



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

Office of
Chief Counsel

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**Hazardous Materials Safety
Law Division**

NOTICE OF PROBABLE VIOLATION

Date Issued: May 14, 2025

PHMSA Case No.: 25-0026-SH-SO

Respondent: Ioditech, Inc.
951 N. Topping Avenue
Kansas City, Missouri 64120
ATTN: Owen Forck, Vice President

No. of Alleged Violations: 1 (+1 Quality Control Item)

Total Proposed Assessment: \$2,250

The Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) alleges that you have violated certain provisions of the Federal hazardous materials transportation law, 49 U.S.C. § 5101 *et seq.*, and/or the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180. PHMSA sets forth the specific allegations in Addendum A to this Notice.

What are the maximum and minimum civil penalties that PHMSA can assess? Federal law sets a maximum civil penalty of \$99,756 (or \$232,762 if the violation results in death, serious illness or severe injury, or substantial destruction of property), and a minimum civil penalty of \$601 if the violation concerns training, for each violation of the Federal hazardous materials transportation law or the HMR. Each day of a continuing violation by a shipper or transporter of hazardous materials constitutes a separate violation for which the maximum penalty may be imposed (49 U.S.C. § 5123(a)).

What factors does PHMSA consider when proposing and assessing a civil penalty? Federal law requires PHMSA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal hazardous materials transportation law or the HMR. Please refer to Addendum B to this Notice for more information concerning these factors, which include corrective actions you take to attain and ensure compliance with the HMR.

How do I respond? You may respond to this Notice in any of three ways:

- (1) By paying the proposed assessment (49 CFR § 107.313(a)(1));
- (2) By sending an informal response, which can include a request for an informal conference (49 CFR § 107.313(a)(2)); or
- (3) By requesting a formal hearing (49 CFR § 107.313(a)(3)).

Details on these three options are provided in Addendum B to this Notice and also online at: (<https://www.phmsa.dot.gov/hazmat/field-operations/nopvresponses>). PHMSA explains its procedures for assessing civil penalties and imposing compliance orders in 49 CFR §§ 107.307 - 107.331.

When is my response due? You must respond within thirty (30) days from the date that you receive the Notice (49 CFR § 107.313(a)). I may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period (49 CFR §107.313(c)). A response received out of time will not be considered. To assure timely receipt, **PHMSA strongly encourages you to submit your response by e-mail, fax, or express mail.**

What happens if I fail to respond? You waive your right to contest the allegations made in Addendum A to this Notice if you fail to respond within thirty (30) days of receiving it (or by the end of any extension). In that event, the Chief Counsel may find that you committed the violation(s) alleged in this Notice and assess an appropriate civil penalty.

What happens if PHMSA issues an Order assessing a civil penalty, and I fail to pay? If you fail to pay a civil penalty assessed by an Order, on the 91st day after the date of the Order you will be prohibited from conducting hazardous materials operations, in accordance with 49 CFR Part 109, Subpart E. If PHMSA issues a cease operations order and you continue to conduct hazardous materials operations, you may be subject to additional penalties, including criminal prosecution pursuant to 49 U.S.C. 5124. The prohibition shall continue until payment of the penalty has been made in full, or until PHMSA approves an acceptable payment plan.

The Case Exhibits have been supplied to you via a secure large file transfer link. If receiving the Case Exhibits in electronic format creates an undue hardship for you, please contact me.

BRITTANY
SIGRID BESSER
Brittany S. Besser, Attorney

Digitally signed by
BRITTANY SIGRID BESSER
Date: 2025.05.14 13:21:31
-04'00'

Enclosures: Addendum A
Addendum B
Addendum C

SERVICE BY ELECTRONIC MAIL

ADDENDUM A

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GENERAL ALLEGATIONS

General Factual Allegations/Averments

1. On September 12, 2024, PHMSA's Investigators conducted a compliance inspection at Respondent's facility in Kansas City, Missouri (see Inspection Report No. 24608018 at page 1).
2. Sean Brown, Director of Operations; Jacob Douglas, Quality Assurance Manager; Owen Forek, Vice President; and Cory Rohs, Safety Consultant, provided the necessary documents and information during the course of the inspection (see Inspection Report No. 24608018 at page 1).
3. Respondent closes and fills packaging with Class 8 materials and ships hazardous materials by highway. Respondent is a large company with over ten (10) hazmat employees, and training is conducted annually (see Inspection Report No. 24608018 at page 1).
4. As an offeror of hazardous materials, Respondent is a regulated entity subject to the HMR and to the jurisdiction of the Secretary of Transportation, PHMSA's Associate Administrator for Hazardous Materials Safety, and PHMSA's Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 CFR § 107.301).

SPECIFIC ALLEGATIONS

Probable Violation No. 1

Offering for transportation in commerce, a hazardous material, in a UN standard packaging that had not been closed in accordance with the manufacturer's closure instructions, in violation of 49 CFR §§ 171.2(a),(b),(e),&(g); 173.22(a)(4); and 173.24(f)(2).

Regulatory Standard

1. 49 CFR § 173.22(a)(4) states, in part: "Except as otherwise provided in this part, a person may offer a hazardous material for transportation in a packaging or container required by this part only in accordance with the following... For a DOT Specification or UN standard packaging subject to the requirements of part 178 of this subchapter, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of this subchapter, as identified by the packaging manufacturer or subsequent distributor (for example, applying closures consistent with the manufacturer's closure instructions) in accordance with §178.2 of this subchapter. A person must maintain a copy of the manufacturer's notification, including closure instructions (see §178.2(c) of this subchapter) unless permanently embossed or printed on the packaging."

2. 49 CFR § 173.24(f)(2) states, in part: "... a closure (including gaskets or other closure components, if any) used on specification packaging must conform to all applicable requirements of the specification and must be closed in accordance with information, as applicable, provided by the manufacturer's notification required by §178.2 of this subchapter."

Factual Allegations/Averments

1. During a review of Respondent's procedures for handling and shipping hazardous materials, the Investigators observed UN standard 31HA1 intermediate bulk containers (IBCs) utilized by Respondent's employees to transport hazardous material "UN3264 Corrosive Liquid Acidic, Inorganic, N.O.S. (Iodophone AE 20%), 8, PG III" (see Inspection Report No. 24608018 at page 3 and Exhibit 2 to Report No. 24608018).
2. The Investigators questioned Respondent's Representatives regarding procedures for preparing IBCs for shipment. The Investigators were introduced to Jon Scott, one of Respondent's employees who handled closing and preparing packages for transport (see Inspection Report No. 24608018 at page 3 and Exhibit 2 to Report No. 24608018).
3. The Investigators asked Mr. Scott to walk them through his procedure for preparing an IBC for transportation. Mr. Scott retrieved an IBC to demonstrate his process (see Inspection Report No. 24608018 at page 3 and Exhibit 2 to Report No. 24608018).
4. The Investigators questioned Mr. Scott on the torque values required for the 2-inch bung and 6-inch port cap on the IBC. The port cap included a 2-inch bung housed inside. Mr. Scott produced a non-torquing cap wrench to open and close the package and stated that employees utilize that tool in addition to hand-tightening the caps (see Inspection Report No. 24608018 at page 3 and Exhibit 2, page 5, to Report No. 24608018).
5. The Investigators explained to Mr. Scott that a person who plans to offer hazardous materials into transportation must perform all functions necessary to bring the packages into compliance with hazardous materials regulation, as identified by the packaging manufacturer or subsequent distributor, which includes applying closures consistent with the manufacturer's closure instructions (see Inspection Report No. 24608018 at page 4).
6. Jacob Douglas, Quality Assurance Manager, provided the Investigators with George C. Brandt Inc. Invoice # 177701, dated June 19, 2024, indicating the purchase of 60 IBCs received by Respondent (see Inspection Report No. 24608018 at page 4 and Exhibit 3 to Report No. 24608018).
7. The Investigators obtained a copy of the closure instructions, which indicated that the 6-inch port cap and 2-inch bung must be tightened to the specified torque value in the manufacturer's closure instructions (see Inspection Report No. 24608018 at page 4 and Exhibit 4 to Report No. 24608018).
8. The Investigators explained to Respondent's Representatives that the IBCs Respondent uses have required torque values for closures, which must be followed to maintain the

- UN certification (see Inspection Report No. 24608018 at page 4 and Exhibit 4 to Report No. 24608018).
9. The Investigators obtained two (2) Bills of Lading (BOL), denoting the shipment of “UN3264 Corrosive Liquid Acidic, Inorganic, N.O.S. (Iodophor AE 20%), 8, PG III,” prepared and shipped in the manner described above:
 - a. BOL #13103, dated July 2, 2024, denoting the shipment of one (1) IBC, weighing 2,630 pounds, to Wausau Chemical, 9919 Innovation Way, Wausau, WI, 54401 (see Inspection Report No. 24608018 at page 4 and Exhibit 5 to Report No. 24608018) and
 - b. BOL #13196, dated August 30, 2024, denoting the shipment of one (1) IBC, weighing 2,630 pounds, to Wausau Chemical 9919 Innovation Way, Wausau, WI, 54401 (see Inspection Report No. 24608018 at page 4 and Exhibit 6 to Report No. 24608018).
 10. Mr. Douglas provided the Investigators with a copy of the Safety Data Sheet (SDS) for the above material, which confirmed the material as hazardous (see Inspection Report No. 24608018 at page 4 and Exhibit 7 to Report No. 24608018).
 11. The Investigators discussed with Respondent’s Representatives that failure to close UN standard IBCs containing hazardous materials in the method prescribed by the manufacturer and certifier violated the Hazardous Materials Regulations and voided the UN certification of the packaging. Respondent’s Representatives understood the violation as discussed and stated they would take the necessary actions to prevent future occurrences (see Inspection Report No. 24608018 at page 4).
 12. On or about July 2 and August 30, 2024, Respondent offered for transportation in commerce, a hazardous material, in a UN standard packaging that had not been closed in accordance with the manufacturer's closure instructions, in violation of 49 CFR §§ 171.2(a),(b),(e),&(g); 173.22(a)(4); and 173.24(f)(2).
- Please see Inspection/Investigation Report Number 24608018 at pages 3-5, and the exhibits that accompany this report, which are incorporated herein.

Quality Control Item No. 2

Allowing hazardous material employees to perform a function subject to the requirements of the hazardous materials regulations (HMR), while failing to properly document in-depth security training, in violation of 49 CFR §§ 171.2(a), 172.704(d), and 172.800(b)(12).

Regulatory Standard

1. 49 CFR § 172.704(a)(5) states, in part: “Each hazmat employee of a person required to have a security plan in accordance with who handles hazardous materials covered by the

plan, performs a regulated function related to the hazardous materials covered by the plan, or is responsible for implementing the plan must be trained concerning the security plan and its implementation. Security training must include company security objectives, organizational security structure, specific security procedures, specific security duties and responsibilities for each employee, and specific actions to be taken by each employee in the event of a security breach.”

2. 49 CFR § 172.800(b) states, in part: “(b) Applicability. Each person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials must develop and adhere to a transportation security plan for hazardous materials that conforms to the requirements of this subpart. As used in this section, “large bulk quantity” refers to a quantity greater than 3,000 kg (6,614 pounds) for solids or 3,000 liters (792 gallons) for liquids and gases in a single packaging such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container....(12) A large bulk quantity of Division 6.1 material (for a material poisonous by inhalation see paragraph (5) above)....”

Factual Allegations/Averments

1. After the facility walkthrough, the Investigators requested hazardous materials training documents and shipping papers (see Inspection Report 24608018 at page 6).
2. The Investigators obtained three (3) Bills of Lading (BOL), denoting the shipment of “UN 3495 Iodine, 8, (6.1) PGIII” from Respondent in UN certified 50 Kilogram drums:
 - a. BOL # 13134, dated July 22, 2024, denoting the shipment of six (6) drums, weighing 679.38 pounds, to Centaur Animal Health INC, 1351-F West Highway 56, Olathe, Kansas, 66061 (see Inspection Report No. 24608018 at page 6 and Exhibit 8 to Report No. 24608018);
 - b. BOL # 13141, dated July 24, 2024, denoting the shipment of twelve (12) drums, weighing 1358.76 pounds, to Transene Company, INC, 10 Electronics Ave, Danvers, MA, 01923 (see Inspection Report No. 24608018 at page 6 and Exhibit 9 to Report No. 24608018); and
 - c. BOL # 13157, dated July 31, 2024, denoting the shipment of six (6) drums, weighing 679.38 pounds, to Centaur Animal Health INC, 1351-F West Highway 56, Olathe, Kansas, 66061 (see Inspection Report No. 24608018 at pages 6-7 and Exhibit 10 to Report No. 24608018).
3. Mr. Douglas provided the Investigators with a Safety Data Sheet (SDS) for Iodine, dated 09/2023, which confirmed the materials as hazardous (see Inspection Report No. 24608018 at page 7 and Exhibit 11 to Report No. 24608018).
4. According to 49 CFR § 172.800(b)(12), each person who offers for transportation in commerce or transports in commerce a “large bulk quantity” of a hazardous material

(which refers to a quantity greater than 3,000 kg (6,614 pounds) for solids or 3,000 liters (792 gallons) for liquids and gases in a single packaging, such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container) must develop and implement a transportation security plan (see Inspection Report No. 24608018 at page 7).

5. The Investigators requested to review Respondent's security plan. Respondent's Representatives had a readily available Standard Operating Procedure Spill Response Document (SOP) in case of spill emergencies, but the individual responsible for providing the security plan was out of the office on September 10, 2024 (see Inspection Report No. 24608018).
6. The Investigators returned to the facility on September 12, 2024. At that time, they obtained Respondent's security plan. While evaluating the security plan, the Investigators noted a missing address on the in-depth security training document. The hazmat training record for the security plan needed a training certification statement and an address showing where training took place (see Inspection Report No. 24608018 at page 7 and Exhibit 12 to Report No. 24608018).
7. The Investigators pointed out these deficiencies to Respondent's Representatives and then completed PHMSA's "Hazmat Security Inspection Report," which Owen Forck certified as accurate by means of a signature (see Inspection Report No. 24608018 at page 7 and Exhibit 13 to Report No. 24608018).
8. The Investigators discussed the importance of making sure the company keeps the security plan in compliance, which includes maintaining accuracy with record-keeping and applying the certification statement. Respondent's Representatives understood the requirements as discussed and stated they would take the necessary actions to correct the quality control item noted (see Inspection Report No. 24608018 at page 7).
9. On or about July 22, 24, and 31, 2024, Respondent allowed hazardous material employees to perform a function subject to the requirements of the hazardous materials regulations (HMR), while failing to properly document in-depth security training, in violation of 49 CFR §§ 171.2(a), 172.704(d), and 172.800(b)(12).

- Please see Inspection/Investigation Report Number 24608018 at pages 6-8, and the exhibits that accompany this report, which are incorporated herein.

FACTS ALREADY CONSIDERED (UNDER 49 CFR § 107.331) IN SETTING PROPOSED PENALTIES

Prior Violations:

When setting a civil penalty, PHMSA will review the respondent's compliance history and determine if there are any finally-adjudicated violations of the HMR initiated within the previous six years. Only cases or tickets that have been finally-adjudicated will be considered (i.e., the ticket has been paid, a final order has been issued, or all appeal remedies have been exhausted or

expired). PHMSA will include prior violations that were initiated within six years of the present case; a case or ticket will be considered to have been initiated on the date of the exit briefing for both the prior case and the present case. If multiple cases are combined into a single Notice of Probable Violation or ticket, the oldest exit briefing will be used to determine the six-year period. If a situation arises where no exit briefing is issued, the date of the Notice of Probable Violation or Ticket will be used to determine the six-year period. PHMSA may consider prior violations of the Hazardous Materials Regulations from other DOT Operating Administrations.

The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows (49 CFR Part 107, Subpart D, Appendix A):

1. For each prior civil or criminal enforcement case—25 percent increase over the pre-mitigation recommended baseline penalty.
2. For each prior ticket—10 percent increase over the pre-mitigation recommended baseline penalty.
3. If a respondent is cited for operating under an expired special permit and previously operated under an expired special permit (as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the civil penalty 100 percent.
4. If a respondent is cited for the exact same violation that it has been previously cited for within the six-year period (in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the baseline for that violation by 100 percent. This increase will apply only when the present violation is identical to the previous violation and applies only to the specific violation that has recurred.
5. A baseline proposed penalty (both for each individual violation and the combined total) will not be increased more than 100 percent on the basis of prior violations.

PHMSA's records do not contain any prior violations by Respondent at this facility within the past six (6) years, and PHMSA did not consider any prior violations in determining the proposed assessment for the violation in this Notice.

Penalty Increases for Multiple Counts:

PHMSA generally will treat multiple occurrences that violate a single regulatory provision as separate violations and assess the applicable baseline penalty for each distinct occurrence of the violation. PHMSA will generally consider multiple shipments or, in the case of package testers, multiple package designs, to be multiple occurrences; and each shipment or package design may constitute a separate violation.

PHMSA, however, will exercise its discretion in each case to determine the appropriateness of combining into a single violation what could otherwise be alleged as separate violations and

applying a single penalty for multiple counts or days of a violation, increased by 25 percent for each additional instance, as directed by 49 U.S.C. 5123(c). For example, PHMSA may treat a single shipment containing three items or packages that violate the same regulatory provision as a single violation and apply a single baseline penalty with a 50 percent increase for the two additional items or packages; and PHMSA may treat minor variations in a package design for a package tester as a single violation and apply a single baseline penalty with a 25 percent increase for each additional variation in design.

When aggravating circumstances exist for a particular violation, PHMSA may handle multiple instances of a single regulatory violation separately, each meriting a separate baseline or increase the civil penalty by 25 percent for each additional instance. Aggravating factors may include increased safety risks, continued violation after receiving notice, or separate and distinct acts. For example, if the multiple occurrences each require their own distinct action, then PHMSA may count each violation separately (e.g., failure to obtain approvals for separate fireworks devices) (49 CFR Part 107, Subpart D, Appendix A).

Corrective Action:

An important purpose of PHMSA's enforcement program is to bring the regulated community into compliance with the HMR, and to promote ongoing efforts by that community to maintain compliance. In determining the final penalty assessment, PHMSA considers documented evidence of actions taken by a Respondent to correct violations and ensure that they do not recur (49 CFR § 107.331(g)).

In its November 26, 2024 letter, Respondent addressed the actions it has taken to correct the violations alleged in this Notice and to prevent future violations of the HMR. Respondent described and documented its corrective action as follows:

- Violation No.1: Respondent provided photos of the new tools, showing that packages are now being torqued according to the manufacturer's closure instructions (see Inspection Report No. 24608018 at page 9 and Exhibit 18 to Report No. 24608018).
- Quality Control Item No.2: Respondent provided updated documentation for the security plan and evidence for future training to ensure continued compliance (see Inspection Report No. 24608018 at page 9 and Exhibit 18 to Report No. 24608018).

Based on this information and documentation, the proposed penalty has been reduced by 25% for Violation 1.

Financial Status

Under 49 CFR §107.331 (e) and (f), the proposed penalty may be reduced if Respondent demonstrates that it is unable to pay that penalty, or if payment of the proposed penalty would affect Respondent's ability to continue in business. Respondent's poor financial condition may

be a basis for reducing the proposed penalty; a healthy financial condition is *not* a basis for increasing the penalty.

PHMSA has no information that indicates that Respondent is unable to pay the proposed penalty or that payment of the proposed penalty will affect Respondent’s ability to continue in business. If Respondent wishes its financial condition to be considered in assessing a penalty for the violation(s) alleged in this Notice, it must provide current financial information (i.e., copies of Respondent’s three most current Federal tax returns, an income statement, and a current balance sheet [preferably certified]).

TOTAL CIVIL PENALTY PROPOSED

| Probable Violation | Baseline Penalty | Increase for Priors | Corrective Action | Proposed Penalty |
|--------------------|------------------|---------------------|-------------------|------------------|
| 1 | \$3,000 | +\$0 | -\$750 | \$2,250 |
| QC | \$0 | +\$0 | -\$0 | \$0 |
| TOTAL | \$3,000 | +\$0 | -\$750 | \$2,250 |

ADDENDUM B

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**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

How do I respond to this Notice of Probable Violation (Notice)?

You may respond to this Notice in any of three ways:

- (1) Pay the proposed assessment (49 C.F.R. § 107.315);
- (2) Send an informal response, which can include a request for an informal conference (§ 107.317); or
- (3) Request a formal hearing (§ 107.319).

How do I pay the proposed assessment?

You pay the proposed assessment by:

- (1) Sending a wire transfer, through the Federal Reserve Communications System (Fedwire), to the U.S. Treasury account (49 C.F.R. § 89.21(b)(3)). Addendum C contains the instructions for sending wire transfers. Questions concerning wire transfers should be directed to: DOT/PHMSA/MMAC, AMK-325/HQ-RM 181 6500 S MacArthur Blvd., Oklahoma City, OK 73169 (Telephone No. (405) 954-9309).

Or

- (2) Sending a certified check or money order if the penalty amount is \$10,000 or less. The certified check or money order must be payable to the "U.S. Department of Transportation" and must be mailed to: DOT/PHMSA/MMAC, AMK-325/HQ-RM 181 6500 S MacArthur Blvd., Oklahoma City, OK 73169 (Telephone No. (405) 954-9309).

Or

- (3) Using a credit card via the Internet. To pay electronically with a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/public/form/start/1078346>

Where do I send my response?

You must address your informal response or formal hearing request to the attorney who issued the Notice at the following address:

Pipeline and Hazardous Materials Safety Administration
Office of the Chief Counsel (PHC-10)
Room E26-105
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
Washington, D.C. 20590

When is my response due? (§ 107.313)

You must respond to the Notice within thirty (30) days of the date you receive it. The attorney who issued the Notice may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period.

What happens if I do not respond? (§ 107.313)

If you fail to respond to the Notice within thirty (30) days of receiving it (or by the end of any extension), you will waive your right to contest the allegations made in Addendum A to the Notice. In addition, the Chief Counsel will issue a default Order finding the facts as alleged in the Notice and assessing the civil penalty as outlined within that notice.

May I propose a compromise offer? (§ 107.327)

Yes. At any time before an order is issued and referred to the Attorney General for collection, you may propose to compromise a civil penalty case by submitting a specific compromise offer amount to the attorney handling the case (§ 107.327). The Chief Counsel may also propose a compromise.

If a compromise is agreeable to all parties, the attorney handling the case will forward a compromise agreement to you for signature. This document will outline the terms of the joint agreement and you must return a signed original to the attorney handling the case within 30 days. After this agreement has been returned it will be signed by the assigned attorney and presented to the Chief Counsel with a request that the Chief Counsel adopt the terms of that agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of the agreement constitute an offer of compromise until accepted by the Chief Counsel. When you agree to a compromise, you give up your right to appeal the order issued by the Chief Counsel.

What should I include in my informal response? (§107.317)

Your informal response must contain written explanations, information or arguments that respond to the allegation(s), the amount of the proposed civil penalty, or the terms of a proposed compliance order. Provide complete documentation of your explanations and arguments. No specific format is required for an informal response.

May I request an informal conference? (§ 107.317)

Yes. You may request an informal conference as part of your informal response. Please describe the issues you want to discuss during the conference. After receiving your request, the attorney handling the case will contact you to arrange the conference. Normally the conference will be held by telephone, and the attorney handling the case and the inspector who conducted the compliance inspection will participate in the conference.

What happens after I submit an informal response to the Notice?

We will hold an informal conference if you have asked for one. Based on the Notice, the evidence supporting the Notice, any written explanations, information and documentation that you provide, and matters presented at a conference, the Chief Counsel decides the case. The Chief Counsel may issue an order finding all or some of the violation(s) alleged in the Notice or may withdraw all or some of the alleged violation(s). If the Chief Counsel finds violation(s), the order will assess a civil penalty.

How do I appeal an order? (§ 107.325)

You may appeal an order to PHMSA's

Administrator. How do I request a formal hearing? (§ 107.319)

You must request a formal hearing within 30 days of the date that you receive the Notice. If you are granted an extension of time to respond to the Notice, you must submit a formal hearing request by the end of the extended time period. If you do not request a formal hearing within the specified time, you will waive your right to a formal hearing.

Your request for a formal administrative hearing must include the following:

- (1) The name and address of the respondent and any other person submitting the request;
- (2) A statement of which allegations of violations are not in dispute; and
- (3) A description of the issues that you will raise at the hearing. (The Administrative Law Judge will decide whether issues not raised in the request may be raised at the hearing.)

After receiving a request for a hearing that complies with these requirements, the Chief Counsel will request an Administrative Law Judge from the DOT Office of Hearings to preside over the hearing. Once an Administrative Law Judge is assigned, all further matters in the proceeding will be conducted by the Administrative Law Judge. Either you or PHMSA may appeal the decision of the Administrative Law Judge to PHMSA's Administrator.

How does PHMSA determine if I have committed a violation?

This is a civil penalty case and PHMSA uses the "knowingly" standard, which is defined in the Federal hazardous materials transportation law (See 49 U.S.C. 5123(a)(1)), in all civil penalty cases. The standard for a violation is similar to "negligence". After considering all the available information (including the additional information you provide in your response to the Notice), PHMSA must find either that (1) you had actual knowledge of the facts giving rise to the violation, or (2) you had imputed knowledge, of the facts giving rise to the violation, in that a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. PHMSA does not need to find that you actually knew about, or intended to violate, requirements in the Federal hazardous material transportation law or the HMR.

What factors does PHMSA consider when proposing and assessing a civil penalty? (§ 107.331)

PHMSA considers the following factors when proposing and assessing a civil penalty for a violation of the regulations:

- (1) The nature and circumstances of the violation(s);
- (2) The extent and gravity of the violation(s);
- (3) The degree of your culpability;
- (4) Your history, if any, of prior offenses;
- (5) Your ability to pay the penalty;
- (6) The effect of the penalty on your ability to continue in business;
- (7) The size of your business, and
- (8) Other matters as justice may require.

The nature and the timeliness of any corrective action you take to prevent future violations of a similar nature will be considered under item No. 8. However, you must submit documented evidence of that corrective action to the PHMSA attorney. If you have submitted documented evidence regarding any of these factors during PHMSA's investigation of the alleged violation(s), and that documentation is referenced in the Notice or accompanying Inspection/Investigation Report, you do not need to resubmit it.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), PHMSA must consider the rights of small entities in enforcement actions. PHMSA's hazardous materials enforcement program has been designed to consider small businesses and the penalties that PHMSA proposes and assesses are generally considered appropriate for small businesses. PHMSA takes into consideration the size of the company when proposing and assessing a civil penalty.

However, special consideration may not be given to a small business if:

- (1) The small business has not corrected its violation(s) within a reasonable time;
- (2) The small business has committed one or more prior violations of the HMR;
- (3) The violations involve willful conduct;
- (4) The violations pose serious threats to health, safety or the environment; or
- (5) The small business has not made a good faith effort to comply with the law.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. Our objective is to ensure a fair regulatory enforcement environment.

You have a right to contact the Small Business Administration's national Ombudsman at 1-888- REG-FAIR (1-888-734-3247) or <https://www.sba.gov/ombudsman> regarding the fairness of the compliance and enforcement activities by this agency.

The Pipeline and Hazardous Materials Safety Administration strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

[Where can I find more information on how PHMSA handles hazardous materials enforcement cases?](#)

A more detailed discussion of these procedures is in 49 C.F.R. §§ 107.301 through 107.333. These procedures are also on the Office of the Chief Counsel's home page at <http://www.phmsa.dot.gov/org/office-of-chief-counsel>.

ADDENDUM C

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**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION**

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| 1. <u>RECEIVER'S ABA NO.</u> 021030004 | 2. <u>TYPE SUBTYPE</u> (provided by sending bank) |
| 3. <u>SENDING BANK ARB NO.</u> (provided by sending bank) | 4. <u>SENDING BANK REF NO.</u> (provided by sending bank) |
| 5. <u>AMOUNT</u> | 6. <u>SENDING BANK NAME</u> (provided by sending bank) |
| 7. <u>RECEIVER NAME:</u> TREAS NYC | 8. <u>PRODUCT CODE</u> (Normally CTR, or sending bank) |
| 9. <u>BENEFICIAL (BNF)- AGENCY LOCATION CODE</u> BNF=/AC-69140001 | 10. <u>REASONS FOR PAYMENT</u> <i>Example:</i> PHMSA Payment for Case #/Ticket |

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this nine digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE:** **\$10,000.00**

Block #7 - RECEIVER NAME- "TREAS NYC." Ensure the sending bank enters this abbreviation, which must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/AC-69140001" Ensure the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #10 - REASON FOR PAYMENT – "AC-Payment for PHMSA Case#" To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number."

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer, the General Accounting Division at (405) 954-9309.