.3.1.1).

NOTE: The guidance in this section also applies to situations where an agent believed that an imminent hazard existed and requested issuance of an emergency order but the OA Administrator, or designee, determined that the package did not pose an imminent hazard and consequently, did not issue an emergency order.

Section 9.3.1.1 – Documenting the Reclosing. While reclosing the package, the agent should document his/her process in a manner and form as prescribed in guidance from the agent’s OA. At a minimum the agent should document:

- A. How the agent reclosed/reconstructed the package and brought it into compliance with the HMR;
- B. How (A) above complies with the regulations; and
- C. Where practicable, and consistent with the guidance of the agent’s OA, the agent should take step-by-step photographs of the reclosing process and of the reclosed package.

Section 9.3.1.2 – Additional Requirements/Procedures. After an agent recloses the package the agent should:

- A. Place inspection tape, as approved by the OA, around the package;
- B. Initial the inspection tape, and if applicable, supply any unique identifier that may have been assigned by the OA;

- C. Request that the person from whom the package was obtained initial the inspection tape in a spot adjacent to the agent's initials; and
- D. Return the package to the person from whom it was obtained.

Section 9.3.2 – Package Found Not to Contain a Hazardous Material. After opening a package that is found not to contain a hazardous material, the agent should securely reclose the package and follow the guidance in Section 9.3.1.

SECTION 10 – TRANSPORT FOR ANALYSIS

Section 10.1 – In General. When an agent determines that further examination of a package is necessary or that an analysis of the material itself is required, the agent may direct a person to transport the package to a test facility capable of performing the required task, or to a location where an examination may be safely conducted by the agent. The reasons for using this authority may include any of the following situations:

- Conflicting information exists;
- Additional investigation is not possible on the immediate premises; or
- To otherwise determine that the package is in compliance.

Section 10.2 – Authority/discretion. An agent can direct a person to transport a package for examination and analysis based solely upon the agent's discretion. However, the agent should use this authority sparingly and in accordance with any additional guidance from the agent's OA. When deciding whether to use this authority, the agent should consider:

- Is an on-site inspection adequate for determining compliance and more appropriate for gathering of information to make the required determination?
- Has the agent identified a facility capable of identifying the package contents through examination and analysis?
- For a package already in transportation, seek the appropriate emergency order to temporarily hold the package and refer to his/her OA's guidance regarding further investigation of the original offeror or manufacturer.

Section 10.3 – Documentation. An agent should contemporaneously document his/her reasons for using this authority. At a minimum, the agent should document:

- A. A description of the packaging, including available shipping information;
- B. The type of testing needed (examination and analysis, packaging testing);
- C. The person being directed to transport the packaging; and
- D. The identified test facility and its contact information.

SECTION 11 – ASSISTANCE FROM QUALIFIED PERSONNEL

Section 11.1 – In General. When an agent is unable to perform a function, or when safety might otherwise be compromised by an agent’s performance of an essential function, the agent may authorize properly qualified personnel to assist in the activities. Although an agent may make a request for assistance to a person, that person, or his/her employer, has the right to refuse the request.

NOTE: Such a refusal may be grounds for a removal (see Section 8).

Section 11.2 - Authority/discretion. An agent may request assistant of qualified personnel based solely upon his/her discretion.

Section 11.3 – Verifying Qualifications. Prior to requesting or authorizing a person to assist in performing any function, the agent should first verify that the person is properly qualified to perform the function.

Section 11.4 - Documentation. Whenever an agent authorizes a person to assist in performing a function, the agent should document:

- A. How he/she verified that the person was properly qualified;
- B. The function the agent requested and/or authorized the person to perform;
- C. What the person actually did; and
- D. Any additional information the agent believes is relevant to his/her request for assistance from qualified personnel.

SECTION 12 – EMERGENCY ORDERS

Section 12.1 – In General. Emergency orders may be in the form of an emergency restriction/prohibition, recall, or out-of-service order, and may be issued for any unsafe practice or condition posing an imminent hazard.

Key Points to remember about emergency orders are:

- Emergency orders are not limited to addressing violations of the Federal hazmat law or the HMR. They can be used when an unsafe practice or condition constitutes, or is causing, an imminent hazard. The primary tool to address an unsafe practice or condition is the Emergency Restriction/Prohibition Order (see Section 12.2.3).
- The OA Administrator, or designee, must find an imminent hazard based on an agent's inspection/investigation, and where applicable, information from additional testing or research.
- Before an OA issues an emergency order there will be at least 2 levels of review above the agent. In all cases, the authorizing official shall conduct the first level of review.
- The person authorized to issue an emergency order should not be the same person designated as the authorizing official. To the extent possible, this person should be located at the issuing OA's headquarters.
- May also be used in situations where a non-compliant packaging portion of a transport vehicle is posing an imminent hazard.
- In general, an emergency order will be issued based on an agent's inspection/investigation. However, an OA Administrator, or designee, has the authority to issue an emergency order based on an independent internal or external investigation, and/or research.
- Issuing one type of emergency order does not foreclose an OA from issuing additional emergency orders based on the same set of facts and circumstances.
- An emergency order removes a package from transportation until the identified requirements are met and/or the person to whom the emergency order was issued demonstrates to the satisfaction of the issuing OA that an imminent hazard is no longer present.
- An emergency order can only be removed or rescinded by a written order.
- An emergency recall order can only be issued by PHMSA, in consultation with the requesting OA.

Section 12.2 – Types of Emergency Orders. There are three types of emergency orders authorized:

- Out of Service (OOS) – Applicable to packages that are in transportation (see Section 12.2.1).
- Emergency Recall – All emergency recall orders are issued by PHMSA in consultation with the OAs as appropriate. This emergency order addresses packaging designs, and may be limited to a particular manufacturing run of a certain packaging design or designs. Typically, an emergency recall order imposes requirements on the party in possession of the subject package. However, this emergency order may also impose specific requirements on the manufacturer of a packaging design that is the subject of the order (see Section 12.2.2 and Part II – Modal Specific Considerations). An emergency recall order will be published in the Federal Register.
- Emergency Restriction/Prohibition – An emergency restriction or prohibition is limited to the extent necessary to abate the imminent hazard. This emergency order is very versatile and can be broadly or narrowly tailored. Unlike an OOS or an Emergency Recall order, this emergency order is not generally directed toward packages, although in certain circumstances, it may be used to address packaging issues. This emergency order can be used to restrict all, or a portion of, an entity’s activities. In addition, an OA can issue this emergency order to restrict or prohibit the transportation of hazardous materials based on a determination that an unsafe practice or condition poses an imminent hazard (see Section 12.2.3).

Section 12.2.1 – Out-of-Service (OOS) Order. This emergency order is applicable to packages that present an imminent hazard and are found in transportation. An OOS Order is issued to the party with custody and control of the package.

- **Example** – Recall the package in question under the example provided in Section 8.1. The agent determines that a shipping paper is inconsistent with the label on the package because the material is in fact a poison. Therefore, the packaging is not authorized for the material, the placard is incorrect, the label is incorrect, and the lack of hazard communication would pose a direct threat to emergency responders and the public should an incident occur during transportation. In this situation, it may be appropriate to take the package and/or any related packages out-of-service until brought into compliance.

Section 12.2.2 – Emergency Recall Order. This emergency order is suited to address a type of packaging or a specific packaging design. This order is issued by PHMSA. See Part II, Modal Specific Considerations for the PHMSA procedures for issuing an emergency recall.

- **Example** – During the course of an inspection/investigation, an agent discovers that a packaging design was not properly tested or that a manufacturing run of a particular design has a fatal defect. Upon further investigation, the agent believes the design defect poses an imminent hazard if the packagings were allowed to be used for the transportation of hazardous materials.

Section 12.2.3 – Emergency Restriction/Prohibition Order. An OA Administrator, or designee, may issue an emergency restriction/prohibition order to impose a restriction or prohibition on the transportation of hazardous materials for a violation of the Federal hazmat law or HMR, or for an unsafe practice or condition that constitutes, or is causing, an imminent hazard.

- For an unsafe practice or condition, the requirements to abate the imminent hazard may be focused on all, or a portion of, an entity’s operations. The emergency restriction/prohibition order could be as broad as the removal or eradication of an external condition or the prohibition of a general and otherwise legal practice.
- **Example** – The President has declared a national emergency. The conditions that caused this finding or that are a by-product of the event may also pose an imminent hazard to the safe transportation of all or some hazardous materials within the affected area. Under these circumstances, the Secretary is authorized to issue an order that restricts the transportation of all or some hazardous materials until such time as the imminent hazard condition has abated.

Section 12.3 – Authorizing Official. Upon receiving information from an agent concerning non-compliance, a packaging design, or an unsafe condition or practice that the authorizing official believes may pose an imminent hazard, the authorizing official will request issuance of an order from the person designated by the OA to issue an emergency order. The authorizing official, as soon as practicable, shall provide all documentation, as supplied from the agent, to the person authorized by the OA to issue emergency orders.

Section 12.4 – Person Authorized to Issue an Emergency Order. After receiving the request from the authorizing official, the person authorized to issue an emergency order should review all the documentation as supplied by the agent and the authorizing official.

Section 12.4.1 – Review by Person Authorized to Issue an Order. This person shall follow the policies and procedures set forth by his/her OA. However, when determining whether an imminent hazard exists, at a minimum, this person shall consult with the OA’s Office of Chief Counsel, or its equivalent legal section.

Section 12.5 – Elements of an Emergency Order. After the person authorized to issue an emergency order has made a finding that an imminent hazard exists, he/she shall issue the appropriate written order. The written emergency order shall be limited to the extent necessary to abate the imminent hazard and shall at a minimum contain:

- A. A description of the violation, condition, or practice that constitutes or is causing the imminent hazard;

- B. The specific terms and/or conditions that the affected party or parties must meet, or that must take place, in order for the emergency order to be removed;
- C. The name and the contact information of the identified emergency contact person;
- D. The OA's policies and procedures for how or when the package may be transported to a location where work required to bring the package into compliance may safely be conducted and/or for remedial action to abate the imminent hazard; and
- E. A statement of the recipients right to petition for review with a reference to 49 CFR § 109.19.

Section 12.5.1- Attachments to the Order. When issuing an emergency order, an OA shall attach a copy of all evidence that was used in determining the existence of an imminent hazard.

Section 12.6 – Notification, Service and Publication. The OA will timely publish in the Federal Register emergency orders that it issues. When issuing an emergency order, the OA should take every reasonable effort to immediately notify the recipient that the order has been issued and provide a copy of the order (without attachments) by facsimile or electronic mail. After the initial notification, the OA shall serve a copy of the order (with an original signature) and all attachments upon the recipient by:

- A. In person service;
- B. US Postal Service or private mail service, with a return receipt or signature of recipient requested;
- C. Facsimile or electronic mail only when the recipient has stated in writing that it waives service via A and B above.

Section 12.7 – Termination of an Emergency Order. An emergency order may only be terminated upon a written order issued by the person who signed the original order.

SECTION 13 – SPECIFIC MATERIALS

Section 13.1 – Perishable, Radioactive and Poison By Inhalation Hazardous Materials and Select Agents. No agent may open or otherwise handle a package containing a:

- Perishable hazardous material;
- Radioactive material;

- Hazardous material with a primary or subsidiary classification of Poison-Inhalation Hazard, or
- Select Agent.

Section 13.1.1 –Requirements for Specific Materials. An agent may exercise authority under Part 109 for the materials specified in this section only if the agent has had training in the handling of the hazardous materials specified in this section. In addition, prior to undertaking the handling or opening of a package containing one of these materials, the agent must be in a facility designed for the handling of the specific material (if special facility is required) and have all safety equipment, handling equipment, and materials to properly close the package.

Section 13.2 – Documentation and Authorization. If the agent meets the requirements of Section 13.1, the agent must perform the documentation requirements for the authority exercised and must also include:

- A. The specific material;
- B. The specialized facility at which the agent is performing the function (if applicable);
- C. The safety equipment used in performance of the function;
- D. Safety measures undertaken; and
- E. Specific materials to be used in reclosing the package, and certify that the materials are on hand.

PART II – MODAL SPECIFIC CONSIDERATIONS

SECTION 1 – FAA

Section 1.1 – Authorizing Official – Agent’s Regional Chief or designee.

Section 1.2 – Deviations.

Section 1.3 – Emergency Recall Orders – An emergency recall order can only be issued by PHMSA. See Section 4 of this Part for the PHMSA procedures for issuing an emergency recall order.

SECTION 2 – FMCSA

Section 2.1 – Authorizing Official – Agent’s Regional Chief or designee.

Section 2.2 – Deviations.

Section 2.3 – Emergency Recall Orders – An emergency recall order can only be issued by PHMSA. See Section 4 of this Part for the PHMSA procedures for issuing an emergency recall order.

SECTION 3 – FRA

Section 3.1 – Authorizing Official – Agent’s Regional Chief or designee.

Section 3.2 – Deviations.

Section 3.3 – Emergency Recall Orders – An emergency recall order can only be issued by PHMSA. See Section 4 of this Part for the PHMSA procedures for issuing an emergency recall order.

SECTION 4 – PHMSA

Section 4.1 – Authorizing Official – Agent’s Regional Chief or designee.

Section 4.2 – Deviations.

Section 4.3 – Emergency Recall Orders.

Section 4.3.1 – In General. The Associate Administrator for Hazardous Materials Safety may issue an emergency order mandating the immediate recall of any packaging; packaging component; or container certified, represented, marked, or sold as qualified for use in the transportation of hazardous materials in commerce when the continued use of such item would constitute an imminent hazard.

The OA requesting an emergency recall order will designate a primary legal and technical POC to assist PHMSA in preparing the order and in any subsequent appeal of the order.

Key Points to remember about an emergency recall are:

- Depending on the type of packaging involved, the hazardous material and degree of hazard, and the extent of distribution, the recall order should extend to the appropriate level in the distribution chain:
 - Consumer or user;
 - Retail; or
 - Wholesale.

- Alert the public of the recall when conditions warrant.
- Perform effectiveness checks by contacting the parties to the recall at the appropriate level as specified in the recall order.

Section 4.3.2 – Initiating an Emergency Recall Order. To initiate an emergency recall, the OA shall submit to PHMSA’s Office of Chief Counsel a referral memo and sample order. The following determinations may justify the initiation of an emergency recall order:

- A. The packaging, packaging component, or container constitutes an imminent hazard.
- B. The responsible party has declined to initiate a voluntary recall.

Section 4.3.3 – Documenting Information to be considered by Authorizing Official. The agent should document in a written instrument or form established by the OA:

- A. The agent’s objectively reasonable belief why he/she believes the packaging, packaging component, or container might constitute an imminent hazard if allowed to be used in transportation;
- B. The evidence and facts that support the agent’s belief that the packaging, packaging component, or container may pose an imminent hazard;
- C. Whether the agent was successful in contacting the manufacturer or responsible party of the packaging, packaging component, or container, the steps taken to contact the manufacturer or responsible party, and any details of the contact.

NOTE: photographs or photocopies may be the best evidence. The agent should attach photographs or similar evidence to the document in support of his/her belief.

Section 4.3.4 – Authorizing Official. Upon receiving information from an agent concerning a packaging, packaging component, or container that the authorizing official believes may pose an imminent hazard, the authorizing official will request issuance of an emergency recall order from PHMSA. This person shall follow the policies and procedures set forth by his/her OA. However, when determining whether an imminent hazard exists, at a minimum, this person shall consult with the OA’s Office of Chief Counsel, or its equivalent legal section. The authorizing official, as soon as practicable, shall provide all documentation, as supplied from the agent, to PHMSA in the form of a referral memo.

Section 4.3.5 – Documenting Information to be considered by PHMSA. The OA should document in a referral memo:

- A. The agent’s objectively reasonable belief why he/she believes the packaging, packaging component, or container might constitute an imminent hazard if allowed to be used in transportation;
- B. The activities prohibited and/or the actions required to be performed;
- C. The basis for the emergency recall order;
- D. The evidence supporting the agent’s belief that the packaging, packaging component, or container may pose an imminent hazard;
- E. The remedial action to eliminate or abate the imminent hazard; and
- F. A proposed draft Emergency Recall Order (See Appendix C).

NOTE: photographs or photocopies may be the best evidence. The agent should attach photographs or similar evidence to the referral memo in support of his/her belief.

Section 4.3.6 – Person Authorized to Issue an Emergency Recall Order. After receiving the request from the authorizing official, PHMSA’s Office of Chief Counsel, in consultation with the OA’s designated primary legal POC as necessary, will review the referral memo and supporting evidence for legal sufficiency. If the request is legally sufficient and an emergency recall is deemed necessary, PHMSA’s Office of Chief Counsel will forward the proposed emergency recall order and supporting materials to the Associate Administrator for Hazardous Materials Safety for review and concurrence. The Associate Administrator for Hazardous Materials Safety may approve, modify, or deny the emergency recall order.

Section 4.3.7. – Elements of an Emergency Recall Order. See Section 12.5 for the required elements and attachments to the emergency recall order.

Section 4.3.8 – Notification, Service and Publication. See Section 12.6 for the procedures for notification, service and publication.

Section 4.3.9 – Termination of an Emergency Recall Order. An emergency recall order may be terminated when the continued use of the subject packaging, packaging component, or container no longer constitutes an imminent hazard.

Key Points to remember about termination of an emergency recall order include:

- The party responsible for the packaging, packaging component, or container may request termination of the emergency recall order by submitting a written request.

- The emergency recall order may only be terminated through a written order issued by the Associate Administrator for Hazardous Materials Safety.

Section 4.3.9 – Petitions for Review of an Emergency Recall Order. All petitions for review will be governed by the procedures set forth in 49 CFR § 109.19. The OA’s designated primary legal POC shall assist PHMSA’s Office of Chief Counsel with a petition for review. If a petitioner requests a formal hearing and the Chief Safety Officer assigns the petition to the Office of Hearings, the OA requesting issuance of the emergency recall order will designate an attorney from the OA’s Office of Chief Counsel to represent the OA and PHMSA at the hearing. PHMSA’s Office of Chief Counsel, Hazardous Materials Safety Law Division will provide one attorney to assist the OA’s attorney.

PART III – FORMS / RECORDS

The forms/records included in this part are merely representative samples. Each modal OA has the discretion to develop its own version of any form/record in order to carry out the enhanced authorities addressed in this manual.

APPENDIX A – Sample Removal Order

APPENDIX B – Sample OOS Order

APPENDIX C – Sample Emergency Recall Order

APPENDIX D – Sample Emergency Restriction/Prohibition

APPENDIX E – Sample Rescission Order

APPENDIX F – Sample Sticker

APPENDIX A
Sample Removal Order

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UNITED STATES DEPARTMENT OF TRANSPORTATION

[Agency Name if Issued by PHMSA, FAA, FRA, or FMCSA]

)
 [NAME OF COMPANY]) Date Issued: _____
 [STREET ADDRESS])
 [CITY, STATE, ZIP]) Expires: _____
)



REMOVAL ORDER

This notice constitutes an Removal Order by the United States Department of Transportation (DOT) pursuant to 49 U.S.C. § 5121(c)(1)(C) and 49 CFR §109.7.

This Order applies to

As a designated officer, employee or agent of the Secretary of Transportation (Secretary), the undersigned believes that this package and related packages constitutes or is

causing an imminent hazard to public safety. For more detailed information see “Background/Basis for Order” below.

EFFECTIVE IMMEDIATELY YOU MUST:

- 1)
- 2)

This Order applies to [COMPANY NAME], its officers, directors, employees, subcontractors, and agents.

This Order is effective immediately and **remains in effect unless withdrawn in writing, or until it otherwise expires by operation of law. HOWEVER, as delegated from the Secretary, the Administrator, Pipeline and Hazardous Materials Safety Administration (PHMSA), or Designee, may issue up to two (2) additional Removal Orders.**

Jurisdiction

[COMPANY NAME] offers for transportation or transports hazardous materials in commerce within the United States and therefore is a “person”, as defined by 49 U.S.C. § 5102(9), in addition to being a “person” under 1 U.S.C. § 1. Accordingly, [COMPANY NAME] is subject to the authority and jurisdiction of the Secretary, including the authority to remove a package and related packages from transportation, 49 U.S.C. § 5121(c)(1)(C) and 49 CFR § 109.7.

Background/Basis for Order

Upon inspection/investigation I _____ , an Investigator
for the PHMSA found _____

_____.

Purpose for Removal Order

The undersigned believes that the facts as described under the preceding section show that the above-referenced package may constitute or be causing an imminent hazard.

Accordingly, this Removal Order is issued because:

_____.

Failure to Comply

Any person failing to comply with this Emergency Order is subject to civil penalties of up to \$110,000 for each violation or for each day they are found to be in violation (49 U.S.C. §5123). A person violating this Emergency Order is also subject to criminal prosecution, which may result in fines under title 18, imprisonment of up to ten years, or both (49 U.S.C. § 5124)

Authorizing Official

Prior to issuing this emergency Order, the undersigned reviewed the information with,
and obtained authorization from:

[Authorizing Official Name and Title
[Program/Division Office]
[Address]
Telephone: #####

Dated: _____

[PRINTED OR TYPED NAME],

Investigator

Office of Hazardous Materials Enforcement

APPENDIX B
Sample OOS Order

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UNITED STATES DEPARTMENT OF TRANSPORTATION

[Agency Name if Issued by PHMSA, FAA, FRA, or FMCSA]

)

[NAME OF COMPANY]) Order No. _____

[STREET ADDRESS])

[CITY, STATE, ZIP])

)



OUT-OF-SERVICE ORDER

This notice constitutes an Out-of-Service Order by the United States Department of Transportation (DOT) pursuant to 49 U.S.C. § 5121(d) and 49 CFR §109.17(b); and pursuant to delegation of authority to the Administrator, **[NAME OF AGENCY HERE e.g. Pipeline and Hazardous Materials Safety Administration]**, United States Department of Transportation.

This Order applies to **[DESCRIPTION OF PACKAGE, INCLUDE THE MATERIAL ETC]** and related packages, offered for transportation by **[NAME OF OFFEROR]**.

The United States finds that this package and related packages constitutes or is causing an imminent hazard to public safety. For more detailed information see “Background/Basis for Order” below.

EFFECTIVE IMMEDIATELY YOU MUST:

- 1)
- 2)

This Order applies to [COMPANY NAME], its officers, directors, employees, subcontractors, and agents.

This Order is effective immediately and remains in effect unless withdrawn in writing by the Administrator or his/her designee, or until it otherwise expires by operation of law.

Jurisdiction

[COMPANY NAME] offers for transportation or transports hazardous materials in commerce within the United States and therefore is a “person”, as defined by 49 U.S.C. § 5102(9), in addition to being a “person” under 1 U.S.C. § 1. Accordingly, [COMPANY NAME] is subject to the authority and jurisdiction of the Administrator, including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard (49 U.S.C. § 5121(d)).

Background/Basis for Order

Upon reliable and credible information received in the course of investigations, the Secretary has learned _____

Remedial Action

To eliminate or abate the imminent hazard, you must

Rescission of this Order

Before you may offer and/or transport any package subject to this order you must be able to adequately demonstrate to the Administrator that you have taken the actions listed above, or that you have taken other actions, and that the actions taken have, in fact, resulted in an imminent hazard no longer existing. After you have made such demonstration the Administrator will issue a Rescission Order. Until the Administrator has issued this order you must not offer or transport any package covered by this order.

Failure to Comply

Any person failing to comply with this Emergency Order is subject to civil penalties of up to \$110,000 for each violation or for each day they are found to be in violation (49 U.S.C. §5123). A person violating this Emergency Order is also subject to

criminal prosecution, which may result in fines under title 18, imprisonment of up to ten years, or both (49 U.S.C. § 5124)

Right to Review

Any person to whom the Administrator has issued an Emergency Order is entitled to review of the order pursuant to 49 U.S.C. § 5121(d)(3) and in accordance with section 554 of the Administrative Procedure Act (APA), 5 U.S.C. §§ 500 *et seq.* Any petition seeking relief must be filed within 20 calendar days of the date of this order (49 U.S.C. § 5121 (d)(3)), and include one copy addressed to the Chief Safety Officer (CSO) for the Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation, 1200 New Jersey Avenue, S.E., Washington DC 20590-0001 (ATTENTION: Office of Chief Counsel) (electronically to PHMSACHIEFCOUNSEL@DOT.GOV) and one copy addressed to U.S. DOT Dockets, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Room W12-140, Washington, DC 20590 (<http://Regulations.gov> under Docket # PHMSA-2011-0303). Furthermore, a petition for review must state the material facts at issue which the petitioner believes dispute the existence of an imminent hazard and must include all evidence and exhibits to be considered. The petition must also state the relief sought. Within 30 days from the date the petition for review is filed, the CSO must approve or deny the relief in writing; or find that the imminent hazard continues to exist, and extend the original Emergency Order. In response to a petition for review, the CSO may grant the requested relief in whole or in part; or may order other relief as justice may require (including the immediate assignment of the case to the Office of Hearings for a formal hearing on the record).

In order to request a formal hearing in accordance with 5 U.S.C. § 554, the petition must state that a formal hearing is requested, and must identify the material facts in dispute giving rise to the request for a hearing. A petition which requests a formal hearing must include an additional copy addressed to the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, M-20, Room E12-320, 1200 New Jersey Avenue, SE, Washington, DC 20590 (FAX: (202) 366-7536).

Emergency Contact Official

If you have any questions concerning this Emergency Restriction/Prohibition Order you should call _____.

Dated: _____

Name,

Title

APPENDIX C
Sample Emergency Recall Order

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UNITED STATES DEPARTMENT OF TRANSPORTATION
[Pipeline and Hazardous Materials Safety Administration]

)
[NAME OF COMPANY]) Order No. _____
[STREET ADDRESS])
[CITY, STATE, ZIP])
)



EMERGENCY RECALL ORDER

This notice constitutes an Emergency Recall Order by the United States Department of Transportation (DOT) pursuant to 49 U.S.C. § 5121(d) and 49 CFR §109.17(c); and pursuant to delegation of authority to the Administrator, Pipeline and Hazardous Materials Safety Administration United States Department of Transportation. This Order applies to [COMPANY NAME] and to any _____ package manufactured under [UN TEST REPORT, etc][hereinafter referred to as affected packaging or affected package(s)]. In addition this order applies to any person who is in possession of a package subject to this order.

The United States finds that this package design constitutes or is causing an imminent hazard to public safety. For more detailed information see “Background/Basis for Order” below.

EFFECTIVE IMMEDIATELY YOU MUST:

- 1)
- 2)

This Order applies to

- 1) [COMPANY NAME], its officers, directors, employees, subcontractors, and agents;
and
- 2) Any person who is in possession of an affected package, including any officers, directors, employees, subcontractors, and agents of said person.

This Order is effective immediately and remains in effect unless withdrawn in writing by the Administrator or his/her designee, or until it otherwise expires by operation of law.

Jurisdiction

[COMPANY NAME] offers for transportation or transports hazardous materials in commerce [AND/OR MANUFACTURES, MARKS OR SELLS A HAZMAT PACKAGE, WHICH IS USED TO TRANSPORT HAZARDOUS MATERIALS] within the United States and therefore is a “person”, as defined by 49 U.S.C. § 5102(9), in addition to being a “person” under 1 U.S.C. § 1. Accordingly, [COMPANY NAME], or any person in possession of an affected package, is subject to the authority and jurisdiction of the Administrator, including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard (49 U.S.C. § 5121(d)).

Background/Basis for Order

Upon reliable and credible information received in the course of investigations, the Administrator has learned _____

_____.

Remedial Action

To eliminate or abate the imminent hazard, you must _____
_____.

Rescission of this Order

Before you may offer and/or transport any package subject to this order you must be able to adequately demonstrate to the Administrator that you have taken the actions listed above, or that you have taken other actions, and that the actions taken have, in fact, resulted in an imminent hazard no longer existing. After you have made such demonstration the Administer will issue a Rescission Order. Until the Administrator has issued this order you must not offer or transport any package covered by this order.

Failure to Comply

Any person failing to comply with this Emergency Order is subject to civil penalties of up to \$110,000 for each violation or for each day they are found to be in violation (49 U.S.C. §5123). A person violating this Emergency Order is also subject to criminal prosecution, which may result in fines under title 18, imprisonment of up to ten years, or both (49 U.S.C. § 5124)

Right to Review

Any person to whom the Administrator has issued an Emergency Order is entitled to review of the order pursuant to 49 U.S.C. § 5121(d)(3) and in accordance with section 554 of the Administrative Procedure Act (APA), 5 U.S.C. §§ 500 *et seq.* Any petition seeking relief must be filed within 20 calendar days of the date of this order (49 U.S.C. § 5121 (d)(3)), and include one copy addressed to the Chief Safety Officer (CSO) for the Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation, 1200 New Jersey Avenue, S.E., Washington DC 20590-0001 (ATTENTION: Office of Chief Counsel) (electronically to PHMSACHIEFCOUNSEL@DOT.GOV) and one copy addressed to U.S. DOT Dockets, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Room W12-140, Washington, DC 20590 (<http://Regulations.gov> under Docket # PHMSA-2011-0303). Furthermore, a petition for review must state the material facts at issue which the petitioner believes dispute the existence of an imminent hazard and must include all evidence and exhibits to be considered. The petition must also state the relief sought. Within 30 days from the date the petition for review is filed, the CSO must approve or deny the relief in writing; or find that the imminent hazard continues to exist, and extend the original Emergency Order. In response to a petition for review, the CSO may grant the requested relief in whole or in part; or may order other relief as

justice may require (including the immediate assignment of the case to the Office of Hearings for a formal hearing on the record).

In order to request a formal hearing in accordance with 5 U.S.C. § 554, the petition must state that a formal hearing is requested, and must identify the material facts in dispute giving rise to the request for a hearing. A petition which requests a formal hearing must include an additional copy addressed to the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, M-20, Room E12-320, 1200 New Jersey Avenue, SE, Washington, DC 20590 (FAX: (202) 366-7536).

Emergency Contact Official

If you have any questions concerning this Emergency Restriction/Prohibition Order you should call _____.

Dated: _____

Name,

Title

APPENDIX D
Sample Emergency Restriction/Prohibition

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UNITED STATES DEPARTMENT OF TRANSPORTATION

[Agency Name if Issued by PHMSA, FAA, FRA, or FMCSA]

)
 [NAME OF COMPANY]) Order No. _____
 [STREET ADDRESS])
 [CITY, STATE, ZIP])
)



EMERGENCY
RESTRICTION/PROHIBITION
ORDER

This notice constitutes an Emergency Restriction/Prohibition Order by the United States Department of Transportation (DOT) pursuant to 49 U.S.C. § 5121(d) and 49 CFR §109.17(a); and pursuant to delegation of authority to the Administrator, Pipeline and Hazardous Materials Safety Administration (Administrator), United States Department of Transportation. This order is issued to [NAME OF COMPANY, if APPLICABLE; OR ALL CARRIERS, or whomever]

Upon information derived from inspection, investigation, testing, or research the Administrator has found that a violation of the Federal Hazmat law (51 U.S.C. §§ 5101, *et seq.*) or the Hazardous Materials Regulations (49 CFR Parts 171 to 180); an unsafe condition; or, an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials. For more detailed information see “Background/Basis for Order” below.

Specifically,

EFFECTIVE IMMEDIATELY ANY PERSON IDENTIFIED BY THIS ORDER:

- 1)
- 2)

This Order applies to [REPEAT TO WHOM AGAIN HERE], its officers, directors, employees, subcontractors, and agents.

This Order is effective immediately and remains in effect unless withdrawn in writing by the Administrator or his/her designee, or until it otherwise expires by operation of law.

Jurisdiction

[COMPANY NAME – OR CHANGE TO FIT CONDITION, E.G. National Emergency – see below] offers for transportation or transports hazardous materials in commerce within the United States and therefore is a “person”, as defined by 49 U.S.C. § 5102(9), in addition to being a “person” under 1 U.S.C. § 1. Accordingly, [COMPANY NAME] is subject to the authority and jurisdiction of the Administrator, including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard (49 U.S.C. § 5121(d)).

[Alternative – any company that offers or transports hazardous materials in commerce is considered a “person”, as defined by 49 U.S.C. § 5102(9), in addition to being a “person” under 1 U.S.C. § 1. Accordingly, such companies are subject to the authority and jurisdiction of the Administrator, including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard (49 U.S.C. § 5121(d)).]

Background/Basis for Order

Upon reliable and credible information received in the course of investigations, the Administrator has learned _____

_____.

Remedial Action

To eliminate or abate the imminent hazard, you must

Rescission of this Order

Before you may offer and/or transport any package subject to this order you must be able to adequately demonstrate to the Administrator that you have taken the actions listed above, or that you have taken other actions, and that the actions taken have, in fact, resulted in an imminent hazard no longer existing. After you have made such demonstration the Administer will issue a Rescission Order. Until the Administrator has issued this order you must not offer or transport any package covered by this order.

Failure to Comply

Any person failing to comply with this Emergency Order is subject to civil penalties of up to \$110,000 for each violation or for each day they are found to be in violation (49 U.S.C. §5123). A person violating this Emergency Order is also subject to criminal prosecution, which may result in fines under title 18, imprisonment of up to ten years, or both (49 U.S.C. § 5124)

Right to Review

Any person to whom the Administrator has issued an Emergency Order is entitled to review of the order pursuant to 49 U.S.C. § 5121(d)(3) and in accordance with section 554 of the

Administrative Procedure Act (APA), 5 U.S.C. §§ 500 *et seq.* Any petition seeking relief must be filed within 20 calendar days of the date of this order (49 U.S.C. § 5121 (d)(3)), and include one copy addressed to the Chief Safety Officer (CSO) for the Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation, 1200 New Jersey Avenue, S.E., Washington DC 20590-0001 (ATTENTION: Office of Chief Counsel) (electronically to PHMSACHIEFCOUNSEL@DOT.GOV) and one copy addressed to U.S. DOT Dockets, U.S.

Department of Transportation, 1200 New Jersey Avenue, S.E., Room W12-140, Washington, DC 20590 (<http://Regulations.gov> under Docket # PHMSA-2011-0303). Furthermore, a petition for review must state the material facts at issue which the petitioner believes dispute the existence of an imminent hazard and must include all evidence and exhibits to be considered. The petition must also state the relief sought. Within 30 days from the date the petition for review is filed, the CSO must approve or deny the relief in writing; or find that the imminent hazard continues to exist, and extend the original Emergency Order. In response to a petition for review, the CSO may grant the requested relief in whole or in part; or may order other relief as justice may require (including the immediate assignment of the case to the Office of Hearings for a formal hearing on the record).

In order to request a formal hearing in accordance with 5 U.S.C. § 554, the petition must state that a formal hearing is requested, and must identify the material facts in dispute giving rise to the request for a hearing. A petition which requests a formal hearing must include an additional copy addressed to the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, M-20, Room E12-320, 1200 New Jersey Avenue, SE, Washington, DC 20590 (FAX: (202) 366-7536).

Emergency Contact Official

If you have any questions concerning this Emergency Restriction/Prohibition Order you should call _____.

Dated: _____

Name,

Title

APPENDIX E
Sample Rescission Order

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UNITED STATES DEPARTMENT OF TRANSPORTATION

[Agency Name if Issued by PHMSA, FAA, FRA, or FMCSA]

In the matter of)
)
 [NAME OF COMPANY]) Order No. _____
 [STREET ADDRESS])
 [CITY, STATE, ZIP])
)



RESCISSION ORDER

By this Order I find that [Company Name] has performed all remedial actions required in [TYPE OF ORDER] Order, number [PLACE ORDER NO. HERE] and/or has made an adequate showing that an imminent hazard no longer exists. [Alternative for a restriction/prohibition – By this Order I find that the condition or practice, which was found to be creating or causing an imminent hazard in [Type of ORDER] Order, Number _____ has been abated or no longer exists.]

Accordingly, I hereby rescind [TYPE e.g., Out-of-Service Order], No. -

_____.

Dated _____

NAME

Associate Administrator,

Hazardous Materials Safety

Pipeline and Hazardous Materials

Safety Administration

APPENDIX F
Sample Sticker

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