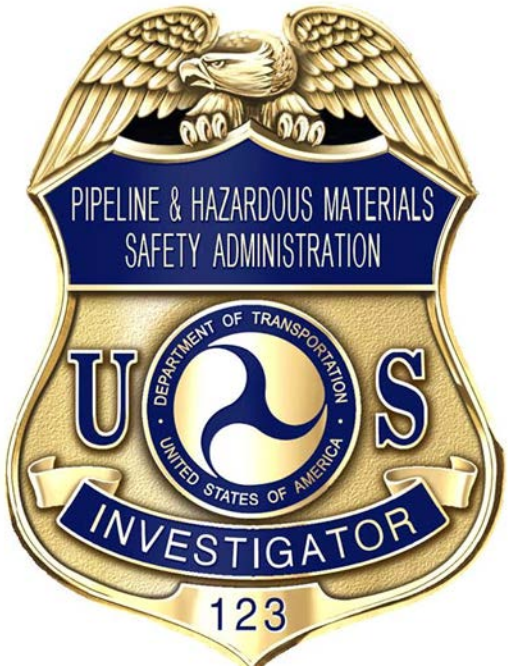
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety

Field Operations



Inspection, Investigation and Enforcement Manual

Version 2.1

Effective Date: October 5, 2017

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Acronyms

AAHMS	Associate Administrator for Hazardous Materials Safety
AVT	Alternative Validation Testing
CMS	Case Management System
DAAFO	Deputy Associate Administrator of Hazardous Materials Safety Field Operations
DOT	U.S. Department of Transportation
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FRA	Federal Railroad Administration
FMCSA	Federal Motor Carrier Safety Administration
HIP	Hazmat Intelligence Portal
HMR	Hazardous Materials Regulations
HMTA	Hazardous Materials Transportation Act
HMSAT	Hazardous Materials Safety Assistance Team
HMTUSA	Hazardous Materials Transportation Uniform Safety Act
ICS	Incident Command System
IIA	Independent Inspection Agency
IP	Itinerary Planner
LOGSA	U.S. Army Logistics Support Agency
MCSAP	Motor Carrier Safety Assistance Program
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NIMS	National Incident Management System
NRC	National Response Center
NFLT	National Field Leadership Team
OA	Operating Administration
OHMS	Office of Hazardous Materials Safety
OIG	Office of the Inspector General
PHC	Office of the Chief Counsel
PHMSA	Pipeline and Hazardous Materials Safety Administration
PPE	Personal Protective Equipment
SII	System Integrity Inspection
SISOP	Systems Integrity Safety Oversight Plan
SISP	System Integrity Safety Program
TSA	Transportation Security Administration
UN	United Nations
USCG	United States Coast Guard

Abstract

EFFECTIVE DATE:	October 5, 2017
SUBJECT:	Field Operations: Inspection, Investigation, and Enforcement Manual
PURPOSE:	To provide the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety (OHMS) with the policy and procedures concerning the completion of inspections, investigations and enforcement actions as part of ensuring compliance with the Hazardous Materials Regulations (HMR). This manual also provides instructions for investigators to ensure that they have the necessary information to conduct inspections and investigations consistently and safely and to offer the Hazardous Materials Safety Assistance Team (HMSAT) the needed information to maintain safety throughout the regulated community through education, engagement, and outreach activities.
ACTION OFFICES:	Headquarters Divisions and Regional Offices
ORIGINATING OFFICE:	Field Support Division, PHH-40
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By and Under the Authority of:

Rachel Meidl
Deputy Associate Administrator for Hazardous Materials Safety Programs and Policies

Executive Summary

The policies and procedures described in this manual draw on the knowledge and experience of the Field Operations' investigators, National Field Leadership Team (NFLT) and legal staff from across the agency. Designed as a job aid, a training guide, and a desk reference, this manual contains procedures and guidance used to support the Field Operations program.

The OHMS Field Operations staff employs a highly-skilled workforce that is responsible for monitoring, educating, and enforcing the regulated industry's compliance and understanding of the HMR. To align with the agency's safety mission, field staff is encouraged to use this manual as a tool to maintain consistency and quality across their required duties, and where necessary, modify stakeholder behavior through enforcement; education, engagement, and outreach via the Hazardous Materials Safety Assistance (HMSAT) program; and/or the Systems Integrity Safety Program (SISP) that encourages continuous improvement. The more consistently the Field Operations' staff performs inspections and investigations, or outreach through the HMSAT or SISP programs, the more industry will adhere to best safety practices and ultimately compliance with the HMR.

This manual includes checklists, forms, and examples of documentation that the Field Operations staff members use throughout the lifecycle of their investigation, inspection and enforcement activities. This manual is available for public review, as required by the Freedom of Information Act (FOIA, 5 U.S.C. 552). Interested parties may direct constructive comments and recommendations to the Deputy Associate Administrator of Hazardous Materials Safety Field Operations (DAAFO). Other agencies may use this manual in the orientation and training of their hazardous material (hazmat) personnel.

Significant Changes from Previous Version

Updated the glossary of terms to include Safety Management System (SMS).

- Incorporated the Accident Investigation Program.
- Incorporated changes to the System Integrity Safety Program.

Disclaimer

This manual is intended to provide information and instruction regarding internal Field Operations' policies and procedures and is solely for the benefit of the U.S. Government. No duties, rights, or benefits, substantive or procedural, are created or implied by this manual. The contents of this manual is not enforceable by any person or entity against the U.S. Department of Transportation (DOT) or the United States. Statements which reflect

current PHMSA court precedents do not necessarily indicate acquiescence to those precedents.

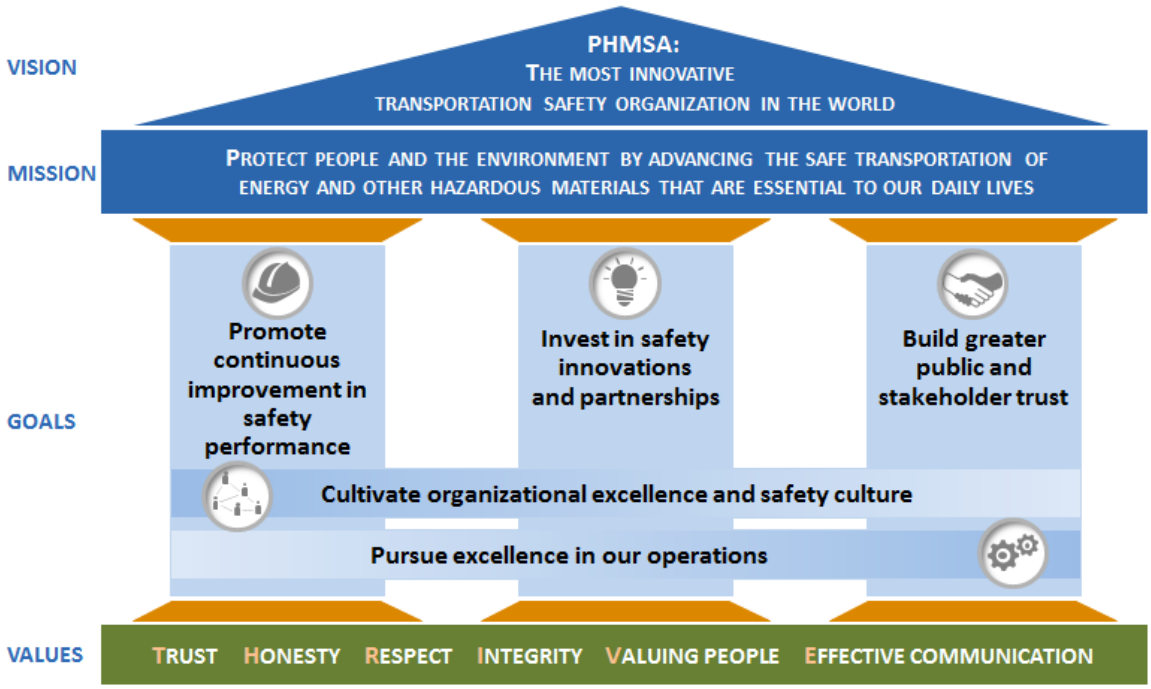
Updating Manual

The Field Support Division, in concert with the NFLT, shall keep the contents of this manual as current as possible by reviewing and updating as needed by January of each year. Anyone may suggest changes, additions, or omissions to their respective supervisor at any time. The supervisor should send any comments or suggested changes to Director, Field Services for consolidation and consideration by the NFLT. The DAAFO, or designee, can revoke or modify the guidance in this manual without prior notice by memorandum. The DAAFO or designee will maintain the master document on the program office's SharePoint site.

Chapter 1: Field Operations Purpose and Operating Structure

Mission, Vision, and Goals

PHMSA's mission is to "protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential" to their daily lives, according to the PHMSA Strategic Plan. PHMSA's vision is to become "the most innovative transportation safety organization in the world."



PHMSA endeavors to become a forward-looking, proactive, innovative, and data-driven organization. The administration is committed to investing in the capabilities and skills necessary to utilize data to provide: enforcement, implementation of innovative technology, Research & Development investments, effective and timely regulation, and public outreach.

PHMSA's goals include promoting continuous improvement, investing in safety innovations, and building greater public and stakeholder trust. The administration also strives to cultivate organizational excellence and a safety culture that invests in its people and the development of key capabilities to pursue operational excellence, utilizing tools and efficient business processes.

Field Operations Purpose

The Field Operations program promotes safety and security in hazardous materials transportation through inspections, investigations, enforcement, and outreach to reduce incidents, accidents, deaths, injuries, and property damage attributed to the unsafe

manufacture or maintenance of hazardous materials packaging, or shipments thereof. An investigator's adherence to the guidelines in this manual enhances his or her ability to accomplish this mission.

Hazardous Materials Program Authority

On January 3, 1975, the Hazardous Materials Transportation Act of 1974 (HMTA), Title 1 of Public Law 93-633 (49 U.S.C. App 1801 et seq), was signed into law. The act enabled the Secretary of Transportation to aggregate the governing bodies that regulate the movement of hazardous materials in commerce into one consolidated and coordinated body of law. On November 16, 1990, the Hazardous Materials Transportation Uniform Safety Act (HMTUSA), Public Law 101-615, significantly modified the HMTA. Further, editorial revisions were codified in 1994 in 49 U.S.C. 5101-5127 as the Federal hazardous material transportation law (Federal hazmat law).

While 49 U.S.C. 5101-5127 provides the primary legislative authority for the DOT's hazardous materials programs, other relevant statutes are, for the most part, mode-specific. Among these are 49 U.S.C. 20101 et seq., formerly the Federal Railroad Safety Action of 1970, 45 U.S.C. 421 et seq.; 49 U.S.C. 40101 et seq., formerly the Federal Aviation Action of 1958, 49 U.S.C. 1301 et seq.; and marine transportation laws at 33 U.S.C. 1221 et seq. and 46 U.S.C. 3701 et seq. The DOT's modal administrations, namely the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Railroad Administration (FRA), are responsible for enforcement actions regarding the transportation of hazardous materials by air, highway, and rail. The U.S. Coast Guard (USCG) became part of the Department of Homeland Security but retained its enforcement authority regarding hazardous materials by water.

Some other authorities underlie the DOT's regulation of hazardous materials transportation to include the Federal Water Pollution Control Act Amendments of 1972, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, the Compensation, and Liability Act of 1980, and the Sanitary Food Transportation Act of 1990. Both HMTUSA and the Hazardous Materials Transportation Authorization Act of 1994 imposed on the Department additional responsibilities not codified in the Federal hazmat law. These laws have influenced the hazardous materials programs of PHMSA and the modal administrations.

Authority to Investigate

Title 49 U.S.C 5121(a) and 49 CFR 107.305 certified PHMSA Field Operations staff (investigators) may inspect the property, conduct tests, make reports, issue subpoenas, conduct hearings, require the production of records, and take depositions in support of an accident/incident investigation. This authority permits investigators to act as a designated agent of the Secretary of Transportation and duly authorized by the Associate Administrator for Hazardous Materials Safety (AAHMS). Also, subsection B in § 49 U.S.C. 5103(b)(1), states that PHMSA's regulations "shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate."

Authority to Take Enforcement Actions
The AAHMS and the Office of Chief Counsel (PHC) have the authority to take action for knowing the violations of the HMR. The AAHMS has authority to issue sanctions including advisory letters, warning letters, and tickets. The AAHMS delegated this authority to Field Operations. PHC has the delegated authority to issue compliance orders and/or initiate civil penalty cases. PHMSA's enforcement procedures for preparation and initiation of a civil penalty case and other actions are found in 49 C.F.R, Part 107, subpart D, §§ 107.301-339. Additionally, PHMSA's ticketing program is described in § 107.310.

Jurisdiction

PHMSA develops, issues, and enforces regulations governing hazardous materials transportation in commerce, including containment requirements. PHMSA's primary emphasis is measuring compliance and enforcing standards, as needed, with those regulations governing the manufacture, reconditioning, requalification, and retesting of DOT-specification and United Nations (UN) standard packaging, and multi-modal shipment of hazardous materials.

Primary Transportation Jurisdiction
The deployment of investigative resources for activity defined in this document is dependent on statutory jurisdiction, the roles and responsibilities outlined in the DOT Cross-Modal Memorandum of Agreement (MOA), cost and benefit, scope and effect of the event, and resource availability. The delegations of primary transportation jurisdiction are listed below:

Statutory Jurisdiction
PHMSA regulates all classes of hazardous materials transported by aircraft, motor vehicle, rail, and vessel, except bulk transported by vessel, which are subject to USCG regulation. PHMSA has primary jurisdiction over packagings and packaging manufacturers, as well as packaging retesters, reconditioners, and recertifiers.

DOT-Modal MOA
PHMSA does not have primary responsibility for the following:
1) accidents and incidents involving dedicated modal uses of cargo tanks;
2) freight motor vehicles and motor vehicle carriers;
3) railroad tank, freight cars, and rail carriers; and
4) aircraft unit load devices (ULD) and air carriers.

PHMSA does have primary jurisdiction over bulk packages under a Special Permit/Approval.

Cost and Benefit
The cost of the resource allocation for response and investigation activities is weighed against the benefit of the outcome and return on investment, to maximize the impact of the program's resources.

Scope and Effect of Event
The breadth of the event and the potential for discovering how hazard classification, communication and packaging regulations were impacted or performed should be considered in the decision to determine the level of response and the number of assigned resources. Frequently, at the beginning of an accident investigation, the full extent of all the details contributing to the event are not fully known. What may appear to be a meaningful event may turn out to not have much influence on the regulations. Conversely, what may appear to be a small event could have larger impacts. Therefore, it is best to start an investigation with more resources to collect a wide range of evidence and scale back as needed.

Resource Availability
Staff and funding sources play the largest role in the determination to engage field participation. OHMS Field Operations has the smallest investigative staff and operating budget within the DOT's modal administrations.

Strategic Partnerships

Authority

Under authority delegated by the Federal hazardous materials transportation law (49 U.S.C. 5101 et seq.) and the HMR (49 C.F.R. parts 171-180), the DOT has four Operating Administrations (OAs) with civil enforcement programs. Pursuant to 49 CFR Part 1, the Secretary has delegated authority to the FAA, FMCSA, FRA, and PHMSA to enforce compliance with the Federal hazardous materials transportation safety law. These delegations allow the OAs to more actively coordinate with each other to increase the efficiency in their investigation, inspection, and enforcement programs, which enhances the DOT's overall enforcement effort. Certain entities, including carriers, shippers, and freight forwarders, are subject to enforcement by more than one OA. The OAs may conduct joint operations with one another. Furthermore, inspections or investigations by one OA may produce information or evidence that might be within the delegated authority of or more appropriately handled by another OA.

Modal Enforcement Responsibilities

Rail

The FRA enforces the hazardous materials regulations for rail transport (including 49 CFR Part 174), along with the general rail safety regulations (49 CFR Parts 209-236). The FRA has inspection and investigation authorities and enforcement responsibility for the entire U.S. rail system.

Air

The FAA enforces the hazardous materials regulations for air transportation (including 49 CFR Part 175). FAA conducts inspections and investigations of hazmat shipments on domestic and foreign carriers at U.S. airports and airport cargo facilities. The agency also

develops and enforces safety regulations for aircraft manufacture, operation, and maintenance.

Highway

The FMCSA enforces the HMR pertaining to highway transportation of hazardous materials (49 CFR Part 177). The FMCSA enforces the vehicle and driver safety regulations (49 CFR Part 390 et seq.), in cooperation with the states under its Motor Carrier Safety Assistance Program (MCSAP). These MCSAP grants accomplish HMR enforcement at the state level by providing grants to state agencies, and assistance by fire marshals and state code enforcement personnel. The FMCSA conducts inspections and investigations of highway shipments by interstate motor carriers.

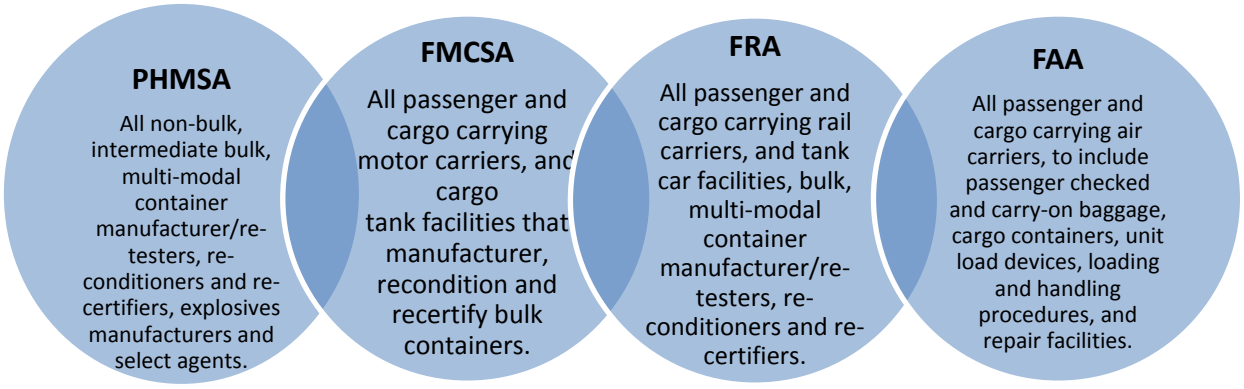
Water

The USCG enforces the DOT hazardous materials regulations for water transportation of non-bulk shipments (including 49 C.F.R. part 176). It also regulates bulk shipments by water under the 46 C.F.R. The USCG conducts inspections and investigations in port areas and on domestic and foreign ships and barges operating in the navigable waters of the United States.

Areas of Emphasis

Each OA's areas of emphasis based on its expertise and regulatory authority beyond hazardous materials transportation. The OAs recognize that there are areas within each OA's delegated responsibilities that are managed primarily by that particular OA due to specialized training and other factors. Inspectors or investigators, from other OAs normally do not initiate inspections or investigations in these areas of emphasis. This provision is not designed to limit the effectiveness of investigation across modal areas. For example, the issuing agency for a hazmat approval will maintain the primary responsibility for the oversight related to the approval process.

OPERATING ADMINISTRATIONS' AREAS OF EMPHASIS



Memorandums of Understanding and Agreement

PHMSA has established Memorandums of Understanding (MOUs) and Agreements to clarify how the OAs can best achieve baseline cross-modal policies on investigation, inspection and enforcement procedures for inspectors and hazmat program managers. This will ensure a more effective use of DOT's hazmat resources and provide the regulated industry a consistent approach to hazmat enforcement.

The DOT has established MOUs and MOAs the Nuclear Regulatory Commission, the Environmental Protection Agency (EPA), and the Transportation Security Administration (TSA). These agreements allow PHMSA to share its resources and hazmat expertise with other Federal agencies through joint inspections. Leveraging these inter-agency/inter-modal relationships exposures the investigators to unique training and outreach opportunities beyond their standard activities.

Other Formal Working Agreements

Certain hazardous materials functions are delegated to the USCG through an MOA, even though it is not a DOT-operating administration. The USCG plays a vital role in promoting an efficient, uniform, safe, and secure system of hazardous materials transportation, with particular emphasis on transportation and shipment of hazmat by water. The parties to this MOA will continue to cooperate with the USCG, utilizing the DOT-USCG MOA that is currently in currently in effect along with superseding MOA regarding hazmat transportation.

Organization

Deputy Associate Administrator for Hazardous Materials Safety Field Operations
The DAAFO oversees the mission of the Field Operations Program nationwide and heads the National Field Leadership Team. The DAAFO's other duties include:

- Setting goals for operational performance;
- Acting as the primary liaison for the Legislative Branch, other Federal agencies, interested parties, regulated industries, and the public;
- Fostering the development of regulatory and policy initiatives;
- Maintaining the investigator certification process; and
- Advising the Associate Administrator of Hazardous Materials Safety on hazardous materials issues in transportation safety and security.

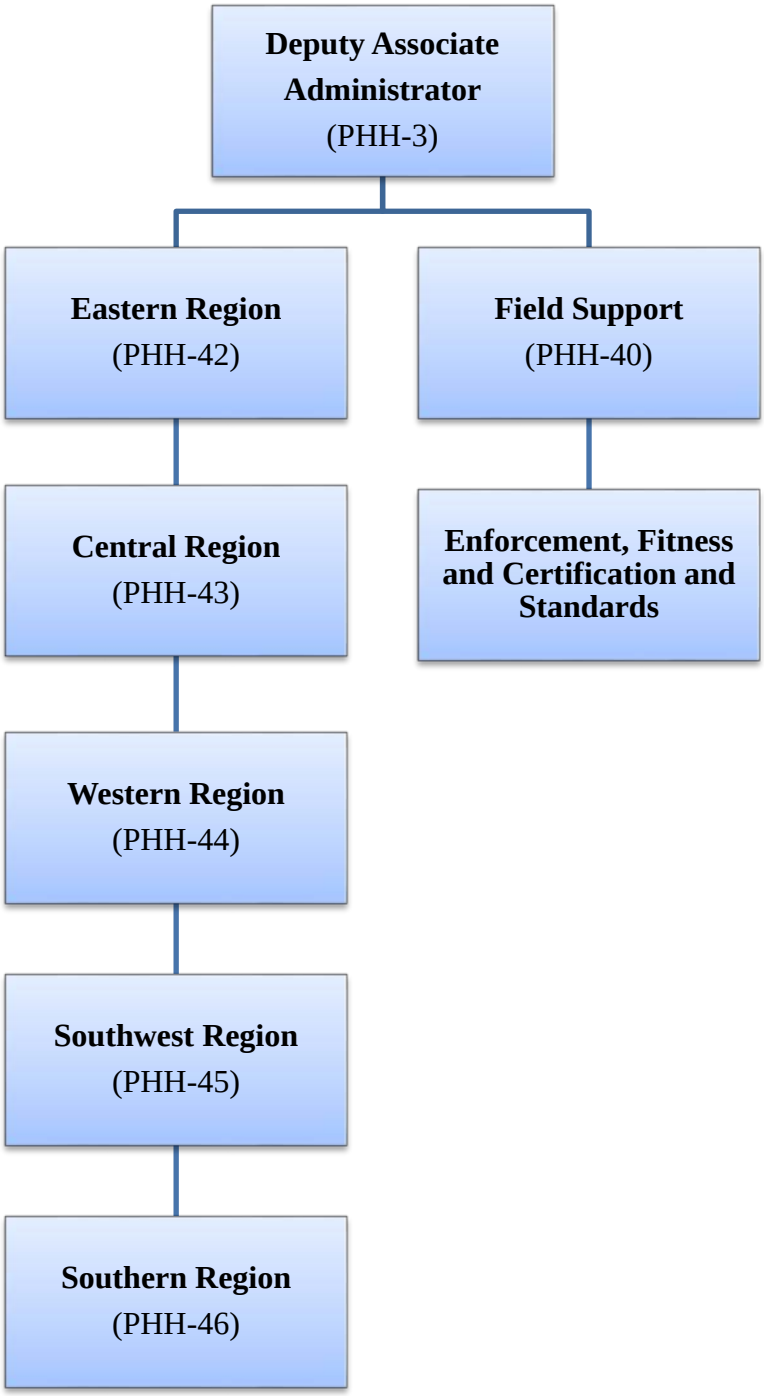
National Field Leadership Team
The NFLT develops and implements the activities, functions, goals, and policies of the Field Operations office nationwide. This team consists of Region Directors and Chief Investigators along with the Director, Field Support, Director of Outreach, Training and Grants and the Chief of Enforcement Branch.

Field Support
The Field Support Division supports the field investigative functions and it is home to the following branches: Enforcement, Fitness and Certification and Standards Branch. It is based in Washington, D.C. at DOT headquarters. The Director of Field Services oversees Field Operations Program participation in the promulgation of the HMR. The Director is also responsible for leading the Enforcement, Fitness and Certifications and Standards Branch in accomplishing its goals. Other Field Support duties include:

- Working with Regional Office leadership on performance measures, fitness reviews, and the investigator training program;
- Serving as the principal liaison between the Region Directors and each of the Policy and Program Directors at headquarters; and
- Serving as the primary advisor to the DAAFO on specialized hazardous materials issues.

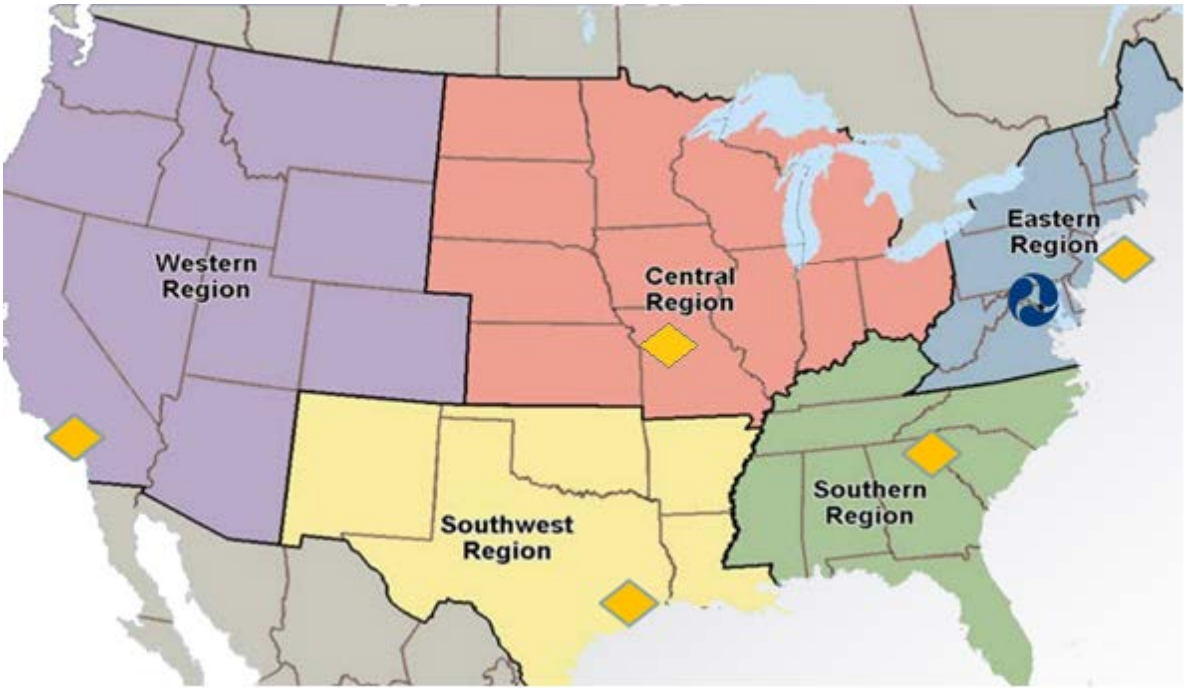
Chief, Enforcement Branch
The Chief, Enforcement Branch oversees and validates the OHMS inspection/investigation program's enforcement activities. The duties for the position include:

- Acting as the primary liaison between the Region Chief Investigators and Branch Chiefs from the Policy and Programs divisions at headquarters;
- Acting as the primary liaison with PHC for enforcement actions and legal determinations, and related matters;
- Measuring and reporting on the performance of the inspections and enforcement programs;
- Developing and updating policies and procedures to ensure that programs are consistently and fairly applied, in accordance with authorities;
- Investigating any alleged misconduct or unprofessional conduct by a region investigator;
- Serving as a senior advisor to the Director, Field Support.



Organization Chart for the Field Operations staff

Hazardous Materials Safety Regional Offices
There are five Hazardous Materials Safety Regional Offices (also known as Regional Field Offices) which serve as points-of-contact for the respective state and local enforcement organizations, the public, and stakeholders. The Regional Field Office staff primarily conducts hazmat compliance inspections and accident investigations along with providing training and technical assistance. Outreach and engagement activities are primarily provided by HMSAT members assigned to each regional office.



Each of the Regional Field Offices consists of a:

- Region Director,
- Region Chief Investigator,
- Senior Investigator (SISP),
- HMSAT member(s), and
- Investigators.

Region Director
The Region Director is the senior leader in a regional field office. The Region Director is responsible for administering PHMSA's regional hazardous materials transporation compliance, investigation, and enforcement program and for supporting outreach, educational, and engagement activities. The Region Directors, in conjunction with headquarters counterparts, develop a strategic approach to recommendations, implementation, and coordination of nationwide policies on compliance, enforcement, and

outreach and engagement matters. They develop and implement comprehensive regional enforcement, investigation, training and outreach policies. The Region Director also serves as an advisor to the DAAFO, the AAHMS, and PHC concerning compliance with, and enforcement of, the Federal hazardous materials transportation law and HMR. The Region Director's responsibilities include:

- Overseeing the investigation of accidents to determine the causes and circumstances of failure, the need for corrective action, and any non-compliance that might have contributed to the accident.
- Overseeing education and outreach to help advance hazardous materials safety goals and direct regional efforts of the hazardous materials safety assistance teams.
- Conducting safety-based alternative compliance programs (SISP) to promote systemic improvement of regulated entities.
- Providing regular feedback to OHMS leadership, on the operation of its programs to help improve the regulations, package testing, data collections, training, response planning, enforcement, approvals and special permits, and technical guidance.
- Serving in a leadership role as part of the National Field Leadership Team in establishing regional enforcement strategies, methods, and policies.
- Interacting and coordinating with OAs on a regional level concerning collaborative compliance and enforcement activities.
- Coordinating with PHMSA headquarters training and outreach efforts in Policy and Programs for the national outreach initiative.

Region Chief Investigators

The Region Chief Investigators oversee investigation, inspection and enforcement programs for their respective region and validate the investigators' competencies based on their CSB coordinated training, certification, and recertification, as well as independent evaluations. The Region Chief Investigator responsibilities include:

- Establishing and maintaining the training and certification records for each assigned investigator;
- Conducting field training with investigators to assist in meeting the standards and maintaining proficiency;
- Reviewing and approving itineraries submitted by investigators to ensure they are consistent with risk-based national and regional priorities;
- Reviewing all investigation and inspection and enforcement reports submitted by investigators, to include evidence collected to support findings, conclusions and violations;
- Determining appropriate enforcement actions (e.g., warning letters, tickets, case referral) based on a review of the investigator's report and a consultation with him or her.

Senior Investigators

A Senior Investigator is assigned as the region's SISP representative (commonly referred to as a SISP coordinator). The SISP program aims to identify regulated entities with systemic

compliance issues or frequent incidents in complying with the HMR. Regulated entities are considered for SISP based on extensive research of the company's compliance and accident histories. SISP coordinators conduct in-depth reviews of data and intelligence on a continual basis to identify risk and unsafe trends regarding hazardous materials transportation. Eligibility for SISP programs is based on an analysis of the probability, consequence, measured risk factors, and overall safety concerns to determine which entities, groups, commodities, adverse safety trends, or stakeholder assistance that needs to be addressed and selected as SISP priorities. The Senior Investigator approaches the regulated entity and extends an offer to enter into a voluntary agreement to develop quality assurance programs that will ensure sustained compliance and improved safety performance.

Investigators

Investigators conduct inspections and investigations to ensure compliance with the HMR. They have particular expertise in the areas of packaging manufacturers, drum reconditioners, cylinder requalifiers, shippers and carriers subject to the HMR. Investigators also engage in training and outreach activities with Federal, state, and industry organizations. Other duties include:

- Inspecting performance of a program area of concentration or assisting others in doing so;
- Inspecting entities for compliance with PHMSA-issued special permits and approvals;
- Investigating hazardous materials incidents or accidents;
- Reporting on enforcement actions and enforcing established policies and procedures;
- Providing advice and technical guidance to the DOT-modal administrations;
- Participating in intermodal and interdisciplinary task forces and teams;
- Reviewing and analyzing proposed and existing hazardous materials transportation regulations to ensure enforceability;
- Conducting Fitness Inspections, as needed;
- Purchasing packaging in the field for the Performance Packaging Validation Testing Program;
- Conducting joint inspections with Federal, state and local agencies to enforce the HMR;
- Obtaining hazardous materials for laboratory testing as part of the Hazardous Materials Testing Program.

Chapter 2: Planning, Conducting and Completing Compliance Inspections

Overview

Investigators conduct a variety of inspections including general shipper, package manufacturer, cylinder requalifier, and drum reconditioner, among other inspections. In addition, investigators conduct fitness inspections, assist with SISP activities, and conducting accident investigations. Investigators use Web-based technologies including the Safety Performance Monitor, the Daily Ranking Report (DRR) and Itinerary Planner (IP) and analytics to target the highest risk areas to inspect. During compliance inspections, investigators document when the HMR, approval, or special permit may be deficient, outdated or does not address an area that should be addressed. Compliance inspections include a number of different inspection types, as discussed below.

Reinspections

Reinspections are inspections of entities previously subject to an enforcement case or ticket. The purpose of the reinspection is to verify compliance by an entity that previously violated the HMR, to determine the effectiveness of the entities' corrective action (if submitted).

An entity involved in an open, appealed, or closed enforcement case is eligible for reinspection. Investigators are to coordinate reinspections of open cases and those under appear with their regional leadership and their regional attorney. For closed cases, investigators may proceed with scheduling without need to notify the regional leadership and attorneys. Inspection planning tools (i.e. DRR and IP) contain exclusions so that companies with cases or warning letters should not appear as eligible for inspection for one year and for six months for tickets. Each year, PHMSA's performance plan includes a 1 percent reduction in those reinspections, which lead to enforcement actions (cases and tickets). For this reason, among others, it is imperative that investigators obtain corrective action when HMR violations are discovered.

Complaint Investigations

Complaints are received in many forms and from various sources. They may be received via telephone, letter mail, email, the Web, or in person when conducting an inspection, accident investigation, or when attending meetings or seminars. Everyone has the right to file a complaint. The complaint may come from a private citizen, a company, a local or state government, other Federal agencies (including the Inspector General, which requires special handling by Regional Chief Investigators), or another DOT OA. Persons filing a complaint may request anonymity.

Joint Inspection Activities

OHMS leverages its resources and expertise by fostering partnerships with the modal administrations, other Federal agencies, and State and local authorities. Joint inspections are completed with another mode or agency on areas of mutual interest. These inspection activities may be led by OHMS or a partner authority. Joint inspection activities include Multi-Agency Strike Force Operations, roadside inspections, and inspections at sites where OHMS is not the primary enforcement agency.

Investigators may also conduct joint inspection activities in support of an accident investigation led by another mode. The Region Director that covers the affected region reviews any external requests for accident investigation assistance. The Region Director will forward the recommendation to the DAAFO for approval/disapproval.

SISP Inspections

The SISP program's main objective is to implement a risk-based program for regulated entities that PHMSA has determined have systemic compliance issues. These entities, often-large corporations, can influence operations for their suppliers and customers. Therefore, the impact of the SISP program has broad implications for how PHMSA can protect the nation against risks to life, property, and the environment when offering or transporting hazardous materials.

SISP provides and facilitates in-depth analyses, observations, and cooperative follow-up inspections to identify the root causes and contributing factors of an entity's transportation safety concerns. The SISP is designed to enhance PHMSA's goal of the safe hazmat transportation and to foster collaboration with industry to ensure safety regulation compliance.

SISP also fosters the continuous improvement of participants and the development of quality-assurance programs. To that end, SISP develops, implements, monitors, and evaluates best practices and internal and external communications to ensure compliance. Refer to Chapter 9 for additional information about SISP Inspections.

Accident Investigations

Investigators are expected to complete accident investigations as part of their duties. The focus of the investigations is on investigating and documenting the role that hazardous materials, communications, and package integrity contribute to the cause and the severity of an incident. In addition, investigators collect remediation cost information to supplement DOT 5800.1 Form data to better track and report the overall costs of these incidents. These costs will include human, property and environmental costs up to the date the investigator submits his or her report. Any subsequent updates to remediation costs will be provided by the DOT 5800.1 Form filer to the Program Development Division, in accordance with the HMR. Refer to Chapter 7 for additional information on Accident Investigations.

Planning Routine Inspection Procedures

Overview

The OHMS investigative staff is small when compared to the vast number of regulated entities that prepare, offer, and transport hazardous materials. Investigation staff must rely on a risk-based approach when determining which entities to inspect in order to maximize the value of its limited resources. The objective is to prioritize which entities are inspected and investigated based on: the types of packagings offered into transportation, the hazards associated with various materials, the volume shipped each year and past histories from previous inspections. One of the field's primary goals is to improve the quality and availability of the data used in inspection planning, and re-focus resources on those regulated entities posing the greatest risk to transportation safety and security.

Investigators conduct extensive reviews and analysis using internal/external data in itinerary planning. In an effort to improve the process and maximize resources on those activities posing the greatest risk, the investigators rely on tools to rank investigation priorities.

A National Inspections Plan sets the annual priorities for the investigators each year. The plan targets serious risks by considering both the likelihood and consequence of an event. This includes companies involved in serious incidents, high risk, and/or high consequence transportation-related activities, companies that have been involved in repeated incidents, have poor safety records or compliance histories, and companies for which complaints have been received.

Internal data sources consist of, but are not limited to: Case Management System (CMS), Hazardous Materials Information System, Hazmat Intelligence Portal (HIP), ACS, MISSLE, Safety and Fitness Electronic Records System, and other Federal data systems. Some of the most valuable external data sources come from state and local partners such as State Fire Marshals, State Police, State Emergency Response Agencies, etc.

Region Chief Investigators and Investigators consider many factors when identifying which regulated entities to inspect. The four main considerations considered include:

> **Exposure**: How often is a hazardous material shipped by the same company? What is the volume being shipped? Are many companies engaged in shipping the same or similar hazardous materials within a concentrated area, e.g., gasoline? Is the community where the shipments occur densely populated or in an environmentally sensitive area?

Consequence: Will an incident involving small or moderate quantities of the hazardous material likely cause injury, death, damage to the environment, or disruption of normal social activities, e.g. explosives, toxic by inhalation, high activity radioactive materials?

Incident History: Does a single person or carrier within the region have a history of incidents that is abnormally high? Is there a trend or pattern with certain types of hazardous materials involved in incidents?

Compliance History: Is there a person or industry within the region that has a history of serious noncompliance? Even frequent noncompliance of a less serious nature may be a leading indicator of more serious issues.

Safety Equipment and Practices

Investigators are often exposed to hazardous materials that present some level of inherent risk to their safety. Investigators should always be prepared for safety hazards and take the proper precautions to reduce the risk of exposure.

Mandatory Equipment List

At a minimum, each investigator will have the following safety equipment on his or her person or readily available in his or her vehicles at all times:

- Ear plugs, two sets
- Leather or Neoprene work gloves
- Safety glasses, ANSI approved
- Safety shoes, ANSI approved
- Gas Alert Quattro 4-Gas Detector

Investigators work in environments in which proper personal protection (PPE) is necessary. Investigators should refer to 29 CFR 1910 and 29 CFR 1926 for information on when to wear PPE. PHMSA will reimburse investigators for one pair each time the shoes/boots become unserviceable due to wear and tear. Additionally, PHMSA will reimburse investigators for one pair of prescription safety glasses each time the prescription changes, or after the glasses become unserviceable due to wear and tear.

Use of gas detection meters, although not required for all field operations, is encouraged due to the broad spectrum of OHMS field operations and the inability to predict or detect all hazardous environments. The use of a 4-Gas Detector is mandatory in an environment where hazardous gases are reasonably expected to be present (e.g., welding fumes, grinding dust, cleaning solvents, compressed gas filling, crude oil transfers) or while performing work in confined spaces (see definition in Glossary of Terms). Examples of confined spaces which investigators may have to inspect include, tractor trailers, intermodal containers, storage tanks and portable tanks, etc. If the gas detector alarms, the investigator shall immediately

evacuate the area a safe distance until it is determined that the area is clear. Refer to the Owner's Manual for instructions on how to complete periodic maintenance, calibration, and replacement of sensors.

Other Safety Equipment

Investigators should evaluate the nature of each specific inspection to determine if additional safety equipment is necessary. These items include the following:

- Coveralls or equivalent
- Flashlights
- Hard hats
- Retro Reflective vests
- Work gloves
- RAD detectors (for RAM inspections)

Gloves should be made of a material appropriate to protect hands during freight. PHMSA will provide or reimburse investigators for, the above equipment. Investigators should check with their Region Chief Investigator prior to purchasing the equipment.

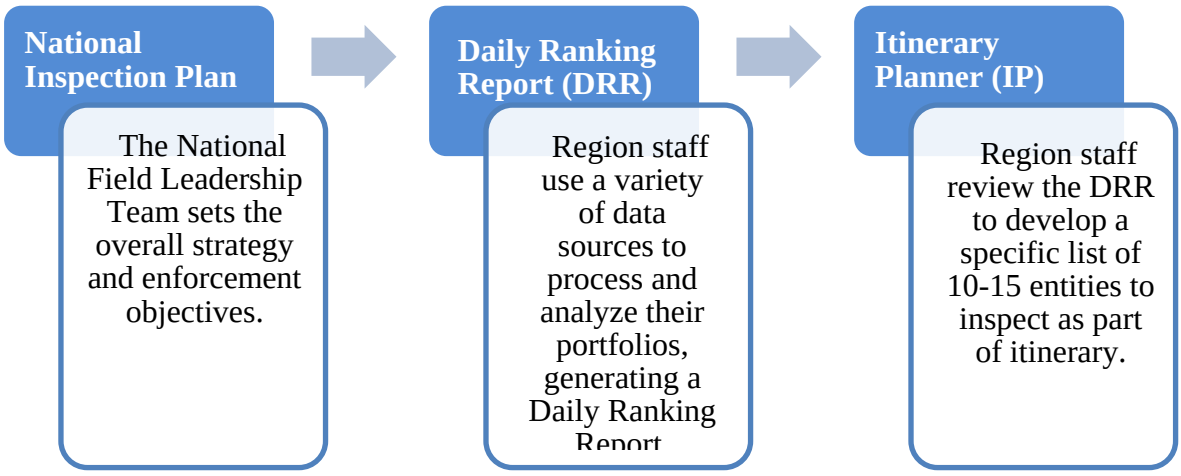
The PHMSA Safety Manual (December 2013 version) includes other safety-related information including makeup and roles of PHMSA safety organization, reporting accidents and near misses, PPE guidance, and motor vehicle safety. The PHMSA Safety Manual can be found on the Field Operations SharePoint site.

Developing Priorities

The agency is continuously looking for ways to maximize its reach to promote efficient use of resources and effective engagement activities with the regulated community. PHMSA is using a more targeted approach, coupled with data and risk analysis to determine inspection and enforcement activities.

The investigators, in concert and with the approval of their supervisors, conduct extensive reviews and analysis of internal/external data in an effort to prioritize inspections and focus resources on companies posing the greatest risk to transportation safety. The investigators rank priorities using the HIP and coordinates schedules using the IP to improve processes and maximize resources. HIP is a Web-based portal that centralizes access to vital information to support risk management, transparency, and decision support objectives. Anyone from PHMSA, or other DOT modes, can access HIP after establishing an account at the following Web link: https://portal.phmsa.dot.gov/analytics/saw.dll?Dashboard.

Investigators should research the company's history of registration, permits, approvals, incidents, and/or prior enforcement activities prior to an investigation. Region Chief Investigators should provide their investigators with additional sources of information that will assist in determining priorities.



Levels of Review for Prioritizing Inspections

National Inspections Plan

Annually, OHMS develops a National Inspections Plan to set the inspection and investigation priorities for the coming year.

The National Field Leadership Team uses a strategic, risk-based approach to develop the National Inspections Plan. The National Inspections Plan specifically aims to:

- Identify Field Operations functions and responsibilities,
- Identify the inspection type priorities,
- Provide an Inspection Risk Model,
- Establish national inspection goals,
- Develop a method for measuring performance; and
- Outline updates to the National Inspections Plan.

Daily Ranking Report

The DRR is a planning and prioritization tool that lists potential inspection sites, organized by risk factors. Because the configuration of the hazmat industry varies by region, each regional DRR is unique. The DRR is automatically updated daily, or as operations dictate. The DRR data is utilized by IP to help investigators create inspection itineraries based on risk.

Region staff review the DRR to develop a specific list of 10-15 entities to inspect as part of the itinerary, known as the IP. Regional Chief Investigators and Investigators use the IP tool to develop an investigation and inspection itinerary. Additionally, Regional Chief

Investigators and Investigators can manually add data priorities to any inspection itinerary.

The IP centralizes data and standardizes the itinerary planning process nationally, avoiding overlap with other investigators. The IP uses data from the DRR to allow investigators to create specific itineraries in order to utilize their time in the field efficiently..

Inspection Itinerary and Authorization

An investigator shall submit his or her inspection itinerary to his or her Region Chief Investigator for approval. Travel itineraries are due to the Region Chief Investigator two weeks prior to the planned travel dates. The Region Chief Investigator may alter the itinerary and the number of days traveled as needed. Priorities typically do not span an entire week, therefore, investigators will include a listing of other inspection activities within their travel itineraries. All inspection activities must be selected in the order of priority precedence.

Authorization from Region Chief Investigator

When approving inspection itineraries, Region Chief Investigators should consider compliance history, incident history, type of hazmat shipped (including high-hazard or high-consequence materials), volume of hazmat shipped and frequency (high exposure), and mode of shipment. Region Chief Investigators shall also consider opportunities for their investigators to pursue new learning opportunities by scheduling inspections in which they can complete tasks as identified in the Investigator Training Manual. In some situations, the Region Chief Investigators will accompany their investigators to evaluate their performance, measure their professionalism, and verify completion of tasks.

Travel Authorization

Following approval by the Region Chief Investigator, the investigator may require a travel authorization. Travel authorizations will be initiated any time inspections are conducted outside a 50-mile radius from the investigator's office or residence, depending on his or her primary work location. Unless otherwise directed, only trip-by-trip authorizations will be selected using the agency's travel management system (currently the E2 System). Blanket travel authorizations issued at the beginning of each fiscal year will be used for local travel expenses incurred while conducting local inspections.

The investigator will maintain a printed copy of the travel authorization during his or her trip. All personnel traveling to a region other than to the one originally assigned must work with their managers to notify the Region Chief Investigator of the region that they plan to visit. Approval must be received to ensure support and resources are available. This notification must be in writing, with a copy provided to the investigator's assigned Region Chief Investigator.

Advance Notice of Inspection

An inspection should normally be unannounced. This gives the investigator a candid view of normal business operations. If advance notice is necessary, prior approval must be obtained from the Region Chief Investigator or Director. However, investigators must verify the entities they plan to visit are still in operation to reduce the amount of Out-Of-Business dispositions.

Advance notice of inspections may be necessary in the following situations:

- In cases of apparent imminent danger, to enable the company to correct the danger as quickly as possible;
- When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary;
- To ensure the presence of records, equipment, officials, or other appropriate personnel who are needed to aid in the inspection; and
- In any circumstance where a Region Chief Investigator or Director determines that giving advance notice would enhance the probability of an effective and thorough inspection.

Conducting Routine Inspections

Overview

Investigators determine compliance with the safety standards by inspecting regulated entities that offer a hazardous material for transportation, manufactures, reconditions, or requalifies packaging used to transport hazardous materials, and facilitates or handles inter-modal hazardous material transfers. An inspection should rely on his or her training and experience to conduct a thorough, well-rounded investigation.

Safety Considerations

Investigator safety is of the utmost importance. Investigators are exposed to hazardous materials that present some level of inherent risk to personal safety and/or the environment. Further, as a representative of a safety agency, it is incumbent for investigators to set a good example. They should conduct adequate background research into a location to ensure proper PPE is readily available.

Note: Investigators should never open any packaging containing explosives, radioactive materials, poison by inhalation materials, or infectious substances.

Code of Conduct

Investigators must be knowledgeable, respectful, and confident when conducting inspections. Behaviors such as bullying or acting in a demeaning, disparaging, and argumentative manner are unacceptable. When conducting any inspection or investigation, it

is important for all investigators to conduct themselves in a respectful, professional, and unbiased manner. Violations of the PHMSA code of conduct may be subject to a disciplinary hearing and may lead to loss of employment.

Conducting the Inspection

Upon arrival, investigators should first survey the scene and observe the emergency exit locations. The investigator should also observe the scene in order to ensure that he or she has the proper PPE. The investigator must ask to speak with a senior representative responsible for compliance with the HMR. The senior representative may be the main point-of-contact or may designate an employee as the point-of-contact.

The investigators should describe the purpose and procedures for the investigation to the representative, including:

- Areas to be inspected - manufacturing, filling, shipping, retest, etc.
- Testing to be observed - type test, type container.
- Records to be examined - shipping, billing, receiving.
- Personnel to be interviewed - production staff, retest operator.
- Exit interview – results of the inspection.

Identify all parties present during the inspection, denoting names and official titles.

Investigators must not sign any form of release or waiver. Investigators may sign a visitor or guest register used to control entry to the premises, with the condition that it does not constitute a release or waiver of responsibility, and does not limit or prohibit access to conduct official business. If the investigator is unsure of the legal effect of any document that may include confidentially, he or she should consult with the Region Chief Investigator and his or her PHC-10 regional attorney before signing it.

Presenting Credentials

The official credential gives investigators the authority to enter, to inspect, and to examine lands, buildings and equipment, and to inspect and copy records and papers of shippers and other persons, in performance of their inspection duties as authorized by Federal hazmat law.

Note: Credentials may not be reproduced in any manner, including by photocopying, photography, or any other form of reproduction. If asked for a copy, the investigator should first offer a business card and finally his or her government ID (PIV) card or driver’s license.

Investigators shall:

- Upon entry, immediately identify themselves in a courteous manner, state the purpose of the visit, and present a business card.

- Complete any safety or security training required by the facility as needed or requested. This does not include signing confidentiality statements or liability waivers.

. Display official credentials when requested by an employee of the facility, or when determined that it is necessary to carry out official duties.

Refusal to Permit Inspection

If an investigator encounters a situation where the party exhibits aggressive or threatening behavior, he or she shall leave and contact his or her Region Chief Investigator or Director. The Region Chief Investigator or Director for further instruction.

If denied entry, investigators shall:

Upon First Refusal:

- Tactfully, but firmly, explain that Federal hazmat transportation law authorizes such inspections.
- Present the Denial of Entry letter (Appendix B) prepared by the PHMSA Hazardous Materials Safety Law Division, which explains the Department's authority and its delegation to PHMSA and gives the investigator the right to conduct an inspection/investigation.

Upon Second Refusal:

- The investigators shall ascertain the reason for such refusal, leave the premises and immediately report the circumstance to their Region Chief Investigator.
- The Region Chief Investigator shall consult with the Region Director, DAAFO and/or the Assistant Chief Counsel for Hazardous Materials Law, or their staff, for future guidance.

After Subpoena Obtained from Assistant Chief Counsel:

- The investigator shall return to the facility with the original Letter of Introduction, the warrant, and if necessary, local law enforcement.
- If entry is still denied, the investigator shall leave the premises immediately and notify his or her Region Chief Investigator.

If there is suspicion of criminal activity involving Hazardous Materials Law, the investigator should contact the Assistant Chief Counsel to coordinate with the DOT Office of Inspector General (OIG). DOT OIG will coordinate with the U.S. Attorney's Office to obtain a search warrant, which will be executed by OIG. At that point, OIG may require the PHMSA investigator's expertise in the hazardous materials regulations.

If an investigator is assaulted or mistreated, he or she shall contact the local law enforcement agency and his or her Region Chief Investigator or Director.

Employer or Employee Interference

If an investigator has been granted entry to the premises but the person interferes with or limits any aspect of the inspection the investigator should:

- Determine whether to complete or discontinue the inspection
- Notify his or her Region Chief Investigator of the circumstances; and
- Document the occurrence in detail in the Inspection Report

Examples of interference are:

- Failure to produce vital records or other documents;
- Failure to answer material questions; or
- Failure to give statements or be interviewed.

If the DAAFO, Region Director, and the Assistant Chief Counsel determine that more information is necessary to complete an inspection, the Assistant Chief Counsel's office will prepare documentation to support a subpoena. A subpoena can only be used to obtain records and cannot be used to gain access to the premises.

Strike or Labor Dispute

An investigator shall not conduct an inspection on the property during a strike or work stoppage, or at any time when there is picketing at that property, except under the guidance of his or her Region Chief Investigator.

Inspecting Packages

The investigation of hazardous material packages and packaging is a fundamental responsibility of investigators. Investigators conduct a variety of package inspections to determine package compatibility with material, proper design and testing, and proper preparation for transportation.

Collection of Evidence

Investigators engaged in inspections must collect evidence to support their findings. Inspections will lead to the collection of items which will be used during the course of an investigation to support the administrative, civil, or criminal prosecution of Federal hazardous materials transportation laws and regulations. Investigators must collect all evidence necessary to support findings of non-compliance. Evidence may be collected in the form of photographs, videos, interviews, correspondence, photo copies of records (e.g. invoices, shipping papers, training records, etc.), or other through other appropriate means.

Chain of Custody Controls
The chain of custody is initiated when evidence has been received or obtained. From this point forward, each time the evidence transfers from one responsible party to the next the property inventory report form shall be used for obtaining the original signature of any person taking custody of the evidence. The Chain of Custody form (Appendix B) ensures that the evidence remains legally valid and admissible in court and administrative hearings.

This ensures that the evidence remains legally valid, and admissible in court and administrative hearings.

This custody chain must be maintained until the evidence is presented in court or an administrative hearing, returned to the rightful owner, or legally destroyed or disposed of in accordance with policy.

Oral Statements
Oral statements can be obtained through personal interviews to support the violation. Investigators should provide an Oral Statement as an Exhibit to support the violation.

Note: In order to document the most accurate accounts of the interview, oral statements should be prepared immediately.

Completing Interviews
Most inspections involve witness interviewing. Interviewing is particularly important because it assists in describing the operation, providing leads, identifying physical confirmation and establishing the degree of knowledge.

When conducting an interview, the investigator focus on the facts, rather than opinion or unsubstantiated conclusions. Effective interviewing often reveals contradictions which may indicate or eliminate probable violations upon further investigation. The result of an effective interview should be a clear description of physical information such as shipping papers, defective equipment, improperly sealed containers, etc.

When a regulated entity expresses concern over proprietary information being disclosed during or after an investigation, the investigator should indicate that inspection results are only disclosed as required by law. The person has the option to mark all documents released as “Business Proprietary” for protection from public disclosure in the event of a request under a Freedom of Information Act (FOIA).

Security Inspections of DHS Regulated Facilities

Investigators may inspect facilities that are subject to the U.S. Department of Homeland Security (DHS) Chemical Facility Anti-Terrorism Standards (CFATS; 6 CFR Part 27). The CFATS requirements overlap with the HMR security plan requirements (49 CFR §

172.800-802). In the interest of simplifying regulatory compliance for the industry, investigators will complete DHS Chemical-terrorism Vulnerability Information (CVI) Authorized User training, in order to review CFATS security site plans that must be accessed to verify HMR security plan requirements. While DHS regulations do not require investigators to complete CVI Authorized User training, in order to review CFATS security site plans that must be accessed to verify HMR security plan requirements. While DHS regulations do not require investigators to complete CVI training, in the spirit of implementing a "one-government" approach among Federal administrations, investigators will complete the CVI training as part of their suite of required training courses prior to inspecting facilities that is required to comply with both CFATS and HMR security plan regulations.

DHS regulates "high-risk" chemical facilities pursuant to the Protecting and Security Chemical Facilities from Terrorist Attacks Act of 2014, which extended DHS' existing authority over these facilities. The CFATS program establishes a process whereby DHS identifies "high-risk" facilities, to focus resources on those locations. For facilities designated as high-risk (currently about 3,000), DHS established 18 risk-based performance standards that chemical facilities must address in a site security plan (See 6 CFR § 27.225). All but two HMR requirements for security plans are included in the CFATS requirements. CFATS-approved security plans are not required to: 1) address en route security and; 2) list the security duties for each position responsible for the security plan. These requirements are detailed in 49 CFR §§ 172.802(a)(3) and 172.802(b)(2), respectively.

DHS acknowledges that PHMSA investigators should be able to access DHS security plan information, including Security Vulnerability Assessment (SVA) within the Site Security Plan (SSP), Pursuant to 6 CFR § 27.400(b)(2), a Federal employee has a need to know CVI "if access to information is necessary for the performance of official duties." Additionally, the DHS program requests that all those with access to the SSP information complete the CVI Authorized User training. PHMSA does not believe such training is legally mandated for federal investigators with a need to know the information, particularly in light of the HMR's security plan requirements. However, investigators are directed to complete this one-time training, in the interest of easing regulatory burdens.

The investigator should complete the web-based CVI Authorized User training at www.dhs.gov/chemicalsecurity. A CVI certificate (which is valid indefinitely) will be emailed to the investigator after completing the 20-minute The investigator shall retain this certificate and provide to the facility security representative when needed to grant unlimited access to the SVA and SSP information. The investigator should ask to see the security plan for those chemicals that must have security plans under the HMR but are not covered under the SSP. For all chemicals, the investigator should ask to see the facility's written plan on en route security (outside the perimeter) and a list of security duties for every person responsible for implementing the plan. The investigator should process any violations if this information is not provided or is incomplete. If at any time the investigator questions any of the SSP information, he or she should contact one of the DHS

contacts (See Appendix B).

Documentation

Investigators must carefully document explanations and statements by the regulated party relating to probable violations or issues of concern. The statements may provide substantive support of alleged HMR violations. Evidence, oral and physical, may also provide insight to the extent and gravity of an alleged violation. Also, these items may have significant and wide-ranging safety and enforcement implications. Refer to Chapter 5 for additional information on how to complete the inspection and investigation written reports.

Written Statements

A written statement provides documentation of the results of an interview or request for information. The quality and usefulness of the statement depends on the quality of the interview.

- Techniques of Preparing a Statement
  - Whenever possible, the investigator should have the interviewee prepare a handwritten and signed statement.
  - The investigator should instruct the interviewee to limit his statement to elements of the violation(s) and the facts that contribute to the substitution of the statement. The investigator should instruct the interviewee to limit the statement to the facts.
- Statement Format
  - Introductory data
    - Date
    - Time
    - Location
    - Names and titles of the interviewer and interviewee
    - Declaration that the statement is voluntarily made without promises, threats, or coercion.
  - Body
    - Narrative statement should provide the facts that substantiate the elements of the violation(s) and answers: Who? What? When? Where? Why? How? and Which?
  - Conclusion
    - Declaration that the interviewee read and acknowledges the statement, "is correct to the best of his or her knowledge, and it is voluntarily given without promises, threats, or coercion of any kind."
  - Signature
    - Interviewee should sign the statement and initial each page and correction. If the interviewee refuses to sign the statement, the investigators should ask if the statement is incorrect or untrue in any respect. The investigator should denote the reply and the reasons for refusal to acknowledge receipt, and include this as an exhibit with the

inspection report. All signatures should be witnessed. The investigator may sign "refused" for the interviewee and sign his or her own name, with the date and title.

- Distribution
  - The signed statement should be attached to the Inspection Report as an Exhibit in accordance with the procedure prescribed in this manual. The Statement Form is found in the Appendix B.

Interviewing Best Practices

- The interviewer should allow the subject to carry the conversation to yield information.
- The interviewer should ask simple direct questions that involve one subject or item under investigation. If the answer is vague or evasive, the interviewer should rephrase the question.
- The interviewer should ask open-ended questions, i.e. "how often do you calibrate your equipment? How do you calibrate it?
- The interviewer should avoid leading questions which will allow a simple "Yes" or "No" response, such as: "do calibrate your equipment?"
- It is critical for the interviewer to avoid creating the impression that he or she is only interested in a confession or conviction.
- The interview should try to impress the interviewee with the fact that he or she only identifies compliance and makes note of any possible regulatory or safety concerns.

Photographic Evidence

The use of photography is the most accurate method of recording evidence of probable violations or conditions that may change during the inspection or shortly thereafter. Photographs are generally admissible in a court of law, if they are true and representative of the scene as it existed when the photograph was taken.

Photographs substantiate probable violations, confirm observations, and provide visual details for review during preparation of inspection reports, informal meetings, conferences, and hearings. Photographs may be used later in the process to identify additional violations. Photos should not replace a narrative violation description, but should be used to in conjunction with handmade drawings/schematics to complement the report and better explain packaging configurations.

Investigators should develop a filing system that allows ready access to and retrieval of photographs later. Photographs are sometimes requested post-inspection or post-investigation to support an action under appeal. Photographs can also serve as invaluable training aids.

Photo Documentation Best Practices:

- The investigator should determine the boundaries of the finished photo. Detailed markings, stamps, and embossments should be accompanied by an Observation Form (See Appendix B for a list of the available Observation Forms) prepared at scene. If photographing a specification marking on a surface which makes it difficult to see, the investigator should use a marker or grease pencil to highlight the marking.
- The investigator should show the relationship of scene, situation, and possible areas of concern, accident components or variables, and gravity and extent of potential issues.
- A reference to size in the photographs, such as a ruler, should be included. This will connect the specific item into the overall scene and emphasizes the size and the distortion, or lack of distortion, of the item photographed.
- The investigator should take ample photographs to illustrate important details that may be difficult to observe. He or she should photograph all sides of a package, even if they are blank.
- The investigator should take a series of photos from far to near and/or wide to narrow. A series of photos will help to explain the area of concern.
- The investigators should ensure that the environment is intrinsically safe to photograph, i.e., spark or flash-producing equipment is allowed. If investigators are photographing several packages, number them sequentially. For example, if an investigator wants to photograph 3 UN1H1 drums, 3 UN1A1 drums and 3 UN31HA1 IBCs, he or she should number the first three UN1H1 drums 1-3, the three UN1A1 drums 4-6 and the three IBCs 7-9. This can be done with Post-It notes if you do not have evidence stickers.
- It is advisable to have the date and time stamp function of the camera activated, so that the date and time are embedded in the corner of the picture.

Completing the On-Site Investigation

Exit Briefing

Following an investigation, the investigator must complete the Exit Briefing Form (See Appendix B). The exit briefing should contain the specific cites, to include narrative, from the HMR for any violations discovered along with a detailed description of the violation. The investigator should discuss the findings with owner, supervisor or company representative(s), and any actions or sanctions as a result of the investigation. If there are questions regarding the violations, add clarifying text to the exit briefing.

An example of a violation entry on an exit briefing is as follows:
Section 172.704(a)(2)&(4)
Explanation: ABC Company allowed two hazmat employees to perform functions required for the transportation of hazardous materials in commerce without function-specific or security awareness training as required by the HMR.

Mickey Mango and Marlin Grape package, mark and label hazardous materials for transportation and do not have the training indicated above.

The investigator is required to request that company official(s) sign the Exit Briefing form as verification that the results of the inspection were discussed and then provide the company official(s) with a copy of the completed Exit Briefing Form. Denied signature forms should be denoted on the form. The investigator is required to note the printed name of those receiving the exit briefing on the first page of the exit briefing and record the printed name of the person refusing to sign on your inspection report.

Investigators should commit to assisting and educating the regulated community in understanding the requirements of the HMR while explaining the exit briefing. An opportunity should be provided to rectify deficiencies or to provide outreach assistance and education via HMSAT.

Amendments to an exit briefing may be necessary after an inspection was conducted. If discussions between the investigator, Region Chief Investigator and/or the Region Director result in deletions from, additions to, or other modifications of the exit briefing, the investigator should must amend the current exit. The investigator must notify the regulated party of the changes being made and that an amended exit briefing will be brought or sent to the company official. The exit briefing must be marked with the word “Amended” adjacent to “Exit Briefing” at the top of the first page. New signatures should be obtained. Both exit briefings must be added to the enforcement report as exhibits.

Chapter 3: Preparing Inspection and Investigation Reports

Overview

A written recording of the results from compliance inspections and accident investigations is an important part of the investigation process. The information must be recorded in a manner that provides a permanent and accurate assessment of conditions is easily verified and updated. This chapter is divided into two parts: 1) an overview of compliance inspections documentation; 2) (reserved) overview of reporting incident investigations.

Information concerning each inspection and investigation must be recorded and promptly submitted in CMS. The basic document created is called an inspection/ or investigation report. Supplemental reports should be attached as exhibits.

Preparing Inspection Reports

Inspection reports should be prepared and written in the following manner:

1. Single Subject - Each inspection/investigation report should reflect the results of a single enforcement action.
    - If a single investigation will result in enforcement action against two entities, two reports must be written, one for each party involved.
    - The reports will contain unique report numbers. If two investigations are conducted of the same entity at separate locations, as part of the same inspection or investigation, one report detailing the facts and circumstances of the case is prepared.

2. Facts – Investigators should present tangible factual material supported by necessary evidence; i.e., photos, statements, shipping papers, interviews, etc.
    - Investigators should not theorize, speculate or hypothesize.
    - Each violation must stand alone, based on the evidence presented, and the investigator should write using an objective, rather than subjective tone.

3. Thoroughness – Investigators should be detailed but concise. They should avoid general, abstract or vague discussion and include documentation to support the findings.

4. Style – Investigators should write reports in a formal tone using an appropriate subject rather than the first-person-singular point of view. They should write in the active voice as much as possible. (Example: The investigator examined and photographed… He/She observed that…)

5. Coherence – Finally, investigators should present the reports in chronological order and written in logical, plain English style that can be comprehended by an individual not familiar with the HMR. The reader should be able to transition logically from paragraph to paragraph and section to section. Transition words such as “next,” and “for example” should be used.

Inspections Report Details (CMS Tabs)

Inspections Detail Tab

Report Number: For each inspection or investigation, CMS automatically assigns a unique identification number based on the primary investigator’s shield number denoted on each page of the report. Each report receives a separate sequential number reverting to the number “001" at the beginning of each calendar year (January 1). For example, 14423052 is the 52nd report prepared by investigator 423 in 2014.

Inspection Date: The investigator should enter the date the inspection began. The inspection date is the first day of the inspection for activities lasting two or more days. The completion date for multi-day inspections will be listed in the summary field of the report.

Company Name: The investigator should enter the complete and correct name of the entity that is the subject of the report. This entry must exactly record the legal name of the business, to include Inc., Corp., LLC, or other identifiers that are part of the legal company name. This information can be found in XXX.

Street Address: The investigator should enter the exact location of the company using street name and number, name of intersection, or rural route number, as appropriate. If a post office box is used, he or she should enter it in in the Principal Contact section.

City, State, Zip and Country: The investigator should enter the name of the city, town, or village, and select the state from the drop-down list. If the company is not located in a city, town or village, he or she should enter the name of the post office responsible for delivering mail to that address. The investigator should enter the country (default is United States).

Phone Number: The investigator should enter the telephone number, including the area code (For example: (202) 366-4700).

Fax Number: The investigator should enter the fax number, including the area code, i.e., (202) 366-4700.

Registration Number: The investigator should enter the hazardous materials registration number (if not pre-populated).

Data Universal Numbering System (DUNS): The investigator should enter the DUNS number (if not pre-populated), or select "Generate DUNS" if number is unknown.

Tax ID Number: The investigator should enter the nine-digit Tax ID # of the company being inspected.

Company Web site: The investigator should enter the company Web site address (if known).

Additional Company Information: This list provides additional information about the inspected entity. The choices are: "Small Business," "Greater than 10 Hazmat employees," and "Competent Authority."

Joint Inspection: The investigator should check the Joint Inspection box if the inspection was conducted with another agency, to include Federal, state or local. He or she should select the appropriate agencies from the drop-down box, and enter the organization if applicable.

Prior Case/Ticket Number: The investigator should enter the appropriate prior case/ticket number(s) for reinspections.

Investigator(s): The investigator should add the primary investigator name and check the Primary Investigator box. If there were other PHMSA investigators, the investigator should select their names from the drop-down list. The remaining information will auto-populate. If other personnel participated in the inspection/investigation, the investigator should list their names in the Summary section of the report.

Points of Contact: The investigator should add the company contact and primary contact information. The company contact is generally the person that was assigned as the escort during the inspection. The investigator should denote if a company receives mail at a post office box or an alternate address. The investigator should list the proper zip code since that may differ from the zip code for the physical address. He or she should enter the name and information of each person in attendance at the inspection.

Inspection Codes

Primary Inspection Code: The investigator should select the type of business from the drop-down list that identified the primary function of the company, i.e., Steel Drum Manufacturer, Cylinder Manufacturer or Requalifier, Shipper, etc.

Secondary Inspection Code(s): The investigator should select all codes appropriate to the company's operations.

Summary

Inspection Summary: It should be a concise recording of the inspection date, name of company visited, name(s) of principal persons involved, the type material(s) handled and any probably violations noted.

Summary Example:

On [Date], Investigator [Name] conducted a compliance inspection at [Company Name, City and State]. Mr./Ms. [Name(s) and Title(s)] represented the company and provided requested documentation. [Explain what the company does] Ex: ABC Resin Company (ABC) is a (e.g., shipper/manufacturer of hazardous materials; manufacturer/retester of hazardous materials packagings, etc.). Company ships materials classed as 3, 8, etc., packaged in boxes, 5 and 55 gallon drums, Intermediate Bulk Containers (IBCs), etc. ABC makes approximately ### hazardous materials shipments per (week/month/year).

Probable violations noted during the inspection were discussed with ABC during the exit briefing (Exhibit 1). Violations concerned (ex: unauthorized packaging, shipping papers, test records, etc.).

Correspondence containing action taken, or to be taken by the respondent to rectify the probable violation(s) has been received (Exhibit ##).

The Inspection Summary field is also used to describe the manufacturing process for cylinders and explosives.

Internal Inspection Summary: This page is intended to communicate information about the inspection/investigation that is not intended to be contained in the final report, such as advisory information for future investigators; i.e., “the building is not visible from the main road. Turn on A Street and go 150 yards and you will see a driveway.”

Inspection Result Code: The investigator should select the resulting action agreed upon by the Regional Chief Investigator during preliminary discussions. The Regional Chief Investigator retains the right to change the action after reviewing the final report and supporting evidence.

Exhibits Tab

The Exhibits tab is used to identify evidence and other documents submitted with the enforcement report. These documents include the facts that a witness can testify to, and that are used to describe violations. Documentary evidence may consist of photographs, bills of lading, shipping papers, freight bills, invoices, production reports, test records, etc., which are obtained from the company files, or copies of Government reports and files and statements taken from witnesses.

The investigator should scan originals, if available, and/or legible photocopies of documents when preparing enforcement reports. The copies should be carefully prepared and should be complete, including all notations or remarks. The investigator should not make any notes or entries on the face of the copy. If a copy that is legible cannot be reproduced, he or she should either make an additional copy for touching up illegible portions, prepare a

handwritten copy, or take a photograph.

Hard copy documents obtained during the investigation are scanned into the system and imported into the report. Photographs are usually digital and are imported directly into the report. An older conventional photograph may be scanned and imported into the report.

Each page of every document submitted as evidence must be identified in the lower right corner with the following information:

U.S. DOT/PHMSA/OHMSFO

Report #_____

Exhibit # _____

Page _____ of _____

A digital or manual stamp or label should be used for this purpose.

Note: Investigators should not stamp or label over critical information.

The Exhibits tab is divided into two parts; the Provider, and the Exhibit Information sections.

Provider: The investigator should select the source of the exhibit from the drop-down box, or enter it manually. Specifically, he or she should enter the name and job title of the person providing the exhibit; the company name, city, and state.

Exhibit Information: The investigator should list the exhibit number assigned to the exhibit. He or she should enter a brief Exhibit Title, and a detailed Description. A Description describes the exhibit, and provides a brief general description; i.e., Bill of Lading dated July 12, 2014. The investigator should select the Exhibit Type (PDF), and click on the "Browse" button and select the file to be imported as an exhibit. The investigator should save the uploaded file. The investigator should repeat the process for each exhibit. The system will compile a list of exhibits at the bottom of the page.

Violations Tab

The investigator should click on the green plus sign (+) to add each violation, and click the pencil symbol under "Actions" to edit the violation. The red "X" deletes any violations from the report.

Violation Number: This entry will auto-populate. It is a sequential number listing the order of violations within the report.

Specific Citation: The investigator should enter the specific section number covering the violation being reported, for example: 172.202(c)(1). He or she should enter only one section number per space provided. The investigator should click the green plus sign (+) to add an additional specific violation.

Number Discovered: The investigator should enter the number of repeat violations. This must be supported by the evidence. The "Systemic Issue" check box indicates that the violation is a process violation. Process violations are usually associated with packaging

manufacturers and indicate that the violation occurs repeatedly as a result of an error in the manufacturing process.

Severity Range: The investigator should select high, medium, or low from the drop-down that signifies the severity of a violation was in reference to the total operation. In general, a violation that generates an enforcement case on its own would be "High," a ticket would be "Medium," and a warning or advisory letter "Low."

Exhibit Numbers: The investigator should select the specific exhibit numbers used to support this violation from the drop-down list.

Citation Summary: The investigator should enter the citation for the violation being reported, i.e., "Offering for transportation in commerce a hazardous material, UN2031, Nitric acid, 8, PG II, in unauthorized packaging, in violation of 49 CFR §§ 171.2(a),(b),(e) and (i), 173.22(a)(2) and 173.158(b)."

Evidence Summary: The investigator should write a detailed narrative describing the violation and include references to supporting exhibits; i.e., "the drum was rusted (Exhibit 2)."

Corrective Actions Taken and Additional Information

Corrective Action Taken: The investigator should select "Sufficient," "Insufficient" or "None Required" from the drop-down list. This must reflect the evaluated response by the regulated entity to state that a company provided sufficient corrective action means that the violation(s) has/have been corrected and the investigator believes they will not be repeated. "Insufficient" indicates that the regulated party did not correct the violations and prevent future occurrences or did not respond.

Corrective Action or Additional Information: The investigator should enter an evaluation of corrective action received by the company for violations noted in the exit briefing. Investigators should use this section to enter additional information.

Supplemental Reports

The following reports are considered supplemental, and are submitted as exhibits in the Inspection/Investigation Report. This section is also used to enter additional information.

Shipment Observation Report

The purpose of this form is to record data concerning shipments of hazardous materials or containers suitable or used for hazmat shipment. The form may be used as a standalone document during shipment observations at various facilities or inspections. This form may also be used to record information concerning carrier violations for submittal to the proper modal administration.

Box Observation Report

The purpose of this form is to record, in an orderly fashion, data concerning boxes used in hazmat shipment. The form may be used with the General Shipment Observation Report Form during shipment observations at various facilities or inspections. A Box Observation Report Form is found in Appendix B of this manual.

Drum Observation Report

The purpose of this form is to record data concerning drums used in the shipment of hazardous materials. The form may be used as a standalone document during drum manufacturer inspections or in conjunction with the General Shipment Observation Report Form during shipment observations at various facilities or inspections.

Preparing Incident Investigation Reports (Reserved)

This section will be developed at future date when incident report writing fields in CMS are completed.

Chapter 4: Enforcement Penalties & Non-Enforcement Actions

PHMSA's enforcement penalty procedures for preparing and initiating civil penalties and other actions are found in 49 CFR, Part 107, Subpart D. The AAHMS and PHC have the authority to take action for knowing violations of the HMR. The AAHMS has the authority to issue sanctions including advisory letters, warning letters, and tickets, and has delegated this authority to Field Operations staff. PHC has the delegated authority to issue compliance orders and/or civil penalties.

Notice of Probable Violation
If, following an inspection or under other circumstances, the DAAFO or designee believes that a person has committed substantive and/or serious violations of the HMR, these cases will be referred to PHC. PHC receives a case referral and assigns it to an attorney. The attorney will contact the investigator and discuss the case, asking questions and clarifying issues, and could possibly request additional information and/or documentation. Investigator participation with PHC is critical throughout the process.

After review and clarification of the referral package, the attorney prepares and issues a Notice of Probable Violation (NOPV). This is the basic document used by PHMSA to bring civil penalty enforcement actions. The NOPV provides evidence supporting the violations, the maximum penalties authorized, and the proposed penalties. It also describes the courses of action available to the respondent.

If the NOPV also proposes a compliance order, the NOPV will include a statement of the proposed actions to be taken by the respondent to achieve compliance. When an NOPV is issued, violations are only allegations and the penalty is only proposed. The case could still be modified or even withdrawn if subsequent facts warrant, or a compromise is reached with respondent.

The respondent has 30 days to respond to the NOPV and has three choices: (1) pay the penalty, (2) submit an informal response, or (3) request a formal hearing before an Administrative Law Judge (ALJ). If the respondent pays the penalty, the investigator will have no further involvement in the case, which is closed out by PHC. If the respondent elects to submit an informal response, the respondent may submit a written response to PHC, request an informal conference, or both. If a written informal response is submitted, the attorney will provide a copy to the investigator for evaluation and input. This will normally be accomplished via email or a telephone.

Informal Conference
If an informal conference is scheduled, the investigator and the attorney will discuss in advance any major issues that might arise. Informal conferences are usually conducted via telephone or, on occasion, face-to-face.

The attorney is the moderator of an informal conference and shall lead the discussion.

Investigators are present to provide factual statements regarding the inspection, and to address statements made by the respondent. The investigator and the attorney will conduct a post-conference debriefing to discuss the conference and any issues needing resolution.

Administrative Law Judge Hearings

If a respondent requests an ALJ hearing, PHC in consultation with the DAAFO will determine whether or not there is a genuine issue of material fact or law. Before making a formal request for the services of an ALJ, PHC will attempt to informally resolve the issues. If this cannot be accomplished, a hearing will be arranged by PHC.

The investigator's role in a hearing is largely the same as in an informal conference, except that they may be called to appear as a witness for the government and testify under oath. In the event that a hearing is scheduled, the attorney shall inform the investigator of the specific requirements and procedures, and prepare the investigator for the hearing. The investigator will assist PHC in identifying other appropriate witnesses.

Orders

Following an informal response or an ALJ hearing, a formal Order will be issued finding that violations have or have not occurred, and assessing a civil penalty and/or compliance order. The respondent or Chief Counsel may offer to compromise (Comprise Order) the amount of the penalty. 49 CFR 107.327 describes the process on how Compromise Orders are to be handled. The investigator's involvement in a case normally concludes with the issuance of an Order.

Appeals

A respondent may elect to appeal an Order in accordance with the Administrative Procedures Act. The appeal is directed to the PHMSA Administrator. In the case of an Order issued by an ALJ, PHMSA may also appeal the decision. A case involving an appealed Order will be assigned to the Adjudication Attorney who represents the Administrator and conducts an independent review of the entire case file.

Investigators will only be involved in an appeal if the respondent is challenging material facts or issues related to the inspection, or other matters which directly involve the investigator. Otherwise, PHC will provide the Chief, Enforcement Branch an information copy of the respondent's appeal.

The Administrator's decision in an appealed case is called an Action on Appeal. The Administrator may uphold the Order, modify the Order by eliminating violations and/or reducing the assessed penalty, or may dismiss the case entirely. If the violations are not dismissed, the respondent may either pay the penalty or file an appeal to the United States Court of Appeal or the District in which respondent resides.

Criminal Penalties

Investigators may encounter a situation which involves very serious violations of the

regulations and apparent willful intent on the part of the violator. In such situations, PHMSA has the discretion to initiate a criminal investigation referral to the DOT Inspector General.

Field Operations staff and PHC leadership will work together to decide on a course of action for a criminal investigation.

Injunctive Action
The PHMSA Administrator may seek relief from the Department of Justice for persons engaged in or about to engage in any act or practice involving a violation of the Federal hazardous materials transportation law or regulations issued there-under. This relief could be in the form of mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

Relief of this type would most often be sought when PHC determines there is a substantial likelihood that death, serious illness, or serious personal injury will result from the transportation of particular hazardous material or hazardous materials container. Such a situation is usually termed to be an imminent hazard situation. Relief could be sought prior to any other action or proceeding to reduce the risk of harm of the situation.

Investigators should be aware of the possibility of such events and report the situation to management. PHC and field leadership will provide guidance and direction as necessary.

Tickets

The ticketing program streamlines administrative procedures, reduces costs, and reduces regulatory burdens. It includes certain violations, most of which have an indirect impact on safety, and involve regulatory requirements mandated by Federal hazardous materials transportation law.

The ticketing program affords a respondent the opportunity to respond to a violation by agreeing to pay a reduced penalty and waive their right to full adjudication by the PHMSA Office of the Chief Counsel via the civil penalty process described in 49 CFR Part 107, Sections 107.311-107.327.

Non-Enforcement Recommendations

Investigators serve in a unique role due to their frequent contact with regulated entities and ability to directly observe how the HMR is being applied. An investigator's duty extends beyond reporting violations of the HMR. Investigators have the responsibility to advise other PHMSA offices along with modal partners when the language of a regulation, special permit, or other policy has an effect beyond its intended purpose.

When an investigator finds that portions of the HMR, approval letter, special permit, or other policy are deficient, contradictory, or not meeting the purported intent, should steps be taken to document their findings and rationale for change. Investigators should take photographs, obtain documentation, prepare observation reports, and take detailed notes supporting their observations and recommendations.

Investigators should prepare an email and route through their supervisor to the appropriate Division Director for consideration. The email should include the following:

- A description of what was observed, when observed, where observed, and who was present when observed;
- A statement detailing the extent of the problem;
- Supporting evidence that substantiates the recommendations or helps to further understand the issue;
- Recommendations on actions necessary to correct the problem.

Regulatory Change Support Paper

The Regulatory Change Support Paper (RCSP) process is a formal method where investigators can request changes to the HMR. This process entails a full evaluation of the proposed changes. The RCSP allows PHMSA to prioritize regulatory actions to best achieve safety goals and limit economic impacts on the federal government, the regulated industry, and the general public.

Additionally, the Standards and Rulemaking Division (PHH-10) works closely with Program Management, Data and Statistics Division (PHH-60) to ensure that all RCSPs are evaluated in accordance with the OHMS Policy Analysis Protocol. OHMS relies on the Policy Analysis Protocol as a mechanism for evaluating issues and initiating an action or actions to best address the consequences of the proposed change (e.g., rulemaking, outreach, targeted enforcement, research, international position paper, etc.).

A template for a RCSP is in Appendix B.

Chapter 5: Conducting and Completing Fitness Inspections

Overview

A Special Permit is a document issued by the Associate Administrator permitting a person to perform a function that is not otherwise permitted under the HMR, contingent on an equivalent level of safety determination. An Approval is a written authorization issued by the Associate Administrator for a person to perform a function for which prior authorization is required.

Fitness inspections are conducted on regulated entities who: 1) applied for new or modified approvals or special permits (penalty actions do not apply) or 2) applied for renewal of existing approvals or special permits. A Fitness Recommendation Report is generated for all fitness reviews. The result of the fitness inspection is a recommendation by the attending investigator(s) on whether the applicant should be recommended "Fit" or "Unfit" to conduct the activity authorized by the special permit or approval.

Safety Considerations

Investigators should prepare for an on-site fitness inspection in the same manner as preparing for a compliance inspection. The safety considerations in Chapter 2 for this manual detail the mandatory and optional equipment that investigators should have with them before conducting an on-site fitness review inspection. Investigators shall review the appropriate section in Chapter 2 for information on the required safety equipment.

Fitness Review Process

Automated Reviews

The Approvals and Permits Division (PHH-30) performs an automated review of special permit or approval applications received. The applicant's history is reviewed using the HMIS or the HIP. HIP is a Web-based application that provides an integrated information source to identify hazardous material safety trends through the analysis of incident and accident information. It provides access to comprehensive information on hazardous materials incidents, special permits and approvals, compliance history, enforcement actions, and other elements that support PHMSA's regulatory program. These databases provide triggers to identify the regulated entities that require a safety profile review. Fitness determinations are made only after a desktop safety profile review or an on-site inspection is completed.

The automated review screens the applicant to determine if, within the four years prior to submitting its application, the applicant was involved in any incident attributable to the applicant or package where one of the following occurred:

1. A death or injury;
2. Two or more incidents involving a § 172.504(e) (placarding) Table 1 hazardous material;

3. Three or more incidents involving a bulk packaging;
4. The applicant has a prior enforcement case referral where the DAAFO, or his or her designee, determined insufficient corrective action was taken or there are Independent Inspection Agency (IIA) noted items on a cylinder requalifier inspection report, except for those applicants who were reinspected and found to have no violations; or
5. The applicant is a foreign cylinder manufacturer or requalifier, or a select holder that PHMSA, or a representative of the Department, has never inspected.

When necessary, the Fitness Coordinator (assigned to the Field Support Division) normalizes this data during the safety profile review by contacting the applicant to obtain the number of hazardous materials shipments and the applicant's hazardous materials incident ratio. The fitness coordinator also reviews incident reports during the safety profile review to determine if any incidents are attributable to the applicant or a package, if any incidents are associated with the special permit, or if the incident report(s) contained errors.

Safety Profile Review

The fitness coordinator conducts a safety profile review if an applicant meets one or more of the criteria noted above during the automated review. In a safety profile review, the fitness coordinator performs an in-depth evaluation of the applicant based upon items the automated review triggered concerning the applicant's previous four-year performance and compliance history prior to the submission of the application. Information considered during this review may include the applicant's history of prior violations, insufficient corrective actions, or evidence that the applicant is at risk of being unable to comply with the terms of an application for an existing special permit or approval, or the HMR. If the fitness coordinator determines that the applicant may be unfit to conduct the activities requested in the application, the coordinator will forward the request, and supporting documentation, to the appropriate Field Operations Regional Office to schedule an on-site inspection. If the applicant is not referred to a regional office for an on-site inspection after the safety profile review is completed, the applicant is determined to be fit and the fitness coordinator will submit a fitness recommendation report to the Approvals and Permits Division.

On-Site Inspection

Investigators will conduct an on-site inspection at the recommendation of the fitness coordinator, if one of the following criteria applies:

1. Any incident listed under automated review is attributable to the applicant or package, other than driver error;
2. Insufficient corrective actions in any enforcement case for a period of four years prior to submitting the application, except when reinspected with no violations noted;
3. IIA noted items on a cylinder requalifier inspection report, except when reinspected with no violations noted;

4. Insufficient corrective actions in any enforcement case for a period of four years prior to submitting the application, except when reinspected with no violations noted;
5. or IIA noted items on a cylinder requalifier inspection report, except when reinspected with no violations noted.

<table>
<tr><th>Trigger for
Safety Profile Review</th><th>Trigger for
On-Site Inspection*</th></tr>
<tr><td>Death or Injury</td><td rowspan="3">Any incident
attributable to the
applicant or package
(not driver error)</td></tr>
<tr><td>§ 172.504(e) Table 1
(Placarding) material
AND
Two or more
Incidents</td></tr>
<tr><td>Bulk
AND
Three or more
Incidents</td></tr>
<tr><td>Two or More Prior
Enforcement
Case Referrals</td><td>Insufficient
Corrective Actions on
any enforcement case
OR
Independent
Inspection Agency
(IIA) Items
(Except when
reinspected with
no violations noted)</td></tr>
</table>

Fitness Coordinator Safety Profile and On-Site Inspection Triggers

Once the region office is notified by the Fitness Coordinator of the need for an on-site inspection, the attending investigator(s) should:

- Evaluate the applicant's overall operations, including special focus on practices and procedures that would be authorized under the requested special permit or approval.

- Determine applicability and level of safety regarding operations under the requested special permit or approval including:
    - Risk assessment – worst case to best case scenarios
    - Internal quality control measures
    - Security policies/procedures
    - Employee training and certifications
- Determine if alternative options/practices would enable company to operate under the existing regulatory requirement instead of issuance of a permit or approval.
- Document fitness inspection in CMS.

On-Site Inspection - International Process

PHMSA has limited resources to conduct fitness inspections of foreign companies applying for a special permit or approval, due to the high cost and constraints on investigator manpower. However, every company that requests an approval that gives authority to manufacture or re-qualify DOT specification cylinders or UN pressure receptacles as required by parts 178 and 180 IAW 49 CFR must undergo an on-site fitness inspection prior to issuance of such authority. Currently, fitness checks are now mandatory for initial request and for all renewals concerning a special permit and approval that are authorized by PHMSA. To ensure continuity, all foreign companies manufacturing or re-qualifying DOT specification cylinders or UN pressure receptacles will all contain a five-year expiration date.

International on-site inspections for cylinder requalifiers, manufacturers, and IIA's are based on the criteria listed in the chart below. There are four phases for processing an international trip. They are planning, scheduling, trip, and post-trip.

Planning a Foreign Trip

The number of inspection trips and the locations will be determined prior to the start of the fiscal year and is based on projected workload and manpower capabilities. Field Services Support is responsible for determining the number of projects, the regions are responsible for forecasting the trip dates and assigning investigators. The inspections are based on the following chart, where the risk category determines the inspection to be conducted for the year.

APPLICATION TYPE	CYLINDER SERVICE	ENFORCEMENT HISTORY	LENGTH OF TIME SINCE LAST INSPECTED	PRIORITY RISK CODE	ONSITE PRIOR TO APPROVAL
NEW MFG/REBUILDERS	All services	N/A	N/A	1	X
NEW IIA	All services	N/A	N/A	1	X
IIA CHANGE	All services	N/A	N/A	1	X
NEW DAA	All services	N/A	N/A	**	
RENEWAL MFG,DAAs, REBUILDERS	All services	Incident(s) reported, or other reports of possible violations received**	N/A	1	X
	All Services		0-2 years	4	N/A

RENEWAL MFG (and their approved IIA), DAAs, REBUILDERS, etc.		PHMSA inspected, findings/violations/QCs noted.	2-5 years	3	
			5-7 years	2	
		PHMSA inspected, no findings/violations/QCs noted.	0-2 years	5	
			2-5 years	4	
			5-7 years	3	
		No recent enforcement history	> 7 years or never	1	

NOTES: ** (1) If an incident (as described in Definitions of Enforcement History) is reported, or other reports of possible violations are received outside of the application renewal process; a review will be conducted to determine if an immediate on-site inspection is necessary.

** (2) A thorough desk-top review will be accomplished by PHH-40 prior to recommending the Deputy Associate Administrator (DAA) for approval/renewal. DAA on-site inspections will be conducted in conjunction with cylinder manufacturer locations where they are providing DAA services whenever possible. In the case where the DAA does not operate at an otherwise approved manufacturer, the DAA inspection will be scheduled separately and will be scheduled as a "new" applicant inspection using the 180-day PHH-40 timeframe.

** (3) Modifications to any of the renewal applications will undergo a fitness review and a determination will be made as to whether or not an on-site inspection is warranted. If yes, it will be scheduled using the 180-day PHH-40 timeframe.

Definition of a Priority Rating

Priority 1: These entities have been reviewed and determined to be the highest risk for safety concerns.

Priority 2: These entities have been reviewed and determined to be at a significant risk for safety concerns.

Priority 3: These entities have been reviewed and determined to be at a medium risk for safety concerns. This category includes:

Priority 4: These entities have been reviewed and determined to be a moderate risk for safety concerns. This category includes:

Priority 5: These entities have been reviewed and determined to be a low risk for safety concerns.

Departmental Approval

Once the annual travel plan is developed, and inspections are assigned to investigators by their Region Chief, including the tentative dates, Field Operations provides the travel plan to PHG-1, which ensures that the travel plan is consistent with the agencies' and the Department's programmatic goals and with U.S. foreign and trade policy objectives. The plan is submitted to Deputy Secretary and the Assistant Secretary for Aviation and International Affairs, for final approval.

Field Operations Coordination

Planning and coordination of the trips are split between the regions and the Field Services Support Division. The Field Services Support Division will determine the visa requirements, obtain visas and passports, submit country clearance to the Office of the Administrator, and track the funding for the trip. The region office will contact the company using the Foreign Inspection Notification Letter, provide a detailed itinerary, complete the country clearance form, and plan the trip through the contracted travel agency. The visa forms are completed by the investigators, and the regions may also be required to obtain an invitation letter from the company to obtain a visa.

Foreign Inspection Notification Letters

The letter is sent to both requalifiers and manufacturers. However, the format for each letter is different. Manufacturers are required to pay for the inspection and must deposit the funds prior to the fitness trip. The cost of the trip for requalifiers is paid by the Agency.

To begin the Fitness Notification Letter (FINL) for a manufacturer, obtain the cost of the trip. The airline cost will be obtained by calling the contracted travel agent. The per diem rates are located on the U.S. State Department Web site at the following link: https://aoprals.state.gov/web920/per_diem.asp.

Once the cost and basic logistics are determined, the FINL is created by the Admin, and is signed by the Region Chief. The FINL is emailed to the company, the program manager and Field Services Support Division Admin.

The next step for manufacturers is providing the company with two forms, W-Ben8 and Banking Form. This is provided by the Field Services Support Division Admin. This form is used to track payment of the trip, and to return unused funds.

Once the trip plan is approved by the Deputy Secretary, the Field Services Support Division Admin will determine visa, passport and other travel requirements. The Field Services Support Division Admin will provide the Regional Admin notification when a visa is required. The visa form is initiated by the traveler, and provided to the Field Services Support Division Admin 60 days before the trip. The traveler must provide a complete application and passport photos.

The investigator will coordinate with the company to ensure dates, locations, hotel suggestions, and transportation factors.

The traveler is required to complete a country clearance form within 30 days of the trip. The form is provided to the Field Services Support Division Admin for

processing and tracking. The country clearance is submitted to the Executive Officer, PHMSA PH-3 for coordination with the U.S. State Department. The investigator is required to provide a detailed itinerary and an in-country phone number.

International Travel for GS-15 and Two-Week Trips

A memorandum must be sent to OST, Deputy Chief of Staff, for approval, for all trips that are over eight days, and for all GS-15 travel. The memo must be provided to the Field Services Support Division cylinder program manager 75 days prior to the trip. The signed memo must be loaded into E-2 prior to ticketing the flight. The approved three-month outlook will be uploaded into E-2 prior to ticketing.

Completion of the Trip

Once the trip is complete, the traveler will provide Field Services Support Division Admin a copy of their voucher, a completed W-Ben8 and foreign banking form if the company did not complete prior to the trip. The cost of the trip will be reconciled by the Field Services Support Division Admin and a memo will be provided to FAA finance for the return of the unused funds.

Important Links and Phone Numbers

- https://travel.state.gov/content/passports/en/country.html -Visa information
- http://www.axa-schengen.com/en/schengen-countrires/
- http://www.travel.state.gov/
- http://www.schengenvisa.cc
- https://travel.state.gov/content/travel/en.html
- N:\PHH_1_Organizer\CCMS\Templates
- 800-223-9076 - SATO
- 877-327-5164 - SATO
- 866-641-3500 (option 7)
- 210-877-3219 (option 7)
- John Williams (202) 366-4349

International Phone Request

- Please provide the following information to John Williams.
- 1. Employee Name:
- 2. Routing Symbol:
- 3. Travel location:
- 4. Travel Start Date:
- 5. Travel End Date:
- 6. Request a laptop?
- 7. Blackberry/iPhone email account requested**:
- 8. Blackberry/iPhone
- **In reference to the e-mail account for the international Travel iPhone or Blackberry. The two options are below:

- **Option 1: Your Primary email account**
- You can have your Travel iPhone or Blackberry setup with your existing e-mail account. This will enable you to continue to receive e-mail as usual. If you choose this option. Emails on your current device will not be interrupted. You will receive emails on both devices.
- **Option 2: Generic DOT Travel Account**
- You can have your Travel Blackberry setup with the generic account (your firstname.lastname.travel@dot.gov). With this option, you will not receive any of your daily e-mail because of the temp email address.
- If you have any questions, John Williams can be reached at (202) 366-4349.

Fitness Recommendation Reports Domestic and International

The investigator will determine that an applicant meets the requirements of the HMR or an equivalent level of safety. If the company did meet the required safety level, is unable to comply with the HMR, or is unable to comply with the terms of their application, the investigator will, with the approval of the supervisor, recommend the applicant as "Unfit" in the Fitness Recommendation Report. If the applicant currently holds an approval or special permit, the investigator will identify the violations that are so egregious that the regulated entity should no longer be allowed to hold an existing approval or special permit.

Investigators, with approval from the supervisor, will complete and submit a Fitness Recommendation Memo to Field Support upon completion of the site visit or after completion of all required tests. The required test results may take several months to receive. The report should provide the following:

- Brief synopsis of the company's overall operations
- Information that resulted in the initiation of the fitness inspection
- Inspection summary
- Investigator(s) fitness recommendation (Fit/Unfit)

Field Support will review the Fitness Recommendation Report and forward it to the OHMSPA for final disposition.

Chapter 6: Opening Packages and Issuing Warnings

Overview

During the course of completing compliance inspections, investigators may have reasonable articulable belief that a package or transport conveyance contains a hazardous material and that the package does not otherwise comply with the HMR. The investigator may stop the movement of the package and may open the package to verify internal contents or to determine if materials need to be sent to a lab for further testing. An investigator may determine that a warning or order is necessary to prevent or restrict certain packages from being permitted for transport. This chapter provides overview on how investigators should open various types of packages and describes the types of warnings and orders available to restrict movement of packages, if needed.

Under 49 CFR Part 109, investigators have the authority to:

- Access, open, and examine a package;
- Remove a package from transportation (imminent hazards);
- Order transportation of a package for analysis;
- Permit a shipment to resume in transportation;
- Authorize qualified people to assist in the performance of a regulated function; and
- Issue Emergency Orders

Stop

When an investigator 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. When conducting a hazmat inspection, an investigator 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 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 so an investigator should be aware of this fact and work with regional leadership when stopping a package. 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 investigator to assess compliance.

Opening Packages

Hazardous materials are inspected for compliance with the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101-5127 as codified in 49 Code of Federal Regulations, Part 109, which authorizes a designated agent of the Secretary of Transportation to open and examine a package offered for, or in, transportation when an officer, employee, or agent has an objectively reasonable and articulable belief that the package may contain a hazardous material, or situations that would require issuance of emergency recall (out-of-service orders) to address unsafe conditions or practices posing an imminent hazard. An investigator should notifiy regional leadership before opening any packages.

An investigator 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. Prior to opening a package, the agent should try other methods of obtaining the information he/she needs to determine compliance. If possible, the investigator should ask the entity with custody and control to open the package. After opening the package, the investigator may examine the inner packaging and/or packaging components to determine compliance with the Federal hazmat law and the HMR.

An investigator should not open or otherwise handle a package that:

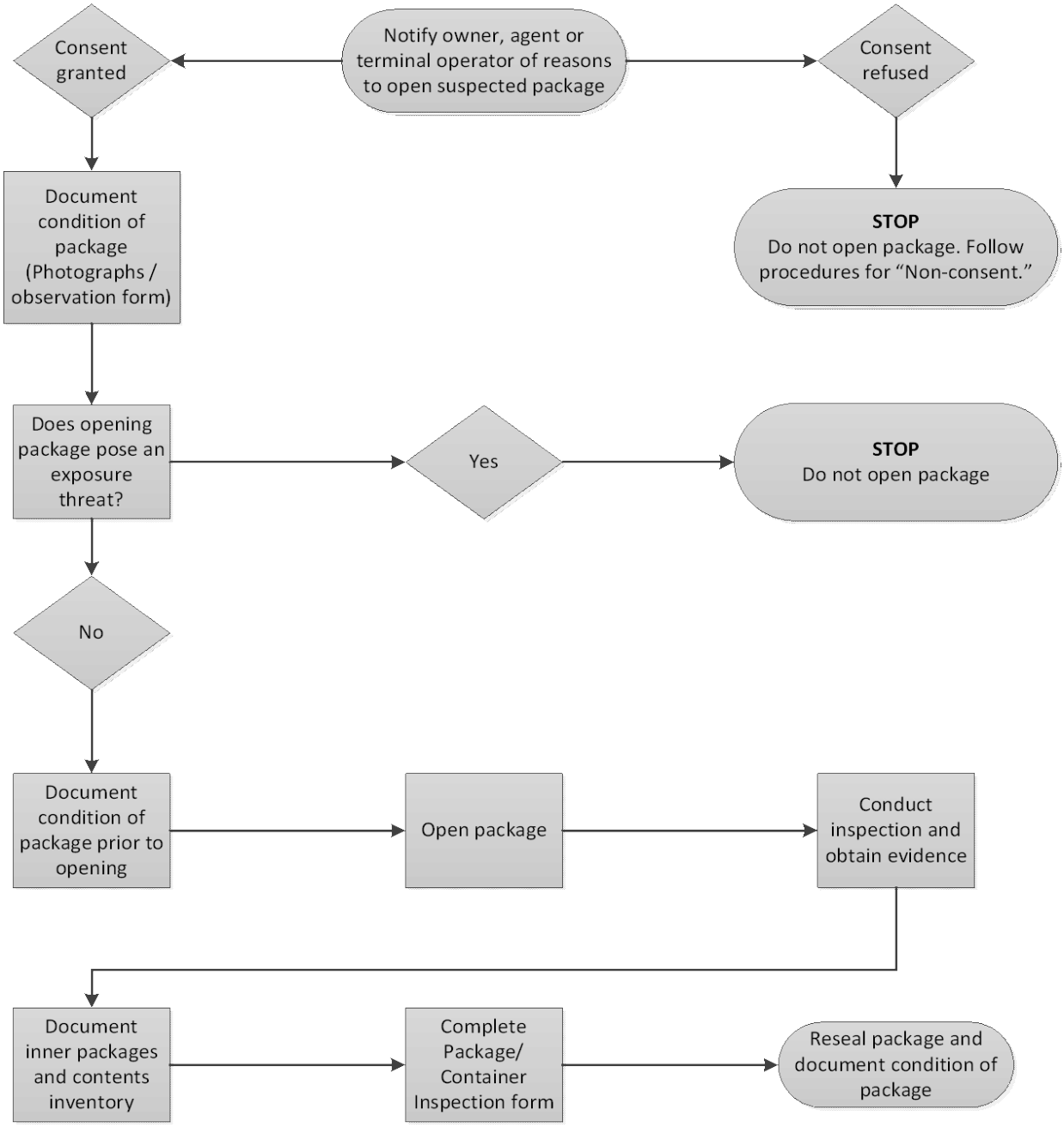
- Appears to be leaking;
- Contains or is believed to contain a:
    - Perishable hazardous material;
    - Radioactive material;
    - Hazardous material with a primary or subsidiary classification of Poison-Inhalation Hazard, or
    - Select Agent.

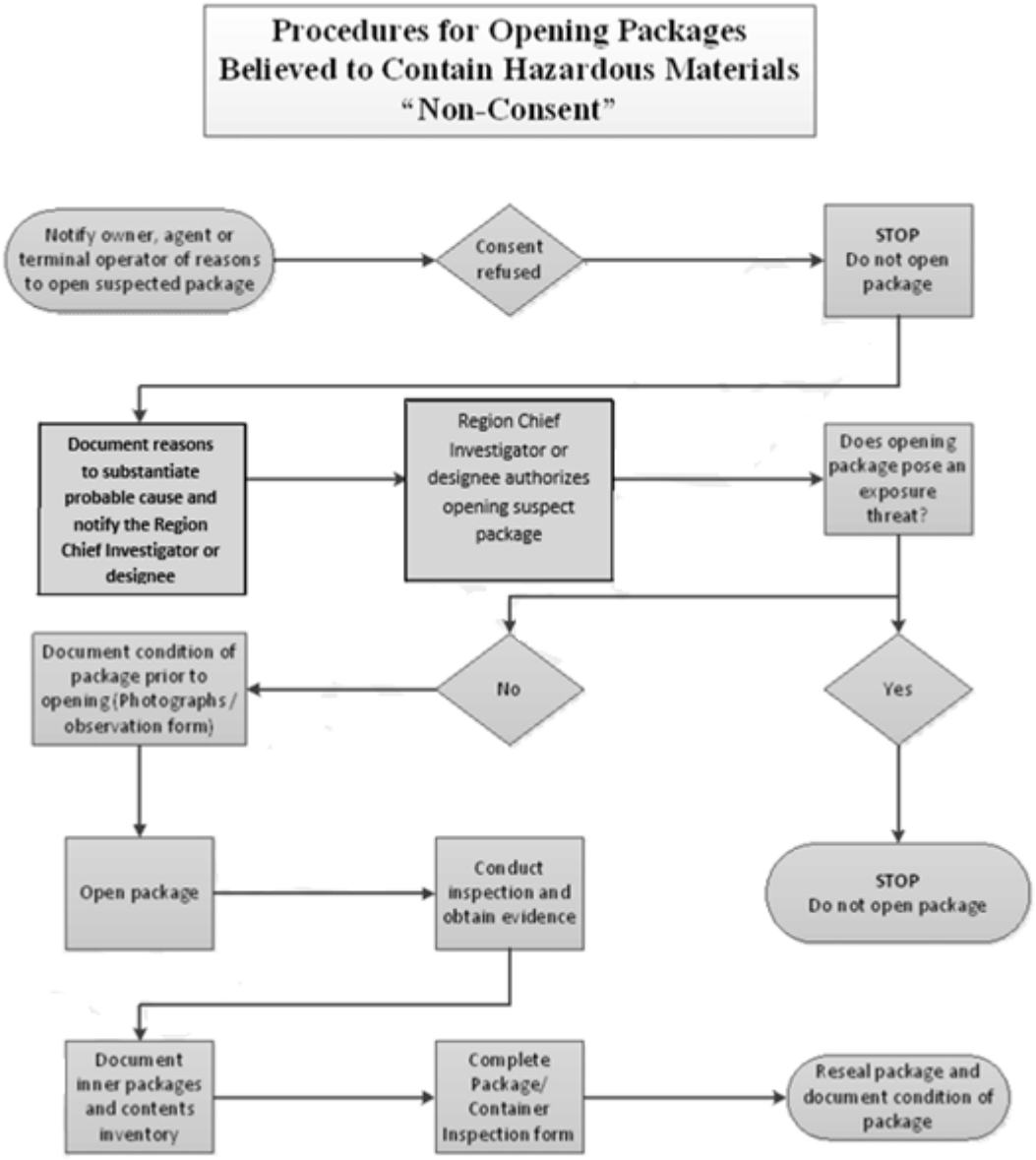
An investigator should not open primary packaging or closures.

- This includes closures on intermediate bulk containers or bulk packagings.
- This does not include testing secondary closures for tightness (even bulk packagings).

After opening the package, the agent may be required to close the package. Guidelines for closing packages is addressed later in this chapter.

Procedures for Opening Packages Believed to Contain Hazardous Materials "Consent"





Opening Package Procedures

- The investigator must ensure the appropriate PPE is worn prior to opening package(s).
- The condition of the package should be documented, with photographs/an observation form before it is opened. The investigator must include marks, labels, outer and inner packages, and all packaging components.
- Before opening the package, the investigator should conduct an external visual assessment for indications of potential hazards such as leaks, or severe package damage. If any leaks are discovered, he or she must discontinue opening the

package and notify the owner, agent or terminal operator to mitigate. If the leak is believed to be life threatening, evacuate and call 911.

- The investigator should open the outer package using the least destructive method possible.
- Reusable closure devices must be removed using an appropriate tool (e.g. appropriate screwdriver or wrench).
- The investigator should open outer packagings sealed using non-reusable closure materials such as tape, stitching or staples by cutting the closure material to the minimum depth necessary to break the seal.
- If the investigator believes the suspect package contains Fireworks, or Class 3 or 4 materials, the outer packaging shall be opened using a non-sparking appliance.
- If the investigator believes the suspect package contains a Division 4.3 material, it shall not be opened in the presence of water.
- The investigator will carefully open the top of the outer package and inspect the inner packagings. The investigator will only inspect to the first layer of the inner packagings.
- Any dividers, pads, cushioning, or absorbent material must be documented.
- The investigator must remove cushioning or absorbent material as necessary to detect and document the inner packaging(s) and components as placed in the outer packaging.
- The investigator should photograph the inner packaging(s) and/or complete an observation report.
- Any documents found within the outer packaging should be copied or photographed.

Re-Closing Packages

If a package is opened by an investigator, the investigator 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.

Note: If an investigator opens a package that is not in compliance, the investigator is not required to reclose the package and/or bring the package into compliance. The following are procedures for re-closing a package.

- The investigator must ensure all inner packagings, cushioning material, absorbent material, pads, and dividers will be returned to the original packaging configuration prior to re-closing the package.
- All box flaps must be closed tightly with the outer box flaps butting. The investigator will then apply one strip of 3-inch industrial strapping tape (6.6 mils thick with a 380-pound tensile strength) completely around the circumference of the box centered over the butting outer box flaps with a minimum 6-inch overlap.
- The investigator must apply PHMSA "inspection/evidence tape" over the tape.

- The investigator is required to initial and place his or her number on the inspection tape using permanent ink.
- The investigator must have the facility representative initial on inspection tape adjacent to investigators mark.
- The package must be photographed as closed and returned to shipping status by the investigator.
- The investigator should notify the company official of the findings and evidence obtained during the investigation.

Opening Containers and Other Enclosed Transport Vehicles

When opening vans, freight containers, box trailers, and other enclosed transport vehicles that contain hazardous materials, the investigator should first secure the doors with a safety strap prior to opening to ensure the load has not shifted against the door and to prevent spillage if load shifting has occurred. After the doors have been opened and secured, the investigator should wait several minutes for an air exchange to take place within the vehicle.

Caution: Some hazardous materials emit vapors that permeate through packages, causing an individual to be overcome by fumes if entering the freight container or vehicle immediately after opening.

Box Truck openings (roll-up) should be adequately secured by either the operator or investigator. Van, freight container, box trailer, and other enclosed transport vehicle inspections requiring entry into the container should always be conducted as a two-person team, with one person always positioned at the doorway. Investigators shall never enter the unit alone to determine the leak-proofness of seals.

When exiting a van, freight container, box trailer, and other enclosed transport vehicle, or when leaving a freight dock area, investigators should always climb down using stairs, ladder rungs, and/or ladders, -- jumping down from the unit or the dock is not permissible.

Transport for Analysis

When an investigator 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 investigator. 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.

An investigator should contemporaneously document his/her reasons for using this authority. At a minimum, the investigator should document:

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

Regional leadership should be contacted be contacted for approval before exercising this authority.

Assistance from Qualified Personnel

When an investigator is unable to perform a function, or when safety might otherwise be compromised by an investigator's performance of an essential function, the investigator may authorize properly qualified personnel to assist in the activities. Although an investigator 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, as discussed earlier in this chapter.

An investigator may request the assistance of qualified personnel based solely upon his/her discretion. Prior to requesting or authorizing a person to assist in performing any function, the investigator should first verify that the person is properly qualified to perform the function. Whenever an investigator authorizes a person to assist in performing a function, the investigator should document:

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

Emergency Orders

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. There are three types of emergency orders authorized:

- Out of Service (OOS) – 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.
- Emergency Recall – All emergency recall orders are issued by PHMSA in consultation with a modal Operating Administration, 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. 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, a modal Operating Administration 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.

Imminent Hazards and Potential Violations

Occasionally, an investigator may encounter a situation involving an imminent hazard or the possibility that someone intends to violate, or continue to violate, the HMR. Investigators shall notify their Region Chief Investigator or Region Director whenever an imminent hazard is likely. 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. In most situations, a removal is limited to 48 hours. (Refer to example below for identifying an imminent hazard.)

Investigators should always take action to promote safety, but be careful to do so in an appropriate manner. The investigator shall ensure that involved parties are aware of their responsibilities under the regulations, but should not take charge or attempt to carry out their responsibilities. Although investigators can advise regulated parties of the applicable regulatory requirements and prohibitions, they should not order, direct, instruct, or mandate particular actions. Ordering, directing, instructing, or mandating that a party should or should not take action is beyond the scope of the investigator's authority and could result in personal legal liability. If the situation is such that immediate emergency response resources (e.g., first responders) are needed to mitigate the situation, the investigator shall call 911.

In a situation where a regulated entity needs additional substantiation for complying with the regulations, investigators may state that since the regulated entity has now been advised about what the regulations require or prohibit, the regulated entity's subsequent violation of those regulations could be considered "willful" and thus subject to possible criminal prosecution.

The investigator should write down his or her verbal statement before sharing it with the company official because of the importance of documenting what was conveyed to the company official. Additionally, the investigator should make these statements with a witness, e.g., another investigator, a law enforcement official, or neutral party.

Imminent Hazard Warning Example

Assume that hazardous materials are discovered on a company's shipping dock, staged and ready for transport, in non-UN standard packaging that do not comply with the regulations. The investigator should advise the company official:

- Of the shipping requirements for the hazardous materials involved;
- That failure to comply with those regulations could result in a substantial civil penalty for the shipper and carrier;
- That the company and individual employees may be subject to criminal prosecution if they proceed to violate the regulations. If necessary, further state that since the company officials have just been notified of the regulatory requirements, any violation would thus be considered willful.

An investigator should not prohibit the company from shipping the hazardous materials until they are properly packaged. The distinction between advising and ordering is so critical that one should even say that he or she is not ordering or prohibiting a specific action.

In this example, the investigator might say: "The regulations, specifically 49 CFR___ , require these hazardous materials to be shipped and transported in UN standard packaging, specifically _____. If they are shipped or offered for transportation in packaging that does not meet those requirements, the company, you, and others involved may be subject to a civil penalty of up to $78,376 per violation, and $182,877if someone is injured or killed. Also, the carrier is likely to be subject to similar civil penalties. In addition, if you proceed and ship these hazardous materials in this packaging, you and the company may be subject to criminal penalties involving up to five years of imprisonment and fines of up to $250,000 for an individual and up to $500,000 for a company. I am not telling you what to do or ordering you. I am simply telling you what the regulations require and what the penalties prescribed by law could be for violating them. Do you understand?"

Issuing an Emergency Order

The Region Chief Investigator will determine from the investigator's brief if an emergency order or out-of-service order is warranted. If the Region Chief Investigator determines that such an order is warranted, he or she will immediately notify the Region Director, the Director Field Services Support or the DAAFO and the Assistant Chief Counsel for Hazmat Law.

Responsibilities by Role

The Director Field Services Support or the DAAFO will notify and discuss the situation with Assistant Chief Counsel's Office along with the Engineering and Research Division, Standards and Rulemaking Division, Approvals and Permits Division, Outreach, Engagement, and Grants Division, and/or Program Development Division. The evidence will be examined to verify if noncompliance meets the specifications of imminent hazard.

1. If the Assistant Chief Counsel's Office, Engineering and Research Division, and the Field Operations representative (e.g. DAAFO or Director Field Services Support) concur that an imminent hazard exists, an attorney will prepare an Emergency Order for the respective regional office to issue the company official or other person having actual control of the transport vehicle and/or packagings.

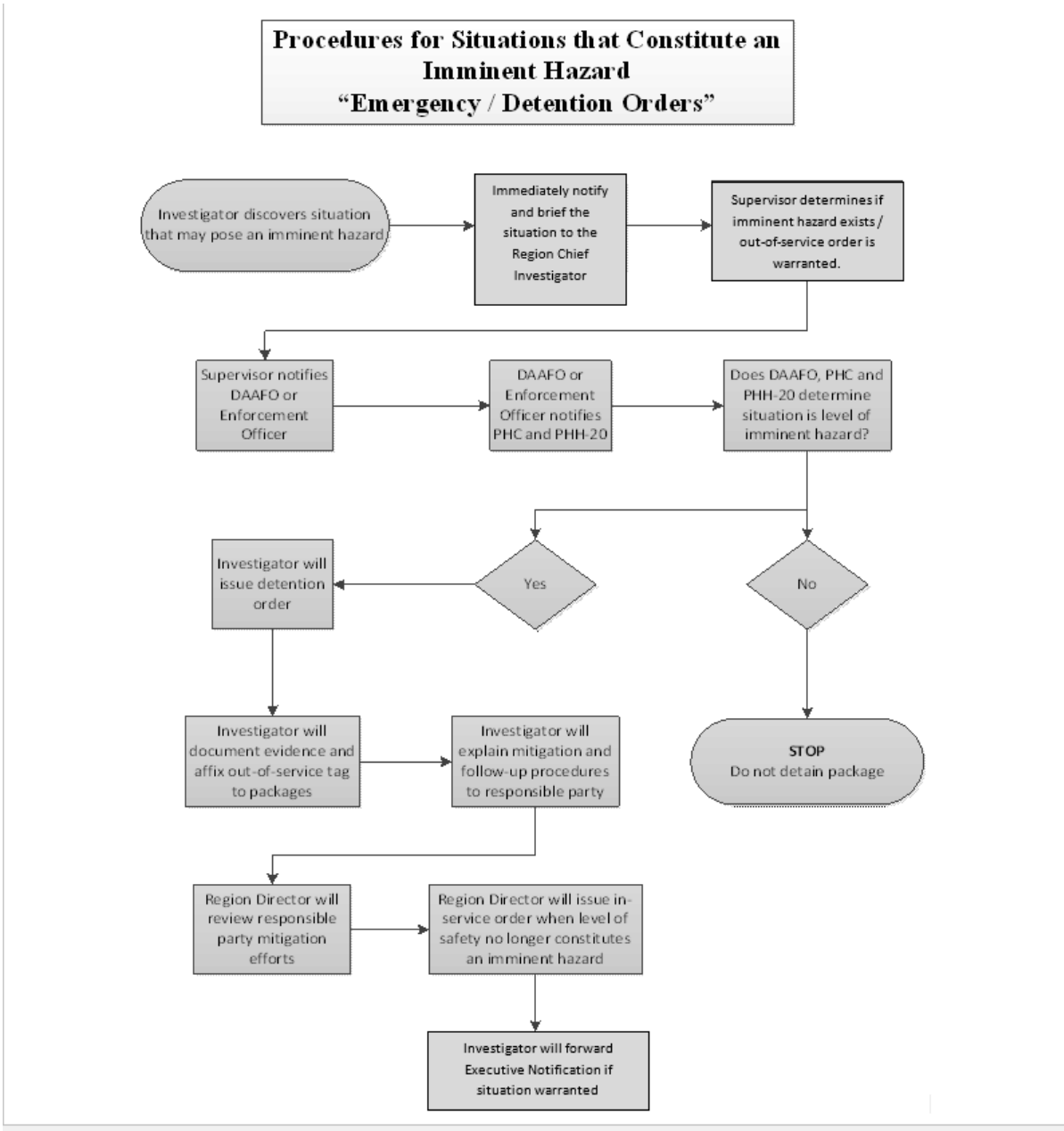
2. The investigator will have the company official sign and date the Emergency Order acknowledging the shipment is on hold until mitigation efforts have been completed.

3. The investigator will affix an out-of-service tag to the affected package or container deemed to pose the imminent hazard.

4. The investigator will explain to the company official the process for rescinding the emergency order after the hazards have been corrected and after submitting such request to the respective Region Director for approval.

5. The respective Region Director or designee will review the responsible party's mitigation efforts and will issue an in-service order approving the package or container to be put back into service.

6. If the imminent hazard was the result of a hazmat release, hazmat response, predication by other enforcement agency requesting investigative assistance, notification required to the National Response Center (NRC), or any emergency where the investigator issued a detention order, an Executive Notification must be completed and forwarded as required by Chapter 7 in this manual.



Decision Tree Emergency/Detention Orders

If less than full resumption of the activity(s) and/or operation(s) is appropriate, the respective Region Director or designee will issue a revised emergency order. The revised order will specify which activity(s) and/or operation(s) remain restricted and/or prohibited until additional mitigation efforts have been completed resolving the situation. Additionally, the Region Director, or designee, will issue a revised order detailing which activity(s) and/or operation(s) have been released and may be resumed at the discretion of the company

official.

If full resumption of activity(s) and/or operation(s) is permitted, the respective Region Director or designee will issue a revised order detailing that all activity(s) and/or operation(s) detailed in the previous emergency order have been released and may be resumed at the discretion of the company official.

- **Public notification.** The purpose of a public notification is to alert the public when conditions warrant that a material or packaging is being recalled due to the possibility of a serious hazard to people, property, or the environment. (Note: This is reserved for urgent situations where other means for preventing use of the recalled material or packaging are inadequate).
- **Recall effectiveness checks.** The purpose of these checks is to verify that all involved recall specified by the strategy have received notification about the recall and have taken appropriate action. The method for contacting the specified parties may be accomplished by personal visits, telephone calls, letters, and/or a combination thereof.

Chapter 7: Package and Materials Testing

Package Testing Program Overview

This chapter provides investigators with information on how to determine when packaging designs should be selected for verification of capability to meet performance standards based on the certification markings by the manufacturer and the process and procedures for testing projects.

Validation Testing is PHMSA's program for the verification of performance packaging testing capabilities for compliance oversight purposes. Validation Testing is used for many purposes; to include: routine oversight, in support of investigations, reinspections and retesting, high incident designs, complaints, accidents, in support of HMR changes, and to gather data on new manufacturers and new design-types.

Investigators that have been qualified in Validation Testing are authorized to lead projects and related packaging manufacturer inspections. Investigators should consult with their Chief Investigator and the National Packaging Safety Program (NPSP) Manager prior to initiation of packaging manufacturer inspection activities and potential Validation Testing projects to allow for coordination of activities, intelligence sharing, and scheduling of resources.

Packaging Design Selection Criteria
Designs for testing are selected based on several factors. In general, PHMSA seeks to verify the performance of designs that represent high risks for chemicals or performance certifications, high potential for consequences in the event of an unintended release in transport, high frequency of use for containers, greatest capacity for shipment, method of transport, history of PHMSA testing, known incidents involving a design, and other issues addressed below. The following guidance should be used to assess whether a design-type is considered for verification of performance testing capabilities:

- **Highest Performance Certification Rating** (degree of chemical danger authorized)
    - Example – steel drums rated ≥ X1.5/250
- **Highest Frequency for Transportation Use** (most utilized transport conveyance)
    - UN1A1 and 1H1 drums (55-gallon)
    - UN1H2 pails and UN3H1 jerricans (2.5 to 7-gallon)
    - UN31HA1 composite IBCs (275 to 330-gallon)
    - UN4G combination packaging
- **Capacity of Container** (potential consequence in the event of failure)
    - IBCs
    - Drums (55-gallons)
- **Mode of Transportation** –
    - Air (highest potential for consequence)
    - Highway, rail and vessel transport

- **Hazard Classification of Material Offered in Design**
    - Precedence set in HMR - high hazard and packing group materials
- **Design-Related Permits and Approvals**
    - Assessment of compliance and safety equivalency
- **Past Validation Testing Outcomes or Manufacturing Inspection Outcomes**
    - Retesting of designs after enforcement action for testing failures
    - Testing of designs after plant inspection enforcement action
    - No prior testing or inspection history (new manufacturers, plants or designs)
    - Changes in design-type specification since last oversight
- **Complaints, Accidents, Incidents Investigation** related to performance packaging
- **Selective Testing (Section 178.601(g)) Considerations**
    - UN4GV
    - Variations 1, 3, 4 and 5 when requirements not met or safety equivalency concerns
- **Routine Oversight**
    - No probable violations noted during plant inspection, but assessment of design performance for routine purposes
- **High Incident Shippers/Designs**
    - Inspections of high incident shippers where specific designs are reported by carriers repeatedly as failing in transport can warranted testing of these designs to assess performance
- **Other Indicators**
    - Production leak-proofness testing issues
    - Qualification testing or periodic retesting issues
    - Quality control concerns in manufacturing process
    - Lack of HMR knowledge and/or documented training for responsible personnel
    - Closure instructions unrepeatable or missing required elements

Validation Testing and Alternative Validation Testing

The HMR provides for two options when PHMSA seeks to verify design performance capabilities for UN-rated and non-specification hazardous materials transportation packaging, Validation and Alternative Validation Testing. Proof of Compliance requirements in Section 178.601(i) allow PHMSA to either conduct performance tests or require the manufacturer to supply packagings for testing.

Prior to 2009, all Validation Testing was conducted by PHMSA's independent laboratory, the U.S. Army Materiel Command, Logistics Support Activity (LOGSA), Packaging, Storage and Containerization Center (PSCC), Tobyhanna Army Depot, Tobyhanna, PA.

In 2009, PHMSA introduced Alternative Validation Testing (AVT) that allows the manufacturer of the packaging to conduct the testing.

Alternative Validation Testing (AVT)

The AVT option affords the manufacturer a degree of control of the process, testing location, and testing protocols. PHMSA uses AVT to validate performance packaging capabilities, observe testing, share best practices, and provide HMR requirements. PHMSA seeks to offer AVT when possible. If a design is related to a complaint, accident, or incident investigation, or the design and/or testing were not in accordance with HMR requirements, AVT is generally not offered.

AVT Offer Form and Policies and Procedures Document

Terms and conditions for AVT participation are presented and explained to the manufacturer in an AVT Offer Form, along with PHMSA's Validation Testing Policies and Procedures document. The AVT process must be formalized, and terms and conditions followed by the tester so that PHMSA can validate the results. The AVT Offer Form and Performance Packaging Validation Testing Program Guidelines are available from the NPSP Manager, the investigator's regional packaging team member, and on SharePoint: http://our.dot.gov/team/phmsa.fieldops/PACKAGING/default.aspx?RootFolder=%2Fteam%2Fphmsa%2Efieldops%2FPACKAGING%2FLOGSA%2FPackage%20Testing&FolderCTID=0x0120008F27F82790C2E84B88E97233EF298E92&View={79DCB4D6-1AD1-40E0-8A76-F0DBE86D45B0}

AVT Expenses

All expenses related to AVT, including testing, test specimens, and shipping of specimens, when necessary, are the responsibility of the manufacturer. However, the manufacturer may use the AVT results to requalify the design. Projects that are conducted in accordance with offer terms, policies and procedures for the program, and HMR requirements will be considered as official.

Compliance Determination Before AVT Offer

Prior to all possible AVT offers, an inspection of the manufacturing and testing location(s) should be conducted, unless PHMSA has recent experience to determine compliance. The investigator must determine compliance for the manufacturing and testing location(s).

If a design is tested at a different location from a plant inspection, an AVT offer may be possible, but knowledge of the testing practices and protocols of the tester is necessary. If the tester is a PHMSA Third Party Laboratory (TPL), no inspection of the laboratory is necessary. Any probable violations noted during the testing should be documented as quality control issues in an exit briefing issued to the TPL. PHMSA does not use AVT to identify probable violations for enforcement action.

In order to determine testing program compliance as part of the oversight process for all manufacturing and testing facilities inspections, an assessment must be made. The assessment is made through demonstration testing of a UN-rated design based on the test report and assembly and closure used for qualification testing. Demonstration testing is an important compliance oversight tool. The investigator should request demonstration testing during all inspections where qualification testing is conducted.

The demonstration testing process should be a simulation of qualification testing. It requires the following:

- a review of test reports and testing protocols;
- a discussion with testing personnel on their actual procedures;
- a review and discussion on test equipment, technical capabilities and actual procedures used;
- an assessment of HMR knowledge and understanding of testing personnel;
- observation of packaging preparation, conditioning, testing and pass/fail determination;
- and the use of actual UN packaging.

Any test specimens that fail during the demonstration testing process should not be used as evidence of a probable violation for a design that is incapable of passing prescribed tests. The performance of the design during demonstration testing should be used as a factor in PHMSA's decision regarding on whether to verify performance packaging capabilities through AVT or Validation Testing. Testing program deficiencies noted during demonstration testing must be corrected before AVT can be offered. The AVT option is used to assess design performance capabilities, not testing compliance.

AVT Offer Process and Procedures

The best scenario for an AVT offer is during a plant inspection when the design is produced and subjected to qualification or periodic retesting on-site. The design should be tested at the same facility where it was last subjected to certification testing. However, other scenarios are possible and are made on a case-by-case determination in coordination with the NPSP Manager.

The investigator completes separate AVT Offer Forms for each party involved in the project. When an outside tester is used, both parties must agree to participate in the program. The packaging manufacturer is first presented with an offer. If the manufacturer accepts the AVT offer, the investigator then presents a separate offer to the tester for consideration.

All AVT offers should be accepted or declined as soon as possible, particularly when offer terms require testing to be completed while the investigator is on-site. If an AVT project is declined, the project is terminated. If HMR requirements or terms of the offer and policies are not met, a second set of test specimens will be purchased for Validation Testing at

PHMSA's independent tester. All potential AVT offers should be coordinated with the NPSP Manager in advance.

AVT Process Observation and Test Report

PHMSA will observe all aspects of AVT project completion. The investigator is responsible to ensure that all terms, conditions and HMR requirements are met. The tester should be instructed to handle the AVT project in the same manner that they previously tested and certified the design-type. The tester should not vary from their standard procedures. Testers should be instructed to explain for the investigator every step of the process prior to start of any action relevant to preparation, closure, conditioning and testing. The investigator must be fully informed on the procedures in advance of each phase of the project.

The investigator should observe every step of the process, including weights and measurements determination, filling, closing, conditioning, preparation for testing (fixturing, etc.), testing, and pass/fail determination. All test samples should be filled and closed based on data gathered by the tester while the investigator observes. Prior test report indications should be checked against actual weights and measurements, such as tare weights, overflow capacity, stack loads, etc. Gauge measurements, temperature readings, conditioning times, drop test heights, vibration cycles per minute, stack test loads, and all other indications must be observed and verified by the investigator and documented in notes.

If the investigator determines that an action to be taken by the tester during any step in the process will be in violation of HMR requirements, or in conflict with the tester's documented procedures and protocols, or where the investigator disagrees with a tester reading, calculation, etc., the issue should be discussed and resolved on the spot if possible. All HMR required tests and test series should be conducted as part of AVT.

A test report that describes the design, testing and outcomes for each test series is due to PHMSA within 10 business days after testing is completed. The test report must meet HMR requirements for a self-certifier or independent tester other than a PHMSA TPL. For TPL's the report must meet Competent Authority Approval requirements. The test report shall be sent to the NPSP Manager who will forward a copy to PHMSA's Office of Engineering.

Validation Testing

PHMSA's primary use for Validation Testing is to assess performance for packaging designs that have been properly manufactured, tested, certified and marked in accordance with HMR requirements. Validation Testing is also used for designs related to complaints, accidents, incidents or investigations. All expenses related to Validation Testing, including costs for test specimens, packaging for transport, shipping and testing are funded by PHMSA.

LOGSA's Role, Testing Standards, and Policies and Procedures

As an independent tester for PHMSA, LOGSA has no interest in testing outcomes. To promote consistency in testing, and the reliability of the results, LOGSA uses ASTM testing

standards (ASTM D4919). LOGSA's Policies and Procedures for Validation Testing are available to the public on PHMSA's Web site:
http://phmsa.dot.gov/hazmat/field-operations/programs-and-inspection-teams

and on SharePoint at the following link:
http://our.dot.gov/team/phmsa.fieldops/PACKAGING/default.aspx?RootFolder=%2Fteam%2Fphmsa%2Efieldops%2FPACKAGING%2FLOGSA%2FPackaging%20Policies%20and%20Strategies%20Documents&FolderCTID=0x0120008F27F82790C2E84B88E97233EF298E92&View={79DCB4D6-1AD1-40E0-8A76-F0DBE86D45B0}

PHMSA will ask LOGSA to repeat the testing procedures and protocols from the most recent periodic retest project. Reconditioned drums will be assembled and closed in accordance with instructions provided to end-users. The performance certification marking applied to test samples is the standard used, not the test report performance certification. All performance determinations are based on HMR criteria for pass/fail determination.

In-keeping with industry protocols, PHMSA will ask LOGSA to start all liquid-rated single packaging and projects with the drop, hydrostatic and leak-proofness test series. For combination packaging intended for liquids, the drop test and internal pressure tests for air-certified designs will be conducted first. If a non-bulk of IBC design fails more or more test series, PHMSA reserves the right to end the test project and report on the results. This also follows industry protocol to identify under-performance of a design for analysis. LOGSA conducts Validation Testing in the order that the NPSP Manager designates. PHMSA seeks to have all designs tested and the associated test report and video released within 8 weeks after test samples arrival and test engineer assignment.

Industry Observation of Validation Testing

PHMSA will attempt to allow packaging manufacturers to observe partial testing (drop, leak-proofness and hydrostatic pressure testing, for example) at LOGSA on a case-by-case basis. The factors include scheduling of LOGSA resources for PHMSA testing, and PHMSA and manufacturer staff availability for travel coordination.

Release of Test Report, Video and Failed Samples for Analysis

PHMSA always provides the packaging manufacturer with LOGSA's test report and video, along with an exit briefing prepared by the investigator to record the official outcome. When failures are determined, the manufacturer will be given an opportunity to examine the samples at LOGSA. Alternatively, PHMSA may authorize the return of failed test samples to the packaging manufacturer for failure analysis. LOGSA maintains all failed test samples until disposal is authorized by PHMSA. If PHMSA takes enforcement action related project failures, the containers will be maintained until the action concludes.

Validation Testing Project Selection Form and Use

After the investigator selects a design for Validation Testing, the next step is for the investigator to complete the Validation Testing Project Selection Form (Validation Testing Form) for each design to be tested. The Validation Testing Form is available on SharePoint at the following link:

http://our.dot.gov/team/phmsa.fieldops/PACKAGING/default.aspx?RootFolder=%2Fteam%2Fphmsa%2Efieldops%2FPACKAGING%2FLOGSA%2FPackage%20Testing&FolderCTID=0x0120008F27F82790C2E84B88E97233EF298E92&View={79DCB4D6-1AD1-40E0-8A76-F0DBE86D45B0}

The completed Validation Testing Form should be provided to the seller of the packaging and to the NPSP Manager. The investigator should consult with the NPSP Manager about information that should be identified for each project. The submission starts the process for purchase, transportation and testing.

Sales Quote Generated by the Packaging Vendor and Purchase and Transportation Arrangements

The vendor uses the Validation Testing Form to identify the design-type and components for purchase, and to prepare a mandatory sales quote for submission directly to LOGSA. LOGSA's point of contact information for the purchase is identified on the Validation Testing Form. Basic information about the design-type, components, assembly and closure, and testing requirements for LOGSA's knowledge should be identified.

All packaging for Validation Testing will be purchased by LOGSA using PHMSA funds. Preparation of packaging for transport (pallets, stretch-wrap, and preparation of the load) and transportation will also be paid by LOGSA. Any offer by a packaging manufacturer to provide packaging at no cost to PHMSA should be declined unless approved by the NPSP Manager. PHMSA will pay market-rate or GSA schedule, for all packaging and components.

The sales quote should identify the follow sell to/ship to information –

U.S. Army Materiel Command (LOGSA-PSCC)
ATTN: AMXLS-AT (Ryan Roberts)
Warehouse 2, Bay 5
11 Hap Arnold Boulevard
Tobyhanna, PA 18466-5097
(570) 615-9057

After LOGSA receives the sales quote from the vendor and verifies authorization for purchase from the NPSP Manager, LOGSA will contact the vendor to make shipping arrangements. In most cases, LOGSA will use its established contracts with carriers. Therefore, the vendor does not have to obtain shipping rates for the sale quote unless requested by LOGSA.

Purchases totaling $3,000 or less can be paid by VISA credit card, when accepted. Purchases exceeding $3,000 must be paid by check. Vendors must be advised to take no action until LOGSA contacts them to execute the purchase.

Submission of Records to Complete Process

After securement of test samples and evidence collection, the investigator provides the NPSP Manager with the completed Validation Testing Form, current test report, assembly and closure instructions, photographs and observation report, and sales quote. The NPSP Manager will review the documentation for completeness, and seek additional input from the investigator, manufacturer, tester or vendor as needed. The NPSP Manager will oversee the purchase, transportation, project planning and testing on behalf of the investigator.

Assignment of Inspection Report Numbers for AVT and Validation Testing

Each activity related to AVT or Validation Testing is assigned a unique report number and inspection reports are processed in CMS. This is necessary to differentiate related activities. For example, if the investigator conducts an inspection of a packaging manufacturer and selects a design for AVT, separate report numbers will be assigned to each activity. A third report number will be assigned for the second set of samples secured for Validation Testing if the AVT project is not completed. A fourth report number will be assigned if the AVT project is to be conducted at an outside test facility where PHMSA has no recent compliance history, because an inspection of the tester is warranted to determine HMR compliance prior to the AVT project.

Other examples where report numbers are assigned include the selection of designs during packaging distributor inspections. The inspection of the distributor is assigned a report number. If a design for testing is dual-rated and testing at both performance certification levels is warranted, two sets of containers are secured, one for each certification. Two separate report numbers are assigned. If a design fails AVT or Validation Testing, and PHMSA offers corrective action testing to assess performance improvement claims, another report number is assigned.

All inspection report numbers assigned by the investigator should be identified and explained in each report processed as part of the oversight activities. For example, the plant inspection report should reference the AVT or Validation Testing, and corrective action testing.

Packaging Sources for AVT and Validation Testing

Investigators may obtain test specimens for AVT and Validation Testing from any available source, such as from a packaging distributor. The preferred source is direct from the packaging manufacturer, as part of a plant inspection. However, an inspection of the manufacturing plant may not always be possible. It is acceptable for an investigator to purchase samples from a distributor if an assessment of compliance for the design-type can be made from a review of the test report, closure statement and review of the specimens.

Regardless of the source for packaging, the investigator should attempt to select the set from a single production lot when possible. Making this determination may not be possible at an end-user or packaging distributor. All test specimens should have the same specifications, including closure and gaskets, capacity, accessories and other component parts. For molded plastic containers, the manufacturer will likely have multiple molds for bodies and lids. The investigator should select bodies from a single mold, rather than units produced from different molds. The same applies to lids for open-head containers.

During a plant inspection, if a design of interest is not in the inventory, the investigator may not request that containers be produced for the sole purpose of Validation Testing or AVT. However, it is acceptable to accept a container for testing if the manufacturer is willing to produce extra containers as part of a scheduled or anticipated future production run. The investigator should return for securement and confirmation of specifications and components.

Sample Lot Size and Securement for AVT and Validation Testing
For each Validation Testing and AVT project, the following number of samples should be obtained for testing for each project:

- Single packaging - 24 units**
- Combination packaging - 20 units**
- IBCs and Large Packagings – 5 units**

* When AVT is offered, two sets of containers are secured. One set of samples is for the AVT project. The second set of samples will be used for Validation Testing in case the AVT is terminated by either party, offer terms are not met, policies and procedures are not followed, or PHMSA does not endorse the testing outcomes.

** The lot sizes listed above do not correlate to minimum lot size for qualification and periodic retesting. Extra samples are secured to account for damage in transport, weights and measurements calculations, and other factors.

For designs where investigator seeks both ratings verified through testing (e.g., X and Y ratings or liquids and solids), one set of test samples per performance rating is required. Each set of containers is assigned a separate report number. If a dual-rated container is selected, PHMSA generally seeks to test for the higher performance certification only. If a design is rated for liquids and solids, verification of performance for the liquid-rating is the higher priority.

The second set of containers for Validation Testing is released to inventory if the AVT project is endorsed. Therefore, no evidence tape is applied to the second set of samples. The containers should be isolated and secured on pallets with stretch wrap. The inspection report number assigned to the second set of containers is marked on evidence tape applied to the outside of the stretch-wrap.

Securement of Samples and Evidence Tape Application for AVT and Validation Testing

There are instances when PHMSA orders packaging direct from the manufacturer or distributor without in-person observation and securement. When packagings are selected by the investigator in-person, the vendor should prepare containers for transport with the investigator's input and direct observation.

Use of Pallets and Stretch-Wrap

For transportation purposes, oversized pallets should be used whenever possible to containerize packaging for purchase. Containers should be loaded to limit overhang off the pallet. Stretch-wrap should be secured firmly to all four pallet corners to prevent containers from shifting off the edge of the pallet in transport. Drums should be double-stacked, when possible, to reduce transportation costs. If the vendor does not offer pallets and wrap, drums may be shipped loose. Composite and rigid plastic IBCs do not need to be palletized and wrapped for transport because they have integral pallets.

Evidence Tape

All packaging obtained in-person will be marked with evidence tape, or the lot of containers may be stretch-wrapped and evidence tape placed on the outside of the wrap for transportation. The investigator's report number must be marked on the evidence tape applied to each container or stretch-wrapped pallet or IBC. Individual test samples that are marked with evidence tape should have the report number, sample size and sample number indicated (e.g., Report 18001001 Unit 1 of 24). Evidence tape applied to individual test samples should be affixed above the UN certification string when possible.

When more than one pallet of non-bulk containers is secured, or for IBCs, each pallet or IBC is also marked with the total number of pallets or IBCs in association with the report number. For AVT project, each set of containers should be marked to indicate the testing location - AVT or Validation Testing.

Evidence tape is also applied to all installed closures, valves, locking-rings, etc., to prevent tampering prior to testing. For packaging closures that are not installed, such as lids for open-head pails, or screw-caps for inner packaging, box tape, etc., the components should be boxed and placed on the pallet when possible. The box of parts should be marked with evidence tape and indication of the components enclosed.

Packaging Shipped Unassembled, Broken Down and Wood Pallets for IBCs

For fiberboard combination packaging that is sold broken-down, the broken-down boxes and overpacked component parts should be stacked on the pallet then stretch-wrapped. Flexible

and fiberboard IBCs that are not assembled for shipping should be palletized and wrapped. Wood pallets for fiberboard IBCs must be obtained from the source. These designs are often sold individually so that the end-user may source pallets locally. The pallet must be of the same design-type as tested and certified for AVT and Validation Testing. Pallets should be stacked together.The flat IBCs should then be loaded on top of the pallets. Nails, liner bags, twist ties and other components that are not stored in the broken-down IBCs should be overpacked in a box and placed on top of the IBCs. Boxes of components should be marked with the project number and other relevant details. The entire lot of pallets, IBCs, components are then stretch-wrapped for shipping.

Additional Evidence Collection for AVT and Validation Testing

Photographs

The investigator shall take photographs of the entire lot of packaging selected for testing. If evidence tape is applied to each test specimen, the photographs should show the evidence tape and markings. If multiple designs are selected, photographs of each sample lot should be captured. One representative sample for each design should be photographed to capture all surfaces of the package, including markings, individual components, other specification details and evidence tape. Photographs of palletized and wrapped containers should also be taken.

Observation Report

The investigator should prepare an observation report for each design. The observation report should include the investigator's name, report number, date of observation, location, manufacturer and certifier, total number of units, all available package markings, dimensions for each component and for the completed package, tare weights for the packaging, when practical, and the type of testing – AVT or Validation Testing.

Test Report and Assembly and Closure Statement

The investigator should obtain the design-qualification test report, most recent periodic retest report (if applicable), assembly and closure instructions for the design as it was tested and certified, and any Permit or Competent Authority Approvals that apply to the manufacture, testing, and certification.

Reconditioned Steel Drums Closure and Other Considerations

Because reconditioned drums do not require periodic retesting by the reconditioner, the only record necessary for AVT or Validation Testing is the assembly and closure instructions provided to the end-user. All reconditioned drums will be prepared for testing based on the assembly and closure instructions provided by the reconditioner.

The investigator must assess HMR compliance for reconditioned drums using the same procedures as new or remanufactured designs. Each reconditioned drum test sample must be examined to determine that the performance marking applied by the reconditioner to the side of each package is not greater than the original performance marking embossed on the bottom of the container by the manufacturer, unless the design was tested and certified by the reconditioner (remanufacturer in this scenario). The entire lot of samples should be the same height, number of rolling hoops, closures and gaskets, and locking ring, bolt, nut and gasket for open-head drums.

Reconditioned drums that do not meet minimum thickness requirements for reuse as hazardous materials transportation packaging (see 49 CFR Section 173.28(b)(4)(i)) will not be authorized for AVT or Validation Testing except in support of the scenarios detailed in this chapter.

Remanufactured Steel Drums

If an investigator selects a design for testing at a steel drum reconditioner, and the drums are also embossed on the sidewall of the drum during the operation, the design has been remanufactured. Remanufacturing today either means installing new top and or bottom heads on an open-head or tight-head drum, or converting an open-head drum to tight-head or vice versa. Some operations also convert non-specification designs to UN.

A steel drum cannot be reconditioned and remanufactured in the same process. A remanufactured drum is new when it comes of the production line. A reconditioned drum is previously used and returned to service after inspection and testing with the same specifications as before the process. Therefore, the marking of a steel drum that has been remanufactured in the same process as reconditioning is in violation of the HMR requirements.

In this scenario, the investigator would select the design for testing as a new or remanufactured. All requirements for verification testing of a new design must be followed. A review of the remanufactures' testing program, if conducted in-house, is required. Review of test reports is necessary against the specifications of the samples being produced.

Special attention to selection of the individual samples as part of a lot for AVT or Validation Testing is necessary to ensure consistency in design height, rolling hoops number and location, thicknesses of heads and body, gauge of locking ring, bolt and nut for open-head designs, bung type and gasket, and original design-type certification (tight-head versus open-head) is very important. An assessment of the design-type testing performance cannot be made if the specimens in the lot are not identical or very similar.

Corrective Action Testing after AVT and Validation Testing

In the event of AVT or Validation Testing design failures, PHMSA seeks corrective action to be taken by the manufacturer to improve testing performance and promote packaging safety. When manufacturers make design, testing, manufacturing or other significant changes that are purported to improve the performance of the packaging, PHMSA may offer the opportunity to have the new or improved design retested to substantiate claims. Post-AVT or Validation Testing is called Corrective Action Testing (CAT).

PHMSA's goal for CAT is to validate performance. The same policies and procedures for AVT and Validation Testing apply to CAT. The results of CAT are noted in the investigator's inspection report for the AVT or Validation Testing project. Any packaging failures determined in CAT are not used for enforcement purposes. Prior to CAT offers to manufacturers, if the design is considered new or different, qualification testing must be conducted and the certification test report provided to PHMSA for review and assessment.

Case Management System Entries for AVT and Validation Testing

Within five business days after AVT or Validation Testing project initiation, the investigator must create Case Management System (CMS) entries to document the project and all related activities. Plant inspections, distributor inspections, end-user inspections and AVT testing conducted at an outside testing facility or manufacturer operated facility other than at the plant where the design is manufactured must each have separate entries in CMS to differentiate the activities. All related CMS entries must be cross-referenced.

CMS entries must identify the manufacturer/remanufacturer/reconditioner, etc. (the entity responsible for application of the performance mark) as the company of record. The primary inspection code in CMS for selection of packaging for testing is "41". The secondary inspection code should correspond to the type of packaging. CMS entries must provide all available information about the design, and a statement regarding any related inspection(s) and corresponding report numbers. The summary must provide the UN certification, manufacturer's name and location (plant where applicable), capacity, closures specifications, test report, photographs, observation report, purchase correspondence, etc.

HMR Citation for Designs That Fail AVT or Validation Testing

The investigator should use the following basic summary format to document in exit briefings and inspection reports when a design fails in AVT or Validation Testing projects:

*Represented, marked, certified, sold and offered (insert - steel drums, combination packaging, composite packaging, intermediate bulk containers, etc., as appropriate) marked (insert full performance marking such as UN1A1/X1.3/250/15/USA/+ZZ0123), when the containers were not capable of passing the (insert each test that the design failed - drop, stack, leak-proofness) test(s) as prescribed in Section(s) 178.*** (include each testing section as appropriate), in violation 49 CFR, Sections 171.2(c) and (g), 178.2(b), and 178.*01(b) (insert non-bulk or IBC section as appropriate).*

Hazardous Materials Testing

Investigators should never purchase or obtain a sample of a suspected hazardous material without prior approval from the Region Chief Investigator or the Region Director.

Investigators can purchase or obtain samples of materials by two methods: (1) directly from a vendor at origin, with OHMSFO identifying and tagging the samples, and having the vendor ship samples to laboratory facilities; or (2) indirectly from a vendor, by arranging with a company in the same business to order samples on field's behalf.

Safety

Investigators shall exercise reasonable care and discretion in selecting materials for testing. When selecting materials for testing, consider the following:

* Potential risk during transportation or storage incident to transportation due to the nature or quantity of the material involved. No RAM will be purchased for testing.
* Previous experience with the hazardous material or regulated entity.
* Ability to safely transport the product in question to a laboratory.
* Cost of testing.

Investigators should never open a package and remove the product for sampling.

Investigators should keep in mind that the purpose of this program is to safely purchase packaged samples of hazardous materials. **They must never deliberately expose yourself to raw chemicals of any kind.**

To ensure the safety of field investigators and integrity of evidence collected during an investigation, no investigator should take a sample material into his or her personal possession unless they have written instructions and approval from the Region Chief Investigator or the Region Director.

Prior to accepting a hazardous material for testing, investigators should thoroughly review the Safety Data Sheet (SDS) and any other available safety data concerning the material. They should not transport the specimen if there is any doubt about its safe transportation.

Procedures for Obtaining Samples

A regulated entity may be asked to provide a sample of one or more hazardous materials it offers for transportation. Investigators may request a sample which they believe may not be in compliance, or may request a sample solely to check the identified classification. Samples may be obtained at the manufacturer's facility, or purchased at a customer location.

Investigators shall never draw or extract raw samples themselves. All investigators are required to wear agency issued PPE when obtaining sample material and hazardous

materials safety training is required. Samples should be provided in the smallest size package required for testing and all packaging should be identified and marked with all parties present, for verification of sample integrity and to ensure the closure/sealing process when applicable UN specification packaging is preferred.

If purchasing materials through another entity is the only feasible way to obtain the material, and such purchases potentially involve the commercial transportation of hazardous material**,** the investigator must inform the Region Chief Investigator or the Region Director. All parties will discuss the logistics of the planned purchase to assure that the transportation risk is acceptable and that all safety precautions are taken.

In those instances, involving commercial transportation and where the subject entity is alleged or suspected to be in violation of any applicable rule, regulation or civil/criminal statute involving hazardous material**,** Region Chief Investigators and Region Directors will evaluate the nature of the suspected offense, the investigatory steps anticipated, and the associated risk prior to any indirect purchase.

Quantity

In purchasing samples for testing, investigators should obtain only the minimum amounts necessary to conduct valid testing. They should make sure to obtain materials which are packaged as they ordinarily are shipped. Investigators must purchase the material in question from a shipper or distributor in gallon, quart, or pint quantities, packaged as sold by the shipper.

Once a product is identified for testing, investigators should request the smallest possible sample sufficient to facilitate accurate testing (usually 100 grams for solids or 100 ml for liquids is sufficient). A product packaged in the supplier's original packaging is preferred if the quantity is reasonable. One gallon or one pound are the maximum quantities that should be obtained for most testing.

Evidence collected for sampling shall be sent to the closest test facility identified by Region Chief Investigator or the Region Director. The lab will pick-up, test and dispose of the sample once classification testing has been completed. The lab test costs will normally be paid by using the Region Government Purchase Card since most often the costs will be below $3,500. If costs are more than $3,500, then a Purchase Order must be processed and market research may need to be performed to find the best price for the government. This may take several weeks to process.

Disposal charges are usually included in the testing contract. Collecting large quantities of excess material is discouraged.

Reimbursement
A company may provide the material at no cost to the government. If reimbursement is

requested, contact the Region Chief Investigator or the Region Director to purchase with the Region Government Purchase Card. Investigators should document all transactions and obtain clearly verifiable receipts. With prior coordination, a purchase order can be arranged. Purchases may never be made using the Government travel credit card.

Chain of Custody

Once the sample is purchased, it must be managed as evidence. Investigators should secure and seal the closure device with OHMS-issued standard evidence tape. They should identify each product with a unique identifier which includes the investigator's badge number, date sample was collected and sequence number for samples collected in that day. An example of a unique identifier is: 243/09/22/16/002 which was the second sample collected by investigator with badge number 243, on September 22, 2016.

Investigators should secure the material in an agreed location with the company and prepare a Chain of Custody Form. (Appendix B). They should make sure to shield the material from extremes in temperature and light, and coordinate delivery to the lab as soon as possible. Investigators must take a photograph of the material prior to departing the inspection site, and obtain a SDS and sample Bill of Lading. They should provide a copy of the SDS to the testing lab for its reference and safe handling of the material. Investigators must leave the original chain of custody document with the material and keep a copy for your records. See Appendix B for the chain of custody form.

Investigators are to ensure to complete the following task when obtaining samples:

1. Chain of Custody
2. Evidence tape
3. Photographs
4. Packaging
5. Closure
6. Safety Data Sheet (SDS)
7. Delivery of Evidence to Regional Testing Facility
8. Instructions for tests to be performed on the material

Animal Testing Policy for Corrosive Materials

When arranging for testing of materials for corrosivity and the use of animals is not required, investigators should inform the prospective laboratory that testing should utilize an *in vitro* testing protocol (such as Corrositex®). Investigators should advise the laboratory that testing using animals should be conducted only when absolutely necessary.

Chapter 8: Planning, Conducting and Completing Accident Investigations

Overview

An investigator's responsibility in accident investigations is investigating and documenting the role and relationship between hazardous materials and the associated packages. The scenes of accidents are typically hectic in the hours and days immediately following the incident. A variety of federal, state and local safety and emergency officials usually converge on the scene, which can present operational, logistical, and jurisdictional challenges for an investigator.

Investigators shall be guided by the following steps during the course of completing assigned accident investigations:

- Use existing mechanisms (including others through National Incident Management System (NIMS)/Incident Command Structure (ICS) structures if necessary) to collect available evidence that will enable a thorough investigation;
- Generate and communicate initial and updated Executive Notifications for the activity in accordance with this manual;
- Aggressively pursue a determination as to the root cause (through a failure analysis process articulated in the Investigation Management Handbook);
- Perform a thorough compliance determination considering the entire transportation stream;
- Coordinate efforts and progress with other applicable modal administrations;
- Produce a final investigation report that includes:
    - all corresponding Executive Notifications for the activity,
    - findings, summaries, evidence, interviews, photographs, etc.,
    - identification of recommended best practices (if applicable),
    - enforcement and safety recommendations (if applicable);
- Communicate the report, including findings and recommendations;
- Develop Lessons Learned and share with Region Leadership; and
- Refer applicable enforcement actions as appropriate.

Lessons Learned

In addition to collecting findings of fact and reporting conclusions, an effective accident investigation program helps to capture and share lessons learned from incidents to: (1) improve hazardous materials transportation safety, and (2) to improve our own incident investigation processes and procedures. PHH-50 and PHH-60 will provide the Lessons Learned to the general public. Accident investigation reports will be posted on PHMSA's Web site and incidents can be tracked through Form 5800.1 data searches.

Lessons learned are those observations and experiences, acquired in the course of completing the investigation, which can be used to make implement new procedures or amend the existing

way of doing things to improve hazardous materials transportation safety. The improvements gained from a lessons learned analysis generally fall into one of three categories:

Those that improve hazardous materials transportation safety through recommended actions taken by the responsible parties.
Those that improve hazardous materials transportation safety indirectly through broad-based knowledge sharing via advisory bulletins, seminars, workshops, conferences, improved industry standards, new hazardous materials transportation safety regulations, etc.

1. Those that improve hazardous materials transportation safety as a result of improved PHMSA investigation processes and procedures.

Preparation and Planning

Investigator's Fitness for Assignment

After an incident occurs and a determination is made that on-site presence is needed, the Region Chief Investigator and prospective investigator(s) shall meet to discuss the investigator's fitness to respond. An investigator may be limited by a number of factors that includes current physical impairment, personal matters, or other concerns which may impact their ability to respond in a timely manner.

The Region Chief Investigator shall take the employee's concerns into consideration before making a final decision on assigning response personnel. However, the investigator's limitations or concerns do not preclude a Region Chief Investigator from directing an investigator to proceed to an accident scene unless the disclosed condition may result in a violation of the law.

Determining Incident Level Response

The response to an accident is categorized into three levels: Levels I, II, and III. If there is uncertainty in the level of response due to availability of information, the higher of the two levels should be selected.

1. Level I (on-scene response not required) - Minimal impact to people and/or the environment. Nominal incident which does not normally meet the reporting requirement pursuant 49 CFR §171.15.

    - Incident examples: Small scale hazmat incidents resulting in no deaths, injuries, evacuations, or closure of major transportation infrastructure (e.g., major interstate highway, railroad, airport, and waterway).
    - Response examples: Monitor incident, may require phone investigation and Executive Notification. Possible regional referral for follow-up inspection at the responsible party's location.
    - ICS/Unified Command (UC) normally not activated or limited to the immediate mitigation of the incident or corollary issues (minimal event with no multiple

operational periods).
- Follow normal Executive Notification criteria.

2. Level II (On-scene response possible) – Moderate impact to people and/or the environment. Meets one or more of the reporting requirements under § 171.15 or poses substantial potential for impact.

    - Incident examples: Medium-scale hazmat incidents resulting in moderate impact to people and/or the environment. Incident may require multi-agency involvement. Examples of these incidents include:
        - Hazmat incidents resulting in death or serious injury to people.
        - Public evacuations, major transportation infrastructure (e.g., major interstate highway, railroad, airport, and waterway) and/or facility shut down.
        - Moderate environmental impact due to the unintended release of a hazardous material or hazardous waste incident to transportation and/or in the transportation stream.
        - Medium scale events involving non-bulk packaging.
        - Incidents where modal agencies do not to respond/provide information.
        - Predicated request for investigative/technical assistance.
    - If on-site response is deemed necessary by Regional Director, the responding investigator should generally be on scene within 24 to 48 hours following receipt of first report. The length of time needed to respond should be discussed between the Region Chief Investigator and investigator during the Fitness for Assignment discussion.
    - Response examples:
        - Phone investigation and/or on-scene response/investigation.
        - Executive Notifications and investigative follow-ups.
        - May require preparation of an accident/incident root cause investigation report.
        - Possible regional referral for follow-up inspection at the responsible party's location.
    - Possible Partial ICS/UC activated (Possible operational periods).
    - Follow normal Executive Notification criteria.
    - Follow normal report writing criteria.

3. Level III (partial or full activation / on-scene response required) – Severe impact to people and/or the environment. Meets one or more of 49 CFR §§ 171.15 criteria; poses substantial harm; or as directed by leadership. This level investigation is also called a Coordinated National Investigation (CNI), as the scope of the investigation will most likely require the assistance and contributions from investigative resources from across multiple regions and may also involve other federal and state partners.
- Incident examples: Large-scale hazmat incidents resulting in severe impact to people and/or the environment normally requiring multi-agency involvement.

    - Major Hazmat incidents resulting in death or serious injury to people.
    - Public evacuations, major transportation systems/infrastructure (e.g., major interstate highway, railroad, airport, and waterway), and/or facility shut down for an extended period of time.
    - Severe environmental impact due to the unintended release of a hazardous material or hazardous waste storage incident to transportation and/or in the transportation stream.
    - Significant events involving bulk and non-bulk packaging.
- In most cases, this will require an on-scene response by at least one investigator and possibly more depending on size of incident. The responding investigator(s) should generally be on scene as soon as possible, but no later than 24 hours following receipt of first report. The length of time needed to respond should be discussed between the Region Chief Investigator and investigator during the Fitness for Assignment discussion.
- Response examples: Requires mobilization of accident investigative resources for on-scene response. Executive notifications and investigative follow-ups. Requires preparation of an accident/incident root cause investigation report.
- Incident Command System/Unified Command normally activated (may require inter-agency coordination to integrate into NIMS/UC structure, written Incident Action Plan/Operations Plan with extended multiple operation periods).

Modal Coordination

Other agencies may have similar authority to conduct investigations of accidents/incidents, especially for CNIs. To reduce duplication of efforts, coordination and cooperation with other DOT modal agencies, as well as with state, local and other Federal agencies is paramount during investigations. PHMSA will always attempt to partner with other agencies with shared investigative interests in order to achieve successes that are more transparent and collaborative.

Violations of the Federal Hazardous Materials Transportation Regulations identified during the accident/incident investigation will be managed in accordance with the Modal MOA and in accordance with the relevant sections of the Field Operations Manual. Reports completed may be limited to the violations discovered. There is no requirement to conduct full or follow up inspections of a shipper, carrier, or other party.

Conducting Accident Investigations

Arriving On Scene

The focus for emergency responders following an incident is to mitigate the hazards and ensure the safety of response personnel, surrounding communities, and the environment. The role of investigators is not that of a first responder. Investigators should exercise appropriate levels of caution and patience to allow the first responders to complete their duties. The investigators will have ample opportunity to gather evidence and conduct an investigation after the scene has been cleared for safety. However, investigators should use the ICS/NIMS structure to highlight and request any evidence that may be susceptible to

damage as a result of response operations (e.g. photos of accident site or package). Investigators should not attempt to collect this data themselves. They should also ensure that all physical evidence has been properly decontaminated.

Safety Considerations

Investigator safety is the primary concern during accident investigations. All PHMSA employees assigned on-site at an accident scene must adhere to all agency safety policies. Employees shall not enter potentially or perceived dangerous situations.

Refer to the safety considerations detailed in Chapter 2 for mandatory and optional equipment when conducting an accident investigation.

Additionally, the equipment listed below shall be worn by and provided to each investigator when responding to an accident:

- Binoculars
- Chemical Resistant Gloves (PVC)
- Extreme Cold Weather Gear (as needed)
- Flame Retardant Shirts/Pants and/or Coveralls (as needed)
- Flame Retardant Reflective Safety vest
- Intrinsically Safe flashlight
- K8 RAD Meter (as needed)
- Three-Step Ladder (as needed)

It is the lead investigator's responsibility to ensure that all PHMSA personnel on scene of the accident are wearing the mandatory safety equipment, at minimum. In addition, for ease of identification by other agencies, PHMSA employees will wear appropriate PHMSA issued PPE and uniform items while conducting accident investigations

Executive Notification Reports

Investigators are well-respected for their unique position to collect and disseminate key accident information that helps inform decisions and advise leadership. Executive Notification Reports have been developed to share initial critical information about the incident to a wide host of PHMSA senior executives. The report also permits investigators to easily provide updates as conditions at the scene change. The template for the Executive Notification Report can be located on the link provided here: http://phmsa-apps.phmsa.dot.gov/exec_notif/

PHMSA has established baseline criteria for incidents requiring Executive Notification Reports. There may be instances where detailed information associated with some of these may not be fully available in the early stages of an incident, but there are early indications of the significance and relevance to PHMSA and the DOT. As such, investigators and regional

leadership should use the criteria below when deciding if Executive Notification is warranted.

The Executive Notification Report criteria are listed below by category:

- Fatalities / Injuries / Evacuations
  - Hazardous material release with an indication of one or more hazardous materials-caused fatalities or multiple injuries.
  - Evacuation or shelter-in-place of 100 or more individuals due to a hazardous materials release.

- Environmental / Infrastructure / Safety / Property Impacts
  - Significant environmental impact or property damage; infrastructure destruction or damage; or widespread community impact (including drinking water sources) caused by hazardous materials in transportation.
  - Anhydrous ammonia release or accident-related release of a toxic-by-inhalation (TIH) hazardous material affecting a populated area greater than 100 individuals or of major significance.
  - Explosion potentially related to hazardous materials transportation.
  - Catastrophic failure of a bulk shipment of Table 1 hazardous material (Table 1; section 172.504).
  - Major disruption to supply of energy products through the transportation infrastructure (e.g., major interstate highway, railroad, airport, and waterway) expected to last more than 24 hours resulting from an incident involving hazardous materials in transportation.
  - LNG marine carrier incidents while loading or unloading, particularly relating to shutdown of operations.
  - Suspected release of radioactive materials from a transportation incident.

- National Significance /Sensitivity / Media and External Interest

  - National Transportation Safety Board (NTSB), Chemical Safety Board (CSB), or other safety oversight agencies have launched an investigation team.
  - An emergency special permit associated with an incident is requested from or issued by PHMSA.
  - Strong indication that the incident is expanding such that criteria contained herein may be met.
  - Suspected noteworthy criminal or terrorist acts involving hazardous materials in transportation.
  - Major Washington, D.C. metropolitan area hazardous materials transportation incident.
  - National media attention.
  - Potential political interest; or if requested by a senior state or local official (e.g., governor; mayor; member of Congress).

In all cases, the assigned investigator is responsible for completing the initial Executive Notification Report and updates, as necessary, unless previously completed by someone else in the region.

During a Level II or III investigation, it will be necessary for investigators to provide updated information to leadership until a point where the event is controlled and the majority of the initial investigation is completed. The Executive Notification Report shall be modified to indicate the update by number (i.e. UPDATE #1, #2, etc.) in the subject line. The report should contain all initial information and include any additional data obtained while on-scene or as a result of further investigation. More than one update can be sent over the course of the on-scene activities. This report should provide updates on previously reported information, and not just duplicate what has already been provided in previous reports.

The number of Executive Notification Reports is dependent on the situation at the scene and whether any major changes have occurred (e.g., deaths now reported, significant increase in evacuations, etc.). Initial notifications are expected to be reported within 12 hours of the region receiving initial notification of the incident. Updated executive notifications are to be provided on an as needed basis, as circumstance at the scene change and become more serious. The important point to remember is that Executive Notification Reports serve as the best method to keep region and national leadership updated on an investigation's status. It is always best to over-inform leadership about an incident than to under-inform as a lack of information often leads to questions which may distract investigators from performing their primary duties.

At the culmination of major on scene investigative activities or where the scene hazards have been mitigated (cleanup may still be on-going) the investigator shall send a final Executive Notification Report. The subject line shall include the word "FINAL" in the subject line of the report. The determination as to when investigator may depart the scene will be made in consultation with the agreement of region and/or national leadership.

The guidelines regarding check-in frequencies and updated Executive Notification Reports are just that — guidelines. It is understood that some geographic areas or accident scene activities make the above requirements impractical/impossible. However, every practical means possible should be used to maintain lines of communication between investigators, the region/national leadership.

Region Leadership/Investigator Check-In Schedule

It is important to establish routine check-ins between investigators at accident scenes and the respective region leadership. This communication serves several purposes, to include: ensuring everyone is safe and has the proper equipment available and a means of providing

updates on the status of the event. The following guidelines intend to establish a timeline for when investigator(s) should contact the region leadership:

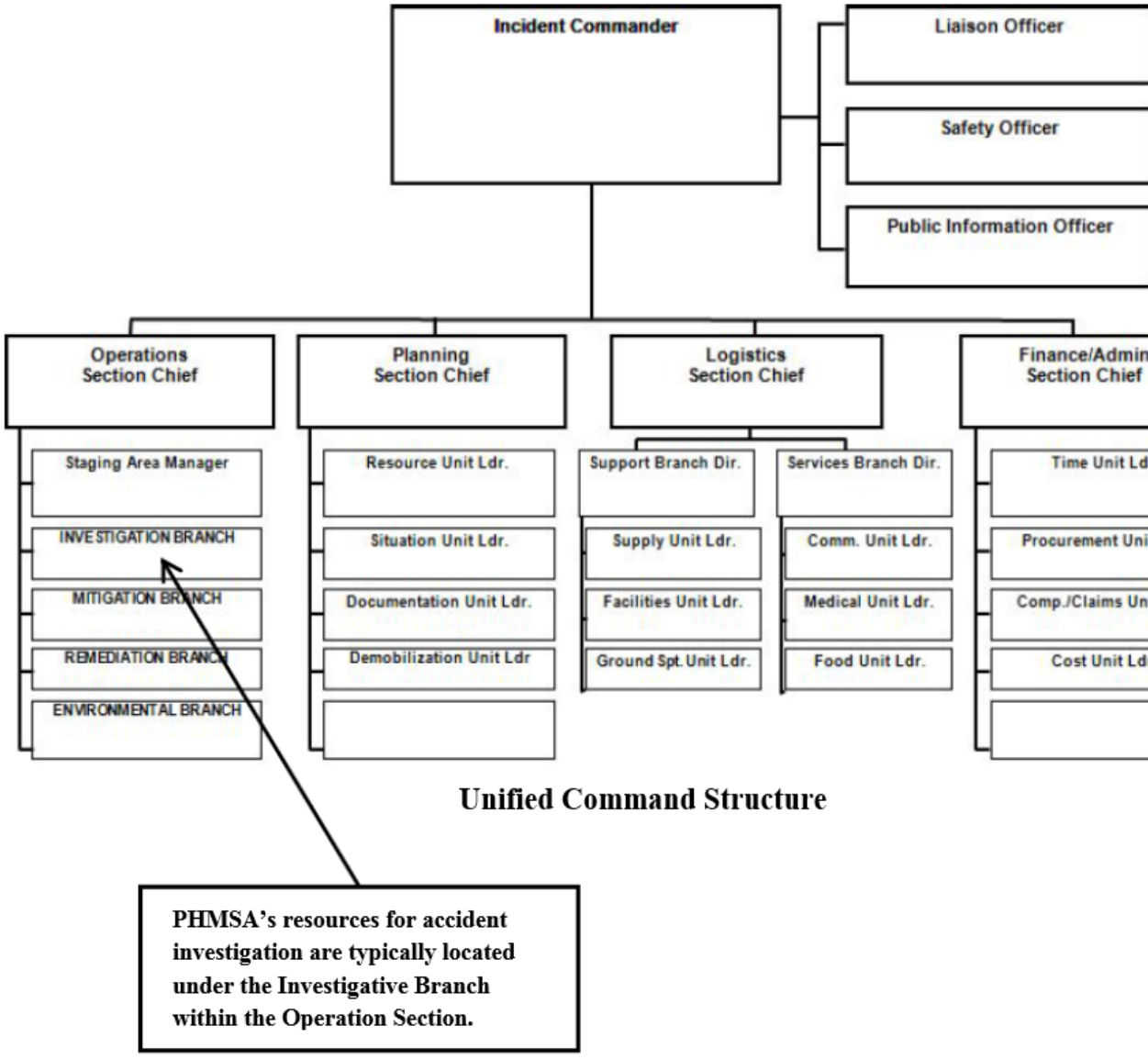
- At the halfway point during transit to the scene, if travel time exceeds two hours;
- Immediately after arrival at the accident scene;
- Whenever significant new facts are developed or the situation at the accident site changes significantly;
- As directed by the region leadership.

If multiple investigators are sent to the same accident scene the region leadership will assign one investigator the role of Investigator in Charge (IIC). The IIC will serve as the principle conduit to the region and/or national leadership team for on scene reporting.

Integration with Incident Command System (ICS)

An effective unified command is indispensable to response activities and requires a clear understanding of the roles and responsibilities of all participating organizations. The ICS, a component of the NIMS, is an important element to ensure the interoperability across multi-agency incident management activities. A UC structure enables organizations with various jurisdictional authorities in response to an incident to support each other through the use of mutual objectives. Each participating agency maintains its own authority, responsibility, and accountability.

The ICS is a response organization framework designed to enable effective and efficient incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure. ICS is normally structured to facilitate activities in five major functional areas: command, operations, planning and logistics, intelligence and investigations, finance and administration. PHMSA investigators will not normally be the lead investigative agency at any active incident scene, as PHMSA's role is strictly post incident investigation and not "first response."



Unified Command Structure

If an incident command structure or UC is established, investigators shall, upon arrival, report to the Incident Command Post (ICP) or equivalent and notify the Liaison Officer of their arrival. Upon check in, investigators should receive a brief regarding the status of the incident, site safety plan, and organization overview.

The Liaison Officer, or designee, may direct investigators to report to the designated Division/Group Supervisor, or the Operations Section Chief. In some instances, investigators will respond to an incident only in a support role function. Under no circumstances will investigators initiate any on-scene activities without prior approval from the Operations Section Chief, or designee, when an ICS structure is active.

Investigators should obtain and familiarize themselves with the Incident Briefing (ICS-201), Site Safety Plan (ICS-208), and the Organizational Assignment List (ICS-203), example copies of which are located in the Appendices.

Investigators may be asked, and should be prepared to provide input into the ICS forms outlining their planned activities while at the accident scene. This helps the Unified Command Structure ensure all needs are met in a unified, orderly manner.

State, Tribal and Local Official Contributions

Most major incidents are managed at the local government level. These incidents typically require a unified response from local agencies, the private sector, and non-government organizations. Some may require additional support from neighboring jurisdictions or state governments. A smaller number of incidents require Federal support or are led by federal agencies. National response protocols are structured to provide tiered levels of support when additional resources or capabilities are needed. The responsibility for responding to natural and man-made incidents that have recognizable geographic boundaries generally begins at the local level with individuals and public officials in the county, parish, city, or town affected by an incident. At most major scenes, the highest-ranking first responder on the scene will most likely be the initial incident scene commander, such as a police officer, sheriff, state police, or fire department official. Generally, by the time investigators arrive on scene to the accident, these officials are replaced with representatives from across federal, state, tribal and local governments. For small-scale incidents, investigators may arrive at a scene where a state or local official is still managing the response without initiating a formal ICS structure. In those cases, the investigators shall report to the lead official and inform as to their purpose and objectives.

On-Scene Priorities

There are four main priorities for investigators to accomplish when arriving to the scene of an accident, to include collection of evidence related to: classification, communication, package integrity, and remediation.

Classification

Investigators shall verify the shipper's compliance with the classification test requirements, package selection, and package testing in the HMR. Investigators will determine which classification testing was performed prior to shipment, how the shipper determined which package to select, and, if necessary, obtain any test reports for the package selected as needed. Investigators may need to complete follow-up compliance inspections to obtain additional information.

Communication

Investigators shall collect evidence on how the shipper and carrier displayed and presented the various hazard communications requirements in the HMR including communications between the carrier and the first responders (i.e., initial reports, shipping papers, package markings and labels). Investigators will record how the information influenced the decisions

and actions made by first responders by conducting interviews with first responders and carrier personnel, when available, shortly after an incident has been mitigated.

Package Integrity
Investigators shall determine the root cause and contributing factors of package failures by documenting package behavior and critical package data (e.g. materials of construction, dimensions, or qualification testing information), and load securement.

Remediation
Investigators shall verify the accuracy of the amount of product spilled/recovered, the total damage costs to the transport vehicles and surrounding infrastructure (homes, streets, etc.), the costs associated with evacuations and impacts to the environment, as articulated by the investigation management handbook. The investigators shall notify the responsible party (most likely carriers) of their responsibilities to submit DOT Form 5800.1 within 30 days of the incident. The data collected on the 5800.1 form is a critical component in helping to prevent future incidents. Forms should be submitted within 30 days to avoid penalties enforced by the Field Services Division.

As part of remediation, investigators shall provide regulatory oversight to ensure that any spilled product is prepared, packaged, and handled according to the HMR for re-entry into the transportation network. This includes examining transport vehicles to ensure display of proper markings and placards and that the vehicles are suitable.

Evidence Collection

Collection Procedures
The identification, protection and preservation of any evidence needed as part of an accident investigation are critically important. Investigators shall be guided by the following steps to ensure that they have completed a thorough examination of the accident scene and have put into place adequate safeguards for any evidence collected:

- Initial Scene Examination/Search – the investigator shall conduct a thorough examination and search of the entire incident scene to locate all physical evidence and witnesses to the incident. This search may have to be delayed until the area needed to be searched is deemed safe for entry by first responders.
- Limited Personnel Access – Investigators shall be part of a relatively small team permitted to be near the package(s) damaged as result of the incident. Investigators shall report any person unauthorized personnel to the Operations Section Chief or designee. Investigators shall document names and purpose of other investigators who have been granted access to critical pieces of evidence.
- Initial Description of Scene – The investigators shall record a thorough description of the accident scene, including videos, pictures and diagrams, to preserve the initial condition of the scene prior to remediation. The investigator shall photograph the incident scene, including the exterior and interior (if available) of each package

damaged. Refer to Chapter 2 and below for additional information regarding on-scene video and photographs collection.

- Evidence Collection - All evidence must be collected legally, in order to be admissible in court. All evidence should be fully described on the chain of custody form and photographed prior to pick up. The investigator should note how the evidence was obtained and collected in the investigation report.
- Evidence Marking - All evidence should be carefully marked for identification (this can include proprietary markings and labels, serial numbers, etc.) preferably on the article (or by using tags/labels). Markings should be cross referenced and documented on the chain of custody form and in the investigator's report.
- Confidential Protections - All evidence collected as part of an accident investigation, for both open and closed cases, should be treated as confidential. Any requests for the evidence collected or the investigator's report shall be forwarded to the Office of Chief Counsel for consideration and final disposition.
- Common Evidence Collection Worksheets – The most common evidence collection worksheets and reports are below.
  - Rail Tank Car Worksheet
  - Cargo Tank Worksheet
  - IBC Worksheet
  - Cylinder Worksheet
  - Drum Worksheet
  - Freight Container Worksheet
  - Box Worksheet
  - Portable Tank Worksheet
  - Radioactive Materials Worksheet
  - Pail Worksheet
  - Explosives Observation Report
  - Shipment Observation Report

Photographic Evidence Procedures

The guidance on photographic evidence procedures documented in the Investigation Management Handbook should be followed. As a reference, the following guidance will ensure the optimal photographic evidence to support investigative findings, conclusions and recommendations:

- Safe and Secure Scene – The investigator shall ensure the scene is safe for video or photography. When necessary, intrinsically-safe cameras must be used.
- Evaluate Conditions: Camera settings should be adjusted to light, location, and weather conditions. Incident scenes vary, i.e., indoors, outside or both and includes large vehicles, small packages, and involve multiple rooms or any combination of locations. Therefore, no single camera setting will work for all scenes.
- Capturing the Scene - The investigator should take photographs before anything is disturbed, progressively working through the scene from outside to close-up pictures. The investigator should first capture the entire scene using wide-angle

shots from the initial approach and through each area. Close-up images of evidence can be taken out of context, so establishing the scene first with wide and medium shots is critical. In addition, photographs should be taken looking up from the scene to capture evidence or environmental factors that may be above the scene. Aerial photographs and videography often provide perspective of the scope of the incident.

- Photographing Victims - The investigator should photograph victims, both fatal (if present) and non-fatal, to show their location and injuries sustained. If a victim must be moved or requires treatment prior to the investigator's arrival, the investigator should follow up to document the victim's injuries. Various techniques using special lighting and colored filters can assist with highlighting injuries (i.e., bruising, scarring).
- Photographing Evidence - Each piece of evidence should be photographed to illustrate the location of discovery. This establishes the relationships of the evidence to the package, the package to the transport device, ect. These photographs should be taken from straight above or straight on at right angles, eliminating potential distance distortions. Each piece of evidence should be photographed with a scale (to indicate size) and photographed without a scale.
- Evidence Markers - Photographs should be taken before and after evidence markers are positioned (if used). These initial images are important to demonstrate that the scene was not compromised.
- Capturing New Evidence - If investigators mark new evidence, the complete series of shots should be repeated, including all evidence shots. These photos should include the entire piece of evidence and a scale to indicate size.
- Operate Efficiently - Sometimes environmental factors such as rain, snow or traffic can make conditions difficult for photography. The investigator must work efficiently and judiciously to capture as much visual documentation as possible from a deteriorating weather scene.

Chain of Custody Controls

When evidence has been received, or obtained, the chain of custody has been initiated. From this point forward, each time the evidence is transferred from one responsible individual to another, another link is attached to the chain of custody. It is important to establish and maintain an unbroken chain of custody in order to protect the rights of entities involved in the integrity of the evidence. This is accomplished with the use of chain of custody documentation in the form of accurate reports, forms and receipts. These records must be maintained by the Evidence Custodian in the authorized Evidence Room. The Evidence Custodian is typically the lead investigator who also manages the temporary check-out of evidence and its relay between labs or testing facilities. The chain of custody form shall be used for obtaining the original signature of any person taking custody of the evidence.

For evidence to remain legally valid and admissible in court and administrative hearings, the existence of each link must be supported by documented proof of its creation and continuous existence. When evidence is collected, it should be fully described on the chain of custody

form as well as photographed prior to being picked up. Additionally, the evidence should be carefully marked for identification and these markers should be described on the chain of custody form. All evidence, except files and documents, in possession of the investigator must be listed on the chain of custody form as well as the circumstances under which it came into the investigator. When evidence is put into transportation, the tracking documentation should be included on the chain of custody forms.

This custody chain must continue without interruption until the evidence is presented in court or administrative hearing, returned to the rightful owner, or legally destroyed or disposed of in accordance with policy. The proper collection, preservation, handling, and safekeeping of any and all physical evidence begins immediately when it comes into the investigator's possession. Receipts (chain of custody form) for any such evidence will be prepared and a copy given to the person(s) from which the evidence was received. Any transfer of custody, including the relaying of all or any part of the materials, will be documented in the "Comments" section of the chain of custody form and related PHMSA Report. Evidence that is hazmat should not be brought back to the investigator's residence. For more information, please see the Investigation Management Handbook.

Completing Interviews

Collection of Statements

Interviews and written statements shall be conducted in accordance with Chapter 2. The following are important reminders particular for accident investigations that investigators should consider:

- The best interview statements are collected as close to the actual time the incident occurred. Over time, the witness accounts are not as fresh or accurate.
- Employee representatives, emergency responders and emergency dispatchers can serve as valuable resources to help identify others who might have information relevant to the investigation.
- Copies of statements gathered by other investigating agencies can be a great time saver and resource when attempting to ascertain the facts surrounding an incident.
- When appropriate, interviews should be conducted privately, outside the presence of other potential interviewees and the general public.

Follow-Up Enforcement Actions

In some cases, investigators may need to conduct a compliance inspection of a shipper or carrier facility to verify compliance with the HMR. This may require coordination with investigators from outside the region where the incident occurred. Investigators should contact their respective Region Chief Investigator to request any assistance outside their regions. IF probable violations are found, investigators should collect all evidence and documentation to support enforcement actions. Investigators should follow the standard procedures for identifying violations as detailed in Chapter 2.

Media

Investigators involvement with the media should be limited, as these interactions most commonly occur through PHMSA's Office of Government and Public Affairs (PHG). Under normal circumstances, investigator should refer media inquiries to PHG. However, in the absence of PHG, investigators may occasionally be asked to respond to media questions. During those circumstances, the investigator should inform the media with the following statement:

"The accident is under investigation and the details of the investigation will be released once the investigation is closed and the report completed."

If the incident is serious, media representatives will most likely be on scene at the incident or calling to obtain details. There may be numerous requests for information from local, regional or national media. The challenge of managing large numbers of requests for information, interviews and public statements can be overwhelming. The investigator and PHG shall determine, in advance, who will be the assigned person to speak with the media and prepare that spokesperson with talking points, so they can speak clearly and effectively in terms that can be easily understood.

The following is a list of "Do's and Don'ts" to assist with the media interaction:

<u>Do's:</u>

- Be prepared and calm.
- Identify yourself as the PHMSA spokesperson.
- Ask reporters for business card cards.
- Speak only for PHMSA, not shippers, carriers or yourself.
- Set up a safe, secure briefing area and position yourself so you have a line of exit.
- Give a clear, high level statement of verified information ("just the facts"), then transition into the steps PHMSA is taking.
- Stay focused on the point(s) you wish to make rather than the reporters' questions.
- Show compassion and concern for the affected people.
- Speak in short, clear points without jargon or technical detail.
- Provide prepared written materials that give reporters background information.

<u>Don'ts:</u>

- Don't speculate on accident/incident causes or provide estimates of costs.
- Don't assign blame.
- Don't speculate or provide comparisons or "war stories."
- Don't be afraid to say, "I don't have an answer for that now but I'll look into that and get back to you."
- Don't allow reporters or sightseers to wander around an incident site unescorted.
- Don't discuss confidential information within earshot of persons you don't know.
- Don't lose your temper, weep, or show any raw emotion; television interviewers especially thrive on emotion.

- Don’t speak off the record - Assume that everything you say will be used in the reporter's story.
- Don’t say "no comment."
- Don’t forget that you are representing PHMSA.

Media Talking Points

During the course of an incident investigation, the investigator may be called to prepare content for the person assigned to communicate with the media. The following general guidelines should be followed when preparing these talking points:

- Simple: investigators should avoid use of big words or technical jargon
- Timely: investigators should provide what audiences need to know now
- Accurate: investigators should stick to the facts, avoid speculation
- Relevant: investigators should be sure the information corresponds to what is happening
- Credible: investigators should build credibility through consistent timely and accurate information

The investigator should consistently repeat the message that “safety and protection of people, property, and the environment is a primary on-site response goal” and the steps that are being taken to accomplish that goal.

Where possible, messages should be tailored to the targeted audience. The investigator should pay particular attention to what those needs are and how to craft the messages to suit that stakeholder group. Messages should be provided in such a manner as to give thoughtful consideration to promote response and cleanup responsibilities involving federal and state governments, and responsible parties including shippers and carriers.

Post-Accident Investigation Procedures

Documentation

Case Management System (CMS) Entries

The investigator’s report shall be loaded into CMS and include all evidence collected. Until the new Accident Investigation portal is completed, investigators should use the inspections portal in CMS to upload their accident investigation reports. Investigators should follow the same procedures when uploading reports into CMS as detailed in Chapter 5 of this manual.

The investigator shall prepare a report in CMS under primary inspection code “51- Death and Injury Investigation.” If another inspection is performed in conjunction with the incident, the appropriate secondary code will be entered. All supporting documentation will be loaded into corresponding CMS report. Each location or company inspected resulting from an accident/incident investigation will have a separate report in CMS.

The investigator’s report should include, at a minimum, the following sections:

- Executive Summary
- Findings of Fact
- Conclusions
- Recommendations including Lessons Learned

Any documents collected during the course of the investigation should be entered as exhibits. If no enforcement was conducted, the documents can be entered as one single exhibit. If enforcement was initiated, the exhibits should be entered in accordance with Chapter 5 of this manual.

Executive Summary

The Executive Summary, synopsis of the major facts about the incident, shall provide a high-level overview, be no more than two pages in length and include causal factors, conclusions and recommendations.

Conclusions

The investigator is called to determine conclusions as to the proximate, contributing and root causes leading to the incident. The proximate cause is the last in a chain of events prior to the occurrence of the incident. The root cause is typically the initiating event which triggered the subsequent chain of events resulting in the incident. Often times, the root cause may not be in the same area as the incident. For example, the root cause for a damaged, leaking package on side of highway was due to shipper's failure to train the person who loaded the contents on how to select the right package. The investigator should leverage their analysis of the evidence collected, knowledge of the HMR, and previous experiences when determining conclusions. Investigators are cautioned not to make hasty, impulsive and unsubstantiated conclusions without fully collecting and analyzing all the evidence and facts.

Recommendations

Once an investigator has reported the conclusions, the next and final step is to determine recommended actions the shipper, carrier, first responders, and government officials should take to avoid recurrence of same event in the future. Most often, investigators will examine their conclusions and make appropriate recommendations such as revisions to the HMR, changes to process guides, and share best practices with stakeholders.

Any lessons learned captured by investigators during the course of their investigations should be included in the Recommendations section of the report. Investigators can easily identify some lessons learned simply by asking "What worked well?" and "What didn't work so well?" During the course of an investigation, the investigator should consider conducting periodic lessons learned reviews with others on the investigation team (if any) and subject matter experts (SMEs) to seek broader perspectives.

Post-Incident Case Review Panel

A post-incident Review Panel will evaluate each incident involving a Level III accident to review and concur on the investigator's findings, conclusions, and recommendations. The Review Panel will convene on an ad hoc basis and be comprised of at least five persons. The makeup of the panel will consist of one person from the PHH-10, one person from the Engineering and Research Division (PHH-20), one member from the Program Management, Data, and Statistics Division PHH-60, one Region Director outside of where incident occurred, and one member from the modal partner agency who has primary jurisdiction over the mode of transport (i.e., FMCSA for highway, FRA for rail, FAA for air and USCG for water). The Review Panel will be chaired by the DAAFO.

The Review Panel may take any number of actions to include: refer the investigation back for further action by the investigator; refer to the Office of Chief Counsel for legal review or to another mode for program review. Once the review Panel is satisfied with the report, they shall deem the investigation "closed" and forward the report to the PHMSA Administrator as a courtesy.

Failing to Report Timely Death and Injury Incidents

PHMSA's Program Management, Data, and Statistics Division and Regional Offices are typically notified of incidents via the National Response Center (NRC) or by receiving DOT Form 5800.1, "Hazardous Materials Incident Report." Notification to PHMSA may also be through the media, complaints, on-line databases, other agencies and investigative leads. The NRC is notified of an incident meeting the requirements of 49 CFR §171.15 by the shipper, carrier, or other individual within 12 hours of the incident occurring. DOT Form 5800.1 are required to be submitted no later than 30 days from the incident date.

In some cases, shippers, carriers, and other individuals fail to report within the required timeframe. For those incidents which resulted in serious injury (requiring admittance to hospital) or death, PHH-60 informs PHH-40 of these infractions. PHH-40 works with PHH-60 to collect the needed forms to pursue enforcement actions (typically ticket violations) for failing to report to NRC and/or submit the DOT Form 5800.1.

Chapter 9: Systems Integrity Safety Program (SISP)

Overview

The SISP's principal objective is aligned with PHMSA's mission: to protect people and the environment by advancing the safe transportation of energy and other hazardous materials. The program achieves this by implementing a risk-based systems safety management approach to compliance to obtain a high level of safety posture that enhances the safe transportation of hazardous materials.

SISP provides and facilitates in-depth analyses, observations, and cooperative follow-up inspections to identify the root causes of transportation safety concerns. SISP is designed to collaborate with industry and stakeholders to achieve compliance by identifying systems failures, contributing key factors, and implementing systems to control risk and improve safety.

The SISP promotes and applies:

- A common definition and understanding of hazards and risk.
- A consistent process for analyzing and assessing risk associated with a hazard.
- Common risk management techniques.
- Consistent safety assurance processes.
- A common approach to establishing safety performance targets and acceptable levels of risk.
- A consistent and effective auditing process to ensure hazardous materials safety systems integrity.

Safety Considerations

Investigators should be prepared for on-site inspections in support of SISP activities in the same manner as they would prepare for compliance inspections. Investigators should review the safety considerations in Chapter 2 and familiarize themselves with the mandatory and optional equipment prior to conducting a SISP inspection.

SISP Investigator Duties

The SISP investigators are assigned to each of the regional offices and work together to provide executive direction over the national program. They implement SISP policies through conducting in-depth inspections and systems analysis of broad and complex transportation, manufacturing, testing, and operations of eligible entities.

SISP investigators evaluate the eligibility of regulated entities based on analysis regarding the probability, consequence, measured risk factors, and overall safety concerns associated

with the company. The eligibility criteria are designed to maximize the efficient use of agency resources by identifying high-risk, high-impact areas for focused inspections and assessments. This ensures that safety threats are identified, protected and corrected so that long-term systems are developed and implemented to improve overall safety.

They will conduct in-depth reviews of data and intelligence on a continual basis to identify risk and unsafe trends regarding hazardous materials transportation.

SISP coordinators will prepare a Systems Integrity Safety Oversight Plan (SISOP) to recommend the appropriate approach and resources to address the safety concerns for each company enrolled in the program. The SISP investigator will engage internal and external stakeholders to ensure that best approaches are used and that all available assets are maximized in order to achieve the program goals.

SISP Investigators will develop an action plan to coordinate and monitor in-depth accident investigations, trends of non-compliance, and adverse safety concerns arising within a specific entity, group, or industry. SISOPs may include coordination with various regions, offices within PHMSA, other federal agencies and departments to perform inspections and report all probable violations to the SISP coordinator. The SISP coordinator will use CMS to record all their activities.

SISP Eligibility Criteria

Regulated entities to be considered for participation in SISP shall meet at least one of the following criteria within the previous five-year period:

- Has more than three (3) separate PHMSA civil enforcement case actions or five (5) separate PHMSA enforcement actions (cases or tickets) and/or warning letters;
- Is identified through adverse safety trends based on data analysis of accidents and/or inspections, high risk/high consequence related activities, or any other outlying factors which may include, but is not limited to:
    - More than 50 hazardous materials incidents of a 49 CFR Part 172.504, Table 2 materials in non-bulk packaging;
    - More than three hazardous materials incidents of a 49 CFR Part 172.504, Table 2 materials in an intermediate bulk or portable tank packaging;
    - More than one hazardous materials incidents of a 49 CFR Part 172.504, Table 1 materials in a packaging other than a cargo tank motor vehicle or railroad tank car;
    - More than one serious incident of a hazardous material in a packaging other than a cargo tank motor vehicle or railroad tank car;
    - Ordered or recommended by PHMSA to perform a safety recall of a DOT specification, UN Standard, or DOT Special Permit packaging;

- Directed by Region Director, DAAFO or designee, or the Associate Administrator for Hazardous Materials Safety.

Regulated entities may meet these criteria irrespective of whether they were directly or indirectly involved. For example, the carrier, the freight forwarder and the original shipper could all be identified with regard to a hazardous material incident.

Conducting SISP Inspections

System Integrity Inspection (SII)

Once a regulated entity has been identified for consideration into SISP, the SISP coordinator will draft a SISOP to recommend next courses of action. The next step in this process will be to prepare an entrance briefing and deliver it to the regulated entity. The entrance briefing will inform the regulated entity of the safety risks and provide background information about the SII process. While waiting for the regulated entity to respond, the SISP investigator will continue to gather additional data, conduct compliance inspections, issue public notices, and any other actions appropriate to the risks identified during the data review stage.

The regulated entity will have 30 days to review the entrance briefing to determine whether or not to accept the offer to enter into a SII agreement. During this time, the regulated entity may engage in discussions with PHMSA and provide evidence that it has already corrected the problems that made it a candidate for SISP.

Confidentiality

A regulated entity may request confidential treatment of information shared with PHMSA by following the procedures set forth in 49 CFR Part105.30.

Terms of SII Agreement

The SII agreement will include operational and legal limitations such as the requirement for full disclosure and production of data, processes, systems and operations by the regulated entity in order to facilitate a complete and accurate assessment. The SII agreement does not authorize non-compliance activity or allow transportation in violation of the HMR.

The SII agreement describes the basic framework for participation in the program, but is designed to give both parties (PHMSA and regulated entity) flexibility as the agreement progresses. Accordingly, a minimum of three addenda to the SII agreement are contemplated which will detail the requirements and responsibilities of each party. These addenda will be negotiated between PHMSA and the regulated entity. An addendum will be created at the beginning of each of three phases described below:

Phase 1 – The SISP investigator and the regulated entity will identify the documents and information needed to conduct an initial analysis of the regulated entity's systems (e.g., operations, quality assurance). The Phase 1 addendum will detail the information the regulated entity will provide and will set timetables for the production and the analysis of that information.

Phase 2 – The SISP investigator and the regulated entity will cooperatively determine sites (facilities, locations) for inspection based on the probable causes of the safety problems identified in Phase 1. The sites for inspection will be identified in the Phase 2 Addendum. Phase 2 may be an iterative process and may require the adoption of multiple addenda.

Site visits will provide the opportunity to observe the current operations and any improvements resulting from prior site visits. The SISP investigator will conduct an SII exit briefing following each site visit and will identify any probable violations. The SISP investigator will also provide feedback regarding quality assurance items and best business practices.

Phase 3 – The SISP investigator will prepare a recommendation report summarizing the findings and suggest actions that ensure continued compliance and promotes safety beyond the minimum regulatory requirements. The regulated entity, however, is under no obligation to implement any of these recommended actions.

Post SISP Inspection Activities

SISP investigators should identify best practices as part of their evaluations of the SII agreement.

SISP investigators will access, share and distribute pertinent information with other OHMS Divisions (e.g. Approvals and Permits, Standards, etc.). This will include any improvements to inspection policies; identifying regulatory modifications; sharing innovative technologies; and identifying positive and negative safety trends.

SISP investigators will access, share and distribute information to outside stakeholders (e.g. DOT modal partners and Federal agencies, industry and professional organizations, etc.). SISP investigators will coordinate with HMSAT to provide training and education opportunities to regulated communities. Additionally, SISP coordinators will assess and share new technologies affecting the different modes of transportation and communicate general and industry-specific best practices.

The outcomes of all activities managed by the SISP coordinators will be measured by quantifying pre- and post-SISP data, and identifying process improvements implemented to the regulated entity's operations. These measurements will be developed and completed by

the SISP investigators. In most cases, data will not be able to be accurately measured until at least one-year after conclusion of the SII agreement.

Glossary of Terms

A

Acceptable Level of Risk – The level of risk that individuals or groups are willing to accept given the benefits gained. Each organization will have its own acceptable risk level, which is derived from its legal and regulatory compliance responsibilities, its threat profile, and its business/organizational drivers and impacts. PHMSA establishes hazard classification, hazard communication, packaging, regulations, special permits, and operational control standards by considering the risk, cost/benefit, and public comments. (Sources: Adapted from http://phmsa.dot.gov/ and http://faa.dot.gov/)

Accident – An unforeseen and unplanned event or circumstance that involves a transportation-related event, mishap or disaster resulting in the failure of a package containing hazardous materials, release of hazardous materials, or a failure of a transportation or safety system that results in personal injury, fatality, property damage, environmental damage, or that warrants evacuation of the public or affects a major transportation system.

Accident Investigations – Since PHMSA does not generally inspect carriers, accident investigations are not conducted in the usual sense, i.e., first response, initial on-scene investigations. PHMSA usually becomes involved after the accident, in an effort to determine if noncompliance with the HMR contributed to the accident or if the HMR has a potential deficiency and needs to be addressed. Accident investigations are also commonly referred to as incident investigations in this manual.

Agent of the Secretary or Administrator – A federal officer or employee, including an inspector, investigator, or specialist authorized by the Secretary or Administrator to conduct inspections or investigations under the Hazmat Law and Hazardous Materials Regulations.

Alternative Validation Testing (AVT) – Subject to PHMSA resources and discretion, the packaging manufacturer may be offered the opportunity to conduct Validation Testing, in lieu of LOGSA testing, when PHMSA seeks to verify design performance testing capabilities.

Authorizing Official – As used in this manual means the Deputy Associate Administrator for Field Operations, Region Directors, Director of Field Services, and Chief Investigators.

B

Best Practices – A philosophical approach based around continuous learning and continual improvement. The most efficient (least amount of effort) and effective (best results) way of accomplishing a task.

Bill of Lading – A transportation document, used as a receipt of goods, as documentary evidence of title, for clearing customs, and generally used as a contract of carriage. (See 48 CFR 47.001.)

C

Case Management System (CMS) – A software system PHMSA uses to keep track of enforcement cases.

Certification and Standards Branch (CSB) – Team of investigators assigned to Field Support Division (PHH-40) who conducts and coordinates the academic certification of all investigators.

Chain of Command – The Regional Leadership where an incident takes place will be the primary reporting structure for on-scene PHMSA employees.

Complaints – A request for an investigation based on concerns that a specific company or location may not be operating in compliance with the Hazardous Materials Regulations. The complaint may come from a private citizen, a company, a local or State Government, other Federal agencies (including the Inspector General, which requires special handling by Regional Chief Investigators), or a DOT colleague.

Compromise Order – After an informal response or Administrative Law Judge hearing, the respondent or Chief Counsel may propose a compromise before the case is referred to the Attorney General for enforcement. In compromise order cases, the respondent may propose a consent agreement to the Chief Counsel. If the Chief Counsel accepts the agreement, he or she issues an order in accordance with its terms.

Confined Spaces – The Occupational Safety and Health Administration defines a confined space as "A space that: (1) is large enough and so configured that an employee can bodily enter and perform assigned work; (2) has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry.); and (3) is not designed for continuous employee occupancy.

Coordinated National Investigation (CNI) – A Level III accident investigation in which resources from across multiple region offices are used to collect evidence, evaluate findings and determine contributing and root causes. Determining the root cause for the accident is the key objective for CNIs and delineates them from Level I and II investigations. Typically, the CNI designation will be made by the Region Director where incident occurred. The CNI Team Lead will be an investigator assigned to region office where incident occurred. CNIs are likely to include support from federal, state and local resources.

Corrective Action – Actions taken to address any probable violations, to ensure compliance and to eliminate harm resulting from the probable violations.

Crisis Management Center (CMC) – Location where the DOT Crisis Management Team meets either at DOT Headquarters in Washington, D.C. or at some other DOT facility around country to support a coordinated response to a large accident investigation or plan for a natural disaster event.

Criminal Penalties – In a situation that involves violations of the regulations and willful intent, PHMSA has the discretion to initiate a criminal investigation referral to the DOT Inspector General. Field Operations and PHC leadership will work together to decide on a course of action for a criminal investigation. Investigators will participate in the development of action plans and will receive instructions regarding how to proceed.

D

Daily Ranking Report (DRR) – A listing of regulated entities in order of risk, with the highest risk activity listed at the top. The list will differ greatly from region to region because the hazmat industry is different in each region. The DRR is automatically updated daily or as operations dictate. This tool will be used in planning assignment of resources and prioritizing activities.

Deputy Administrator – An official appointed by the Secretary of Transportation, who directly supports the Administrator by overseeing administration-wide safety and security policies, objectives and priorities for the transportation of hazardous materials by all modes of transportation, including pipelines.

E

Emergency – A crisis or matter of urgency requiring immediate or expedited treatment, handling, and/or by field investigative staff.

Emergency Order – An emergency restriction, prohibition, recall, or out-of-service order imposed by the Administrator or an agent of the Secretary. An emergency order is the type of extraordinary relief available to address imminent hazard circumstances.

Emergency Prohibition – A prohibition of specified operation(s) of a business enterprise proposed by the Administrator or an agent of the Secretary. An Emergency Prohibition order could effectively shut down an entire operation of a business entity and is the type of extraordinary relief available to address imminent hazard circumstances.

Enforcement – The promotion of compliance with the Hazardous Materials Regulations

through investigation and inspection. Enforcement actions may be taken as a result of non-compliance found during investigations and inspections.

Inspection Report – The report generated after an investigation or inspection summarizing compliance findings and noting any probable violations.

Entrance Interview – Inform the company representative that the inspection is being conducted under the OHMS' inspections program.

Evidence –Proves the existence or non-existence of a fact, used to determine the truth of the matter at issue. It is any article or material that is found, obtained in connection with an inspection, or that may be subject to investigation. It may aid in establishing administrative or criminal offense elements or identified with any circumstances under which a violation was committed or an incident occurred.

Executive Notification – Initial brief and updated briefs, as needed, of events, outcomes and resources on scene provided by investigators to PHMSA senior executives following an accident.

Exit Briefing – Communicates the results of the inspection and possible follow-up actions.

F

First Responder – A person (such as a police officer, emergency management technician, firefighter, etc.) who is among those responsible for going immediately to the scene of an accident or emergency to provide assistance.

Fitness Recommendation – The investigator's recommendation/judgment on whether the applicant should be recommended "Fit" or "Unfit" to conduct the activity authorized by the special permit or approval.

Fitness Inspections – An inspection to determine that an applicant for an approvals or a special permit is fit to conduct the activity authorized. PHMSA has implemented a structured fitness review process consisting of an Automated Review, Safety Profile Review, and On-Site Inspections.

H

Hazmat Intelligence Portal (HIP) – A Web-based hazmat intelligence fusion center that centralizes access to vital information to support risk management, transparency, and decision support objectives.

Hazardous Material Safety Assistance Team (HMSAT) – The HMSAT is responsible for face-to-face outreach and compliance assistance in the field of hazardous materials transportation.

Hot Zone/Contamination Zone – The area where the actual accident occurred and contamination exists. This area is designated by first responders and/or Incident Commanders. This area is not to be entered by PHMSA employees.

I

Imminent Hazard –The existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment. (See 49 U.S.C. 5102(5).)

Incident Commander (IC) – Responsible for setting objectives, directing response and controlling resources in response to an accident or a natural disaster

Incident Command Post (ICP) – The physical location of the tactical-level, on-scene incident command and management organization.

Incident Command System (ICS) – A management system designed to enable effective incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure.

Incident of National Significance – Full-scale response to a national or international incident where there will be severe impact to people and/or the environment, or meets one or more of both reporting requirements under 49 CFR Parts 171.15 and 171.16.

Independent Inspection Agency (IIA) – Perform tests, inspections, verifications and certifications of DOT specification cylinders or UN pressure receptacles as required by 49 CFR Parts 178 and 180.

Incident Investigation – A gathering and examination of facts and evidence by investigators that resulted from an event or series of events causing an accident for a determination of root cause of failure.

Inspection Summary – A concise recording of the inspection date, name of company visited, name(s) of principal persons involved, the type material(s) handled and any probably violations noted.

Itinerary Planner (IP) – A software program designed to enhance resource management through technology. It centralizes enforcement information and standardizes the itinerary planning process nationally.

L

Lead Investigator – Takes direct responsibility for completion of the investigation and all investigative support functions. The Lead Investigator acts as the liaison between PHMSA and all other agencies and/or entities during an investigation while away from the scene. Assumes the final responsibility in the investigation, and oversees the completion of all reports, which are related to a specific inspection or investigation.

LOGSA (U.S. Army, Logistics Support Activity) – The U.S. Army Materiel Command Logistics Support Activity (LOGSA) Packaging, Storage, and Containerization Center in Tobyhanna, PA.

M

Memorandum of Agreement/Memorandum of Understanding (MOA/MOU) – An agreement between PHMSA and another party designed to enhance cooperation and coordination.

Multi-Agency Strike Force Operations (MASFOs) – Multi-agency operations which establish and enhance inter-agency communication networks and connectivity and provided valuable cross training and familiarization of each agency's individual expertise.

N

National Inspections Plan – Establishes the annual inspection priorities and areas of focus for each year as designated by the National Field Leadership Team.

National Field Leadership Team (NFLT) – Consists of Region Directors, Region Chief Investigators, Director, Field Support, Chief, Enforcement Branch and Chief, Certifications and Standards Branch.

National Response Center (NRC) – A 24-hour call center for reporting incidents involving hazardous materials. The NRC phone number is: 1-800-424-8802.

O

Official Credentials – The official shield and credential provided to each qualified investigator which gives them the authority to enter, to inspect, and to examine lands, buildings and equipment, and to inspect and copy records and papers of shippers and other

persons, in performance of your duties as authorized by federal hazmat law.

On-Scene Lead Investigator – Primary Point of Contact for the investigation while on the scene, to include, coordinator of activities for the agency and takes direct responsibility for completion of the investigation and all investigative support functions.

P

Personal Protective Equipment (PPE) – Protective equipment, monitoring devices and clothing used by investigators to provide personal safety during inspections and investigations.

PHMSA Office of Chief Counsel (PHC) – PHC has the authority to take action for knowing violations of the Hazardous Materials Regulations. PHC has the delegated authority to issue compliance orders and/or civil penalties.

Probable Violations – Any issues identified by the investigator that appear to show the company failed to comply with the Hazardous Material Regulations or any special permit or approval.

Q

Quality Control (QC) Item – An issue that is not actually a violation of a regulation, but a person is performing an action or procedure which, if not corrected, could lead to a violation.

R

Recall – The removal of a product or material that PHMSA considers to be in violation of the laws it administers and poses a condition that will likely result in serious injury, death, or significant property or environmental damage if not discontinued immediately.

Recall Order - Will specify the imminent hazard(s), non-compliance with the HMR, and the recommended recall strategy, and/or other appropriate instructions for conducting

Reconditioner – A person who reconditions a package in accordance with the requirements of § 173.28 of the HMR.

Regulated Entity – A person who—(i) transports hazardous material in commerce; (ii) causes hazardous material to be transported in commerce; (iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; (iv) prepares or accepts hazardous material for

transportation in commerce; (v) is responsible for the safety of transporting hazardous material in commerce; (vi) certifies compliance with any requirement under chapter 51 of Title 49 of the United States Code; or (vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi) (49 U.S.C. § 5103(b)(A)(i-vii)).

Reinspections – The inspections of entities previously subject to an enforcement case or ticket. The purpose of the re-inspection is to verify compliance by an entity that previously violated the HMR, in order to determine the effectiveness of the entities corrective action (if submitted).

Remediation – Determining the amount of the product spilled, total costs and impacts to personnel, equipment and the environment following an accident.

Risk Management – The systematic application of policies, practices, and resources to the assessment and control of risk affecting human health, safety and the environment.

S

Safety – The state in which risks associated with transportation activities are reduced and controlled to an acceptable level. PHMSA's goal is to provide a safe and secure environment for the transportation of hazardous materials.

Safety Culture – An enduring set of values, norms, attitudes, and practices within an organization concerned with minimizing exposure of the workforce and the general public to dangerous or hazardous conditions. In a positive safety culture, a shared concern for, commitment to, and accountability for safety is promoted.

Safety Data Sheet (SDS) – The OSHA Hazard Communication Standard (HCS) (29 CFR 1910.1200(g)), requires that the chemical manufacturer, distributor, or importer provide Safety Data Sheets (SDSs) (formerly Material Safety Data Sheets or MSDSs) for each hazardous chemical to downstream users to communicate information on these hazards.

The SDS includes information such as the properties of each chemical; the physical, health, and environmental health hazards; protective measures; and safety precautions for handling, storing, and transporting the chemical.

Safety Management System (SMS) – A risk management strategy based on identification, analysis of hazards and application of remedial controls using a systems-based approach.

Safety Performance Monitor (SPM) model – Statistical algorithm that combines and weighs relevant risk factors to produce a final ranking score for regulated entities.

Safety Profile Review – A fitness coordinator conducts a safety profile review if an applicant meets one or more of the criteria triggered under the "automated review." In a safety profile review, the fitness coordinator performs an in-depth evaluation of the applicant, based upon items the automated review triggered concerning the applicant's previous performance and compliance history before the application submission.

Serious Incident – An incident that involves—(i) a fatality or major injury caused by the release of a hazardous material; (ii) the evacuation of 25 or more persons as a result of release of a hazardous material or exposure to fire; (iii) a release or exposure to fire which results in the closure of a major transportation artery; (iv) the alteration of an aircraft flight plan or operation; (v) the release of radioactive materials from Type B packaging; (vi) the release of over 11.9 gallons or 88.2 pounds of a severe marine pollutant; or (vii) the release of a bulk quantity (over 119 gallons or 882 pounds) of a hazardous material.

T

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.

Ticket – Enforcement action for a violation that has an indirect effect on safety.

W

Warning Letter – Enforcement action when evidence is obtained from observations, other sources, or after completing an inspection or investigation where probable violations a less serious nature were discovered.

Written Statement – Provides documentation of the results of an interview or request for information. The usefulness of the statement depends on the quality of the interview on which it is based.

Appendix A

Memorandum of Understanding (MOU) Between EPA and DOT

Memorandum of Understanding
between the
Environmental Protection Agency
and the
Department of Transportation

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to delineate the areas of responsibility of the Department of Transportation (DOT) and the Environmental Protection Agency (EPA) for the enforcement of standards applicable to the shipment and transportation of hazardous waste. This MOU will also set forth those areas of joint responsibility and cooperation between the two Agencies.

II. STATUTORY BASIS

A. EPA and the Resource Conservation and Recovery Act of 1976

The Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901 et. seq.) in Section 3002 and Section 3003 requires EPA to regulate generators and transporters of hazardous wastes to protect human health and the environment. This authority covers both inter and intra-state transportation. The Act requires EPA to promulgate standards concerning recordkeeping, reporting, labeling, containers, compliance with the manifest system, and the transportation of waste only to permitted facilites.

Section 3003 also requires the Administrator of EPA to ensure that hazardous waste transportation regulations promulgated under RCRA are consistent with those promulgated by DOT under the Hazardous Materials Transporation Act (HMTA). Furthermore, it provides the Administrator the authority to make recommendations to the Secretary of Transportation respecting HMTA regulations and for addition of materials to be covered under those regulations. (40 CFR Parts 260-265.)

B. DOT and the Hazardous Materials Transportation Act

The Hazardous Materials Transportation Act (HMTA) (49 USC 1801 et. seq.) requires the Secretary of Transportation to promulgate standards for the transportation of hazardous materials in commerce to protect public health and safety or property. "In commerce" extends to all activities which affect interstate transportation. The HMTA regulations cover all modes of transportation (highway, railroad, air and water) and require, among other things, proper marking, containerization, storage, shipping papers and placarding. (49 CFR Parts 170-179.)

III. BACKGROUND

A. Regulatory Overlap

DOT and EPA are both promulgating regulations concerning hazardous waste material transportation. The DOT regulations require shippers of hazardous wastes, as defined by EPA, to comply with both HMTA and RCRA regulations. This group includes wastes which were previously designated hazardous materials. These wastes must comply with the new DOT standards for hazardous waste materials.

B. Areas of Individual Regulation

There are, however, areas over which only one or the other Agency has jurisdiction. One such area is the EPA requirement that transporters clean up any discharges of hazardous waste which they are carrying. DOT cannot incorporate such a requirement into its regulations because it is beyond DOT's authority.

DOT, on the other hand, requires that certain safety features be installed on all motor vehicles. EPA's authority does not extend to such safety requirements, and they would not be included in EPA's regulations.

IV. TERMS OF AGREEMENT

A. The Environmental Protection Agency Will:

1. Conduct an on-going program to monitor compliance of generators of hazardous waste and hazardous waste management facilities with the RCRA regulations.

2. Bring enforcement actions, at times, involving hazardous waste transporters where the transportation is ancillary to treatment, storage or disposal of hazardous waste or other activities normally under the primary jurisdiction of EPA as discussed in this MOU. (For example, a "midnight dumper" will be considered an illegal disposer. The fact that the "dumper" is transporting the waste is ancillary to the disposal of the waste and EPA will bring appropriate enforcement action against him.)

3. Provide to the Bureau of Motor Carrier Safety (BMCS), Federal Highway Administration's (FHWA) Washington Office, DOT on a continuing basis, a list of all hazardous waste transporters who have notified EPA pursuant to section 3010 of RCRA and their identification numbers.

4. Immediately notify the BMCS, FHWA's Washington Office, DOT of any possible violation of HMTA or regulations adopted thereunder of which it is aware and provide that office with all relevant information.

5. Investigate reports from DOT which give EPA cause to suspect that a violation of RCRA has occurred and, where warranted, initiate appropriate regulatory or enforcement action under RCRA.

6. Provide DOT with any information obtained during the course of an EPA investigation which EPA believes may involve a violation of HMTA.

7. Make available to BMCS, FHWA, DOT any reports, documents or other evidence necessary to support an enforcement action under HMTA which involves hazardous waste materials.

8. Make available to the Office of Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, DOT, any reports, documents or other evidence necessary to support a regulatory action under HMTA which involves hazardous waste materials.

9. Bring enforcement actions to address hazardous waste activities which may present an "imminent and substantial endangerment to health and the environment" as those words are used in the statutes administered by EPA (such as §7003 of RCRA and §504 of the Clean Water Act).

B. The Department of Transportation Will:

1. Conduct an on-going program of inspections of transporters and shippers of hazardous waste to monitor their compliance with HMTA regulations.

2. Immediately advise the appropriate EPA regional office of any possible violation of RCRA or regulations adopted thereunder of which it is aware and provide that office with all relevant information.

3. Investigate reports from EPA which give DOT cause to suspect that a violation of HMTA has occurred and, where warranted, initiate appropriate regulatory or enforcement action under HMTA.

4. Provide EPA with any information obtained during the course of a DOT investigation which DOT believes may involve a violation of RCRA.

5. Make available to EPA any reports, documents or other evidence necessary to support enforcement and regulatory actions under RCRA which involve hazardous waste.

C. Each Agency Will:

1. Presume that when information reveals a violation of both RCRA and HMTA, if DOT takes an enforcement action under HMTA, EPA will not normally take such action. Conversely, if EPA takes an enforcement action under RCRA, DOT will not normally take such action. This does not, however, preclude either Agency from initiating other legal sanctions in regard to that violation.

2. Coordinate investigations and enforcement actions involving violations of both RCRA and HMTA to avoid duplication of effort.

3. Maintain a close working relationship with the other, both in Headquarters as well as in the field, including an exchange of information relative to the Agencies' planned hazardous waste material compliance monitoring and enforcement activities.

4. Designate for the other Agency a Headquarters contact point to whom communication regarding this agreement or matters affected thereby may be referred for attention.

5. Assign regional liaisons between the Agencies, and provide a mechanism by which regional contacts will be made and maintained for the period of this agreement.

6. Issue and exchange with the other instructions and guidelines implementing this Memorandum of Understanding identifying interagency contacts and liaison representatives, and setting forth other pertinent operational procedures to be followed relative to this agreement.

V. EFFECT

A. This Memorandum of Understanding is not intended to limit in any way the statutory authority or jurisdiction of either Agency.

B. Nothing in this Memorandum of Understanding modifies other existing agreements, or precludes either Agency from entering into separate agreements setting forth procedures for special programs which can be handled more efficiently and expeditiously by such special agreement.

Memorandum of Understanding Between DOT and NRC

Abstract. This agreement delineates the respective responsibilities of the Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) for the regulation of safety in transportation of radioactive materials. It supersedes the existing agreement executed on March 22, 1973, between the DOT and the Atomic Energy Commission. Generally, the DOT is responsible for regulating safety in transportation of all hazardous materials, including radioactive materials, and the NRC is responsible for regulating safety in receipt, possession, use, and transfer of byproduct, source, and special nuclear materials. The NRC reviews and approves or denies approval of package designs for fissile materials and for other radioactive materials (other than low specific activity materials) in quantities exceeding Type A limits, as defined in 10 CFR Part 71.

Agreement Between the DOT and the NRC.

The Department of Transportation (DOT), under the Transportation of Explosives Act (18 U.S.C. 831-835), the Dangerous Cargo Act (R.S. 4472, as amended, 46 U.S.C. 170), Title VI and 902 (h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430 and 1472(h)), the Department of Transportation Act (49 U.S.C. 1655), and the Hazardous Materials Transportation Act (49 U.S.C. 1801-1812), is required to regulate safety in the transportation of hazardous materials, including radioactive materials.

The Nuclear Regulatory Commission (NRC), under the Atomic Energy Act of 1954, as amended (42 U.S.C. Chapter 23), and Section 201 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841), is authorized to license and regulate the receipt, possession, use, and transfer of "byproduct material," "source material," and "special nuclear material" (as defined in 42 U.S.C. 2014). The NRC authority to license air shipment of plutonium is further governed by P.L. 94-79.

For the purpose of developing, establishing, and implementing consistent and comprehensive regulations and requirements for the safe transportation of radioactive materials, and avoiding duplication of effort, the DOT and the NRC agree, subject to their respective statutory authorities, as follows. Terms used in this agreement are defined in 49 CFR Parts 100-199 and 10 CFR Part 71.

I. Development of Safety Standards

A. The DOT (in consultation with the NRC) will develop safety standards for the classification of radioactive materials; for the design specifications and performance requirements of packages for quantities of radioactive materials (other than fissile materials) not exceeding Type A limits and for low specific activity (LSA) radioactive materials; for the external radiation fields, labeling, and marking of all radioactive materials packages and vehicles; for

the mechanical conditions, construction requirements, and tie-down requirements of carrier equipment; for the qualifications of carrier personnel; for the procedures for loading, unloading, handling, and storage in transit; for any special transport controls (excluding safeguards) necessary for radiation safety during carriage; and for all other safety requirements except those specified in the next paragraph.

B. The NRC (in consultation with the DOT) will develop safety standards for design and performance of packages for fissile materials and for quantities of other radioactive materials (other than LSA materials) exceeding Type A limits in the following areas:

1. Structural materials of fabrication;
2. Closure devices;
3. Structural integrity;
4. Criticality control;
5. Containment of radioactive material;
6. Shielding;
7. Generation of internal pressure;
8. Internal contamination of packages;
9. Protection against internal overheating; and
10. Quality assurance of packaging design, fabrication, testing, maintenance, and use.

II. Adoption of Safety Standards and Regulations

A. The DOT will adopt regulations imposing on shippers and carriers subject to its jurisdiction those standards developed by the DOT and the NRC pursuant to Section I of this Memorandum of Understanding and any additional requirements necessary to protect the public health and safety. The DOT will require NRC approval of designs of packages for shipment of fissile materials and other radioactive materials in quantities exceeding Type A limits (except LSA materials) by all persons subject to the jurisdiction of the DOT. The DOT will issue complete and comprehensive Federal regulations for the packaging and transportation of all radioactive materials as a part of its overall body of Federal regulations (49 CFR Parts 100-199) for the packaging and transportation of all hazardous materials.

B. The NRC will adopt packaging standards for fissile materials and for quantities of other radioactive materials (otner than LSA materials) exceeding Type A limits and will adopt regulations imposing on its licensees administrative, procedural, and technical requirements necessary to protect the public health and safety and to assure the common defense and security.

C. The NRC will adopt procedures, standards, and criteria for approval of package designs and for approval of special transport controls proposed by the applicant for a given package design. The NRC will require its licensees to comply with the DOT regulations when those persons are not otherwise subject to the DOT regulations.

III. Package Review

A. The DOT will submit to the NRC for review the following package designs:

1. Specification containers. Approval by the NRC of package designs for fissile materials and for radioactive materials (other than LSA materials) in quantities exceeding Type A limits will be obtained before publication of such designs in the DOT regulations.

2. Packages with foreign certification. Approval by the NRC will be obtained before revalidation of the foreign certificates required in the DOT regulations for packages shipped between origins and destinations within the United States, except for import and export shipments. Approval by the NRC is not required if a package is used solely for export or import or if a package is authorized by the DOT regulations solely for

transportation through or over the United States between origins and destinations outside the United States. The DOT has the responsibility for exercising discretion as to whether it requests NRC review of such packages.

3. Any package for which NRC evaluation is warranted in DOT opinion.

B. The NRC will evaluate package designs for fissile materials and for other radioactive materials (other than LSA materials) in quantities exceeding Type A limits and will, if satisfactory, issue approvals therefor (viz., a license, Certificate of Compliance, or other package approval) directly to the person requesting the approval.

IV. Inspection and Enforcement

A. Each agency will conduct an inspection and enforcement program within its jurisdiction to assure compliance with its requirements. The NRC will assist the DOT, as appropriate, in inspecting shippers of fissile materials and of other radioactive materials in quantities exceeding Type A limits.

B. The DOT and the NRC will consult each other on the results of their respective inspections in the areas where the results are related to the other agency's requirements, and each will take enforcement action as it deems appropriate within the limits of its authority.

V. Accidents and Incidents

A. The DOT will require of all carriers subject to its jurisdiction the notification and reporting to the DOT of accidents, incidents, and instances of actual or suspected leakage involving radioactive material packages if such an event occurs in transit and the DOT will promptly notify the NRC of such events.

B. The NRC will require of its licensees the notification and reporting to the NRC of accidents, incidents, and instances of actual or suspected leakage involving radioactive material packages if such an event occurs prior to delivery to a carrier for transport or after delivery to a receiver. The NRC will encourage the Agreement States[1] and the DOT will encourage the non-Agreement States to

[1] States which have entered into an Agreement with the Atomic Energy Commission or the NRC pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, under which the NRC has relinquished to such States the majority of its regulatory authority over source, byproduct and special nuclear material in quantities not sufficient to form a critical mass.

impose incident reporting requirements on shippers and receivers subject to the States' jurisdiction.

C. In all accidents, incidents, and instances of actual or suspected leakage involving packages of radioactive material regulated by the NRC, the NRC will normally be the lead agency for investigating the occurrence and preparing the report of the investigation. The DOT may either participate, as appropriate, in the investigation with the NRC as the lead agency or conduct a separate investigation. Subsequent to each investigation involving radioactive material regulated by the NRC, the NRC and the DOT will jointly define the scope of the enforcement actions to be taken by each agency to assure that shippers and carriers are subject to concurrent and equivalent enforcement actions but not unduly subject to duplicate enforcement actions.

D. This section V does not affect the authority of the National Transportation Safety Board, which is independent of the DOT and the NRC, to receive accident reports and to investigate transportation accidents.

VI. National Competent Authority

A. The DOT will be the national competent authority with respect

to the administrative requirements set forth in the Regulations for the Safe Transport of Radioactive Materials of the International Atomic Energy Agency (IAEA). In issuing certificates of competent authority for the United States under those regulations, the DOT will require for certain packages other than DOT specification containers an NRC approval in accordance with Section III.A. of this Memorandum of Understanding. The NRC will provide to the national competent authority (DOT) technical support and advice pertaining to the transportation of radioactive materials.

B. The DOT will act as the representative of the United States to the IAEA and other international groups on matters pertaining to the administrative and safety regulatory aspects of transportation of radioactive materials. The NRC will provide technical support and advice to the DOT in this capacity.

VII. Exchange of Information

A. Prior to issuance of any regulations by either the DOT or the NRC involving transportation of radioactive materials, each agency will advise and consult with the other to avoid possible conflict in regulations and to assure that: (1) the regulations will afford adequate protection of the health and safety of the public; (2) the effect of these regulations will not be inimical to the common

defense and security of the United States; and (3) the regulations are in the public interest.

B. The DOT and the NRC will exchange information, consult and assist each other within the areas of their special competence in the development and enforcement of regulations and procedures. Each agency will make available to the other, subject to security requirements and statutory provisions affecting the release of information, summaries of inspection records, investigations of serious accidents, and other matters relating to safety in the transportation of radioactive materials.

VIII. Working Arrangements

The NRC and the DOT will designate appropriate staff representatives and will establish joint working arrangements from time to time for the purpose of administering this Memorandum of Understanding.

IX. Effect

A. Nothing herein is intended to affect the statutory exemption of shipments of radioactive materials made by or under the direction or supervision of the Department of Energy or the Department of Defense in accordance with the provisions of 18 U.S.C. 832(c).

B. This agreement shall take effect upon the signing by authorized representatives of the respective agencies, and shall supersede in its entirety the March 22, 1973, Memorandum of Understanding between the DOT and the Atomic Energy Commission.

C. Nothing in this Memorandum of Understanding is intended to restrict the statutory authority of either the DOT or the NRC.

Done at Washington, D.C., in triplicate, this 8th day of June 1979.

FOR THE UNITED STATES DEPARTMENT OF TRANSPORTATION

Brock Adams,
Secretary of Transportation

FOR THE UNITED STATES NUCLEAR REGULATOR COMMISSION

Joseph M. Hendrie, Chairman,
Nuclear Regulatory Commission

Memorandum of Understanding Between DHS (TSA) and DOT

ANNEX TO THE
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY
AND
THE DEPARTMENT OF TRANSPORTATION
CONCERNING

TRANSPORTATION SECURITY ADMINISTRATION AND PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION COOPERATION ON PIPELINE AND HAZARDOUS MATERIALS TRANSPORTATION SECURITY

I. PARTIES

This memorializes an agreement between the Transportation Security Administration (TSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA), intended as an Annex to the September 28, 2004 Memorandum of Understanding Between the Department of Homeland Security and the Department of Transportation on Roles and Responsibilities (MOU). The "parties" to this Annex are TSA and PHMSA, which are authorized by the Department of Homeland Security (DHS) and the Department of Transportation (DOT), respectively, to execute this Annex.

All terms used in this Annex that also appear in the MOU have the meanings used in the MOU, except as otherwise provided; further, this Annex will be interpreted in a manner that is consistent with the interpretation of the MOU.

II. PURPOSE

The parties to this Annex have a mutual interest in ensuring coordinated, consistent, and effective activities that have the potential to materially affect their respective missions. The purpose of this Annex is to delineate clear lines of authority and responsibility and promote communications, efficiency, and nonduplication of effort through cooperation and collaboration between the parties in the area of transportation security based on existing legal authorities and core competencies. To achieve this purpose, the parties agree to abide by the terms of this Annex, subject to applicable Federal laws, regulations, Presidential Directives, and relevant policies.

III. BACKGROUND AND AUTHORITIES

a. Homeland Security Presidential Directive No. 7, December 17, 2003 *Critical Infrastructure Identification, Prioritization, and Protection* (HSPD-7) directs that "[t]he Department of Transportation and the Department [of Homeland Security] will collaborate in regulating the transportation of hazardous materials by all modes (including pipelines)."

b. In accordance with the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Homeland Security Act) and HSPD-7, DHS holds lead authority, primary responsibility, and dedicated resources for security activities in all modes of transportation. Pursuant to the Aviation and Transportation Security Act (ATSA) (Pub. L. 107-71) and specific delegation by the Secretary of Homeland Security, TSA acts as the lead Federal entity for transportation security, including hazardous materials and pipeline security.

c. TSA enters into this Annex pursuant to 49 U.S.C. §§ 106(m) and 114(m); the Homeland Security Act, § 430 ; the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638; HSPD-7; and Homeland Security Presidential Directive No. 8, December 17, 2003, *National Preparedness* (HSPD-8). At the direction of the Secretary of Homeland Security, TSA has primary authority for the development of the National Strategy for Transportation Security.

d. PHMSA is responsible for administering a national program of safety in natural gas and hazardous liquid pipeline transportation including identifying pipeline safety concerns and developing uniform safety standards. See Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108-426, 118 Stat. 2423 (2004) at § 2(f), 49 U.S.C. § 108 (f). PHMSA also is responsible for promulgating and enforcing regulations and administering a national program of safety, including security, in multimodal hazardous materials (hazmat) transportation. Within DOT, other operating administrations have specific delegated authority with respect to the transportation of hazardous materials. This Annex does not commit DOT organizations other than PHMSA.

e. PHMSA enters into this Annex pursuant to 49 U.S.C. § 301, 49 U.S.C. § 322, 49 U.S.C. § 5103, 5125, 49 U.S.C. §§60101 et seq. and 60103 et seq., 49 C.F.R §§ 1.45(a), 1.53, and HSPD-7.

IV. PROGRAM ELEMENTS

The parties recognize the following program elements are important to development and deployment of an enhanced security strategy for the transportation of hazardous materials by all modes, including pipeline.

1. **Identification of Critical Infrastructure/Key Resources and Risk Assessments.** As a basis for further planning, the parties will review existing definitions of criticality and consider the need, if any, to further refine definitions based on known and anticipated risks. To the extent possible, the parties will consider life, safety, and economic and environmental impacts, so that the ongoing development of plans and countermeasures for protecting critical infrastructure/ key resources (CI/KR) can be prioritized on a risk basis.

To support TSA efforts in this area, PHMSA agrees to provide compliance data, and other information collected in the course of security inspections or reviews of security plans (including those required under 49 CFR 172.800) and activities of transportation carriers and shippers. PHMSA will provide this data to TSA's Office of Transportation Sector Network Management. Further, PHMSA will coordinate with TSA on observations or recommended

measures derived from safety inspections and assessments to evaluate whether they conflict with or adversely affect current or planned security requirements.

TSA will coordinate with PHMSA on observations or recommended measures derived from the results of criticality and vulnerability assessments, including on pipelines, to evaluate whether they conflict with or adversely affect current or planned safety requirements.

2. Strategic Planning. Security planning will be based on risk. To the extent possible, the parties will seek consensus concerning measures to reduce risk and minimize consequences of emergencies involving critical hazardous materials transportation packagings, systems and pipeline infrastructure. To promote communications, efficiency, and nonduplication of effort, the parties will identify initiatives and activities for achieving performance goals and will develop a program framework and timetable for their completion.

3. Standards, Regulations, Guidelines and Directives. In accordance with the MOU, the parties will seek early and frequent coordination in the development of standards, regulations, guidelines, or directives affecting transportation security and will work together to obtain any necessary clearance of such documents. In the course of discharging their safety and security missions, the parties will review the adequacy of existing standards in the private and public sector, identifying any gaps that should be addressed through rulemaking, guidelines, or directives. In carrying out this review, the parties will consider private sector investments and resources, identify best practices, and consider opportunities to promote these practices. Where current standards need strengthening, the parties will explore opportunities to build on existing standards-setting activities or processes and are committed to doing so in a manner that minimizes duplication and regulatory burdens.

The parties recognize that emergencies or other exigent circumstances may preclude thorough coordination prior to dissemination of these types of measures. The parties will coordinate as extensively as circumstances allow and review actions taken as necessary.

4. Inspections and Enforcement. The parties will explore opportunities for collaboration in inspection and enforcement activities, with the objective of maximizing the use of available resources and targeting enforcement resources on the basis of system risks. The parties will immediately develop procedures for referral of safety and security issues to PHMSA and TSA, respectively; will inventory existing inspection and enforcement resources; and will develop specific plans for closer coordination in the deployment and use of inspectors, including any necessary additional training.

5. PHMSA Technical Support. The parties recognize that exigent circumstances or other contingencies may tax available security resources. In these situations, TSA may seek to supplement its resources with PHMSA personnel and/or other assets. If TSA determines such support is necessary to develop, support, staff, implement, or enforce transportation security regulations, orders, directives, plans, programs, or other measures, or to conduct security reviews during a period of elevated security threat, TSA will request such assistance from PHMSA in writing.

6. **Sharing Information During an Emergency Response.** The parties participate in established emergency response procedures. However, the parties acknowledge in this Annex that they both require timely information during emergencies and commit themselves to promptly sharing information about emergency situations that implicate the missions and interests of the other party. Information in this context includes both the initial incident report and ongoing information about incident developments. The timely sharing of such information serves the public interest in the operation of a secure and safe national transportation system. Each party requires this information to enable the execution of their respective roles in responding to the incident, including dedication of Federal resources, coordinating other forms of assistance, and advising the White House or other Federal agencies, as necessary.

7. **Public Communication, Education and Outreach.** The parties will build on existing relationships with stakeholders in order to identify and respond to security-related needs and concerns. To these ends, the parties will review existing protocols for public communication concerning security-related matters, specifically including review of existing protocols for publication of information contained in the national pipeline mapping system. The parties also will identify opportunities to improve alignment among themselves and other agencies with related missions.

8. **Communicating Protective Measures to Affected Organizations.** In pursuit of the joint interest in ensuring the highest state of security and safety awareness and readiness, to the extent practicable, TSA will consult with PHMSA prior to disseminating security requirements (including regulations, orders, and security directives) and voluntary standards and guidelines to the public. Additionally, to the extent practicable, PHMSA will consult with TSA prior to disseminating requirements (including regulations and orders) and voluntary standards and guidelines that impact security to the public.

9. **Research and Development.** The parties will conduct a review of their recently completed and ongoing safety- and security-related projects and will identify opportunities to collaborate and support their strategic plan through identification, development and testing of new or modified technologies or processes. The parties will establish protocols for ongoing information sharing and participation in their respective research and development planning processes.

10. **Legislative Matters.** In matters affecting pipeline and hazardous material transportation security, the parties will consult with each other as soon as possible on the development of proposed legislation, comments on legislative proposals, draft testimony or briefings to be given before Congressional bodies or staff, and answers to questions for the record.

11. **Budget**. The parties agree to communicate throughout the budget development, justification, and execution process in order to develop and present a coordinated position on transportation security funding matters and to avoid duplicative requests for funding in connection with pipeline and hazardous material transportation security.

V. IMPLEMENTATION

The parties to this Annex commit themselves to coordinate, to the maximum extent practicable, their programs and activities in order to improve transportation security in the United States while minimizing duplication, disruptions to transportation operations, and costs imposed on transportation stakeholders and the public.

It is the objective of the parties to specifically delineate roles, responsibilities, resources, and actions needed to advance execution of the program elements identified in Section IV. To that end, within fourteen (14) days of the execution of this Annex, each party will designate one or more members to a working group to develop a multi-year action plan, including specific timelines for implementing the parties' general commitments, as set forth in Section IV. The action plan will, as appropriate, identify and involve other agencies or stakeholders in particular activities contemplated by the plan. Except as otherwise provided below, the working group designated under this Annex will complete its work within six months and will continue to confer on a regular basis thereafter for the purpose of overseeing, evaluating and monitoring compliance with the plan.

The working group will coordinate its activities to complement the National Response Plan pursuant to HSPD-5 ("Management of Domestic Incidents"), the domestic all-hazards preparedness goals and structures required by HSPD-8 ("National Preparedness"), the National Infrastructure Protection Plan and the Transportation Sector Specific Plan (TSSP) as required by HSPD-7 ("Critical Infrastructure Identification, Prioritization, and Protection"), as well as the TSSP Pipelines Modal Implementation Plan Annex. Existing working groups developing or implementing any of these efforts will be used as appropriate to assist in the development of the multi-year action plan. The working group will also ensure that its efforts are completed under the requirements of any future Executive Orders.

VI. COORDINATION MEETINGS

In addition to the regular coordination envisioned by the MOU and this Annex, the parties agree to hold coordination meetings as necessary at the headquarters level, and at regional offices, to discuss:

(1) coordinating training for their field inspectors;

(2) coordinating inspections and enforcement actions by their respective inspectors to

(A) minimize disruption to entities being inspected,

(B) maximize the use of inspector resources, and

(C) ensure that both parties provide consistent information to industry on security matters and safety matters with security implications;

(3) emerging security threats based on intelligence indicators; and

(4) such other matters as warranted by the interaction of the parties in pursuit of their respective missions or as necessitated by the operational environment, emergency circumstances, or other contingencies.

VII. GENERAL PROVISIONS

1. **Principal Agency Contacts.** Subject to updates by the parties, the following are the designated points of contact for this Annex:

Transportation Security Administration
Assistant Administrator, Office of Transportation Sector Network Management (TSNM)
601 South 12th Street
Arlington, VA 22202-4220

Pipeline and Hazardous Materials Safety Administration
Chief Safety Officer
400 Seventh Street S.W.
Washington, DC 20590
V. (202) 366-0656
F. (202) 366-5713

2. **Reservation of Authorities.** This Agreement does not modify existing Agency authorities by reducing, expanding, or transferring any of the statutory or regulatory authorities and responsibilities of either of the signatory agencies.

3. **Severability.** Nothing in this Annex or any supplement thereto is intended to alter or conflict with statutory provisions, regulations, orders, or directives of DHS, DOT, TSA, PHMSA, or any other Federal agency or entity. If a provision of this Annex, or any supplement thereto is inconsistent with such authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this Annex and any supplement thereto will remain in full force and effect.

4. **Rights and Benefits.** Nothing in this Annex is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, officers, or employees, state agencies or officers carrying out programs authorized under Federal law, or any other person.

5. **Period of Agreement/Termination.** This Annex shall be effective as of the date of final signature by both parties and remain in effect until terminated by either PHMSA or TSA. Either PHMSA or TSA may terminate this Annex and any supplement hereto upon ninety (90) days written notice to the respective contact listed in Section VII(1) herein.

6. **Reimbursement.** Absent subsequent agreement, each party will be responsible for its own expenses. If, at a future date, a party desires to address issues of reimbursement with regard to particular activities, that Party will request a meeting on the subject of reimbursement with the other party prior to incurring expenses related to those activities. In that event, the parties will meet promptly to determine whether reimbursement will be addressed by a separate agreement or not at all. Any such reimbursements will be in accordance with the provisions of the Economy Act and applicable agency procedures. If a party seeking such reimbursement is not satisfied with the outcome of such a meeting, it may refuse to provide the other party resources for which it desires reimbursement.

7. **Amendment and Modification.** If, in addition to the matters specifically covered in this Annex, either party identifies additional matters on transportation security that should be specifically included in this Annex, that party will request that the Annex be amended accordingly, and the parties will meet to discuss the need for such an amendment. Any agreed upon amendment or modification must be in writing, and executed by the appropriate representatives of TSA and PHMSA.

APPROVED BY:

TRANSPORTATION SECURITY ADMINISTRATION

E Hawley
Assistant Secretary

9 August, 2006
Date

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

Thomas J Barrett
Administrator

7 August 2006
Date

Memorandum of Agreement Between NRC and PHMSA

MEMORANDUM OF AGREEMENT
BETWEEN
THE NATIONAL RESPONSE CENTER
AND THE PIPELINE AND HAZARDOUS
MATERIALS SAFETY ADMINISTRATION

1. **PARTIES:** The parties to this Memorandum of Agreement (MOA) are the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the National Response Center (NRC) collectively, "the Parties".

2. **AUTHORITY:** The primary authority by which both parties enter into this MOA is 40 C.F.R. § 300.125(b) which directs the Commandant, USCG, in conjunction with other National Response Team (NRT) agencies, to provide the necessary personnel, communications, plotting facilities, and equipment for the NRC.

3. **PURPOSE:** The purpose of this MOA is to set forth terms and conditions by which the NRC will provide services relating to requested reportable incidents of oil spills, chemical and hazardous material releases into the environment and additional notifications regarding PHMSA specific incidents meeting established trigger criteria. The PHMSA will provide funding to cover the cost of such services specified in the ordering document.

4. **BACKGROUND:** The NRC was established under the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300.125). It states in part:

> "The National Response Center (NRC), hosted by and located at the USCG Headquarters, is the national communications center, continuously manned for handling activities related to regulated response actions. The NRC acts as the single point of contact for all pollution incident reporting and as the National Response Team (NRT) communications center. Notice of discharges and releases are made telephonically through a toll free number or a special local number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). The NRC receives and immediately relays telephone notices of discharges or releases to the appropriate pre-designated Federal On-Scene Coordinator (FOSC). The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC."

The NRC serves an important role in the National Response System (NRS) for the preservation, security and restoration of the environment and public safety through communication and coordination of response action of various Federal, state and local organizations. Its multi-disciplinary mission is to disseminate time critical information to first responders about any reportable event or release of chemical, oil and hazardous materials (including chemical, biological, radiological agents and terrorism related activities) for proper response and consequent management.

The NRC is a non-profit Federal entity. The NRC does not receive independent funding from Congress.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) specifies that the NRC should receive its means for operation from the Federal agencies to which it provides services.

The National Response System (NRS) is the mechanism for emergency response to discharges of oil and the release of chemicals into the navigable waters or environment of the United States and its territories.

The NRS functions through a network of interagency and inter-government relationships which coordinate response actions by all levels of government in support of the on-scene coordinators (OSC).

The NRC is tasked with providing emergency notification, information and services to a number of federal departments and agencies. The primary function of the National Response Center is to serve as the sole national point of contact for reporting all oil, chemical, radiological, biological and etiological discharges into the environment anywhere in the United States and its territories; the NRC also receives Suspicious Activity and Maritime Security Breach Reports. In addition to gathering and distributing spill data for Federal On-Scene Coordinators (FOSC) and serving as the communications and operations center for the National Response Team, the NRC maintains agreements with a variety of federal entities to make additional notifications regarding incidents meeting established trigger criteria.

5. **DESCRIPTION:** The NRC provides a 24 hour per day, 365 days per year telephone watch. NRC Watch Standers enter telephonic reports of pollution incidents into the Incident Reporting Information System (IRIS) and immediately relays each report to the pre-designated FOSC and other responsible federal agencies.

6. **RESPONSIBILITES:**

(a) PHMSA will:

1) Provide the NRC with criteria for making incident notifications of their interest.

2) Provide the NRC with a 24-hour point of contact to which real time notifications, conference calls, and telephone and electronic/fax reports may be communicated.

3) Provide the NRC an Interagency Agreement at the beginning of each fiscal year with an Order Requirement/Funding Agreement which describes the services requested, including funding for, one Full Time Equivalency (FTE) GS-7/8/9 position. Funding Orders must be received after the start of the new fiscal year within a reasonable time period within 30 days, but no later than 90 days after the start of the new fiscal year.

4) Meet semi-annually, or as required, to review progress, discuss improvements to process and/or procedures and discuss funding issues.

(b) NRC will:

1) Provide PHMSA estimates during the month of June to allow preparation, planning, assessment, and submission of budgetary reports relevant to the upcoming fiscal year. Estimates will be based on NRC's Standardized Funding Model and USCG Reimbursable Personnel Costs (RPC).

2) Provide the following services listed below as indicated by PHMSA order requirements.

- 24/7 Operational Call Center
- Toll Free Telephone Hotline
- Customized Data Collection Application
- Customized Notification Criteria
- Real Time Verbal Briefs
- Real Time Automatic Reporting
- Real Time Data Transmission
- Customized Nightly Reports
- Conference Phone Bridge Capability
- Custom FOIA Reporting
- NRC Website
- Incident Summaries (INSUMS)
- Language Line Reporting

3) Meet semi-annually, or as required, to review progress, discuss improvements to process and/or procedures and discuss funding issues.

FINANCIAL OBLIGATIONS: This agreement does not constitute an obligation of funds from either party. No provision herein shall be construed as to require either Trading Partner to obligate funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. All activities under or pursuant to this Agreement are subject to the availability of appropriated funds. Presentation and acceptance of a properly funded Order should be received by the NRC/USCG within 30 days, but not longer than 90 days of the fiscal year in which service is provided. Should a Continued Resolution (CR) be in effect, please ensure adequate funding provided to

NRC/USCG based on your agencies' specific CR guidance.

8. **TRADING PARTNER BILLING AND FINANCIAL COMMUNICATIONS:** To ensure proper billing and IPAC collections a funded order must include all the necessary Buy/Sell Minimum Accounting Data Elements (MADE) as set forth in Treasury Financial Manual Chapter 4700, Appendix 10, 9.1.1, attachment (3).

CG Civilian FTE, if applicable to this agreement, will be billed/ IPAC collected based on actual pay reports for QTRS 1-3 provided by the National Finance Center quarterly, in arrears. To ensure proper invoicing and fiscal year close-out, 4th QTR billing and collection will occur in the second month of the 4th QTR based on CG Civilian Pay Manager's CIV PAY Actual Report based on known position encumbrances.

CG Military FTE, if applicable to this agreement, will be billed/ IPAC collected for QTRS 1-3 based on the CG Military Pay Report quarterly, in arrears. To ensure proper invoicing and fiscal year close-out, 4th QTR billing and collection will occur in the second month of the 4th QTR based on known position encumbrances.

9. **DISPUTE RESOLUTION:** All disputes concerning questions of fact or law arising under this Agreement shall be referred by the claimant in writing to the appropriate person identified in this Agreement as the Parties' "Points of Contact." The persons identified as the "Points of Contact" will consult and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signing officials, or their designees, for joint resolution after the Parties have separately documented in writing clear reasons for the dispute. As applicable, disputes will be resolved pursuant to the provisions of the Business Rules for Intergovernmental Transactions delineated in the Treasury Financial Manual, Vol. 1, Bulletin 2011-04, and Intergovernmental Business Rules.

10. **OTHER PROVISIONS/CONFLICTS:**

a. Severability: Nothing in this MOA or any annex shall be construed to conflict with current law, regulation, or directive of the U. S. Department of Homeland Security or the U. S. Department of Transportation. If a term of this MOA is inconsistent with such authority, that term shall be invalid to the extent of the inconsistency. The remainder of that term and all other terms of this MOA or any annex shall remain in effect.

b. Rights and Benefits: Nothing in this MOA is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory, or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or offices, State agencies or officers carrying out programs authorized under Federal law, or any other person.

c. Billing: NRC/USCG will bill PHMSA on a quarterly basis, in arrears, for the costs associated with the positions referenced in this Agreement, beginning at such

time that the positions are filled.

d. Review: The Parties agree that this agreement will be reviewed annually to evaluate its effectiveness and to make any necessary changes.

e. Records: USCG will keep complete and accurate records and accounts regarding billing and the expenditure of funds under the Agreement and can submit quarterly financial reports to ONA such billing and expenditures upon request.

11. **EFFECTIVE DATE:** The terms of this Agreement will become effective upon the date of the latest signature and shall remain in effect for five years from that date. This Agreement can be extended for successive periods of up to five years.

12. **MODIFICATION:** This Agreement may be modified upon the mutual written consent of an authorized representative of each of the Parties. No deviations from this MOA will be authorized without the express written approval of NRC and PHMSA. Any modification that creates an additional commitment of agency resources must be signed by the original agency signatory authority, or successor, or a higher level agency official possessing original or delegated authority to make such a commitment.

13. **TERMINATION:** This Agreement can be terminated by either Party with 365 days advance written notice. In the event of such termination, each Party will be obligated to reimburse the other Party for all costs for which the respective Parties were responsible and that have been incurred in support of this Agreement up to the date the termination notice is received by the non-terminating Party.

14. **POINTS OF CONTACT**:

A. USCG:

NRC
Commandant (CG-MER-3)
Director, National Response Center
2703 Martin Luther King JR Ave
Washington, D.C. 20593
Mr. R. Kevin Smith
(202) 372-2420
Kevin.Smith@uscg.mil

NRC RESOURCE/FINANCIAL
Commandant (CG-MER-3)
Budget Officer, National Response Center
2703 Martin Luther King JR Ave
Washington, D.C. 20593
LT Tammie Carnegie
(202) 372-1506
Tammie.R.Carnegie@uscg.mil

Commandant (CG-MER-3) Storekeeper,
National Response Center 2703 Martin Luther
King JR Ave Washington, D.C. 20593
SK1Jorge Cruz (202) 372-
2427
Jorge.E.Cruz@uscg.mil

B. FINANCIAL -ACCOUNTS RECEIVABLES/INVOICES
Commanding Officer (OGR) USCG
Finance Center 1430A Kristina Way
Chesapeake, VA 23326
Ms. Kimberly Carr (757)-
523-6923
Kimberly.E.Carr@uscg.mil

C. PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

PHMSA Program Manager Mr.
William Stuckey Pipeline and
Hazardous
Materials Safety Administration 1200
New Jersey Ave. SE Washington, DC
20590
(202) 366-4031
William.Stuckey@dot.gov

PHMSA Accounts Payable
Ms. Angela Sung
Pipeline and Hazardous Materials Safety
Administration 1200 New Jersey Ave. SE
Washington, DC 20590
(202) 366-5431
Angela.Sung@dot.gov

PHMSA Financial Officer 1200
New Jersey Ave, SE Washington,
DC 20590 Ms. Angela Sung
(202) 366-5431
Angela.Sung@dot.gov

SIGNATORY AUTHORITY

Approved and Authorized on Behalf of Each Party by:

SMITH.ROBERT.K.1232104224

R.K. Smith
Director, National Response Center

For the Pipeline and Hazardous Materials Safety Administration

Linda Daugherty

for Alan Mayberry — Date
Associate Administrator for Pipeline Safety

WILLIAM S SCHOONOVER

William Schoonover — Date
Associate Administrator for Hazardous Material Safety

Appendix B

Commonly Used Forms

1. Emergency Order Letter
2. In-Service-Order Letter
3. Recall Order Letter
4. Out of Service Order/Shipment Detained
5. Written Statement Form
6. Oral Statement Form
7. Exit Briefing
8. Shipment Observation Report
9. Box Observation Report
10. Drum Observation Report
11. Pail Observation Report
12. Intermodal (IM) Portable Tank Observation Report
13. Cylinder Observation Report
14. Bulk Container Inspection Form
15. F Style Metal Can Observation Form
16. Jerrican Observation Form
17. Nurse Tank Observation Form
18. Security Inspection Report
19. Chain of Custody Report
20. Inspection Report Checklist

Emergency Order Letter

ABC Corporation
1234 Highway
Anywhere, TX 00000

PHMSA EMERGENCY ORDER: 00-000

To Whom It May Concern:

On April 14, 2016, investigators from the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety, Field Operations, conduced freight container inspections in accordance with 49 U.S.C. Section 5121(c) at ZYZ Container Terminal, Houston, TX. During these inspections the investigators inspected container number 12345678, and noted serious safety violations of the Hazardous Materials Regulations (HMR) by your company.

Your shipment has been deemed an imminent hazard, and has been taken Out-of-Service under the provisions of Title 49 Code of Federal Regulations, Part xxx until corrective measures have been taken to ensure the shipment is brought into compliance and is safe for transportation. These control measures are being placed on your shipment as its current condition poses an increased risk to the public and environment while in transportation.

The investigators who performed the inspection have outlined the discrepancies on the attached inspection report. Once you have completed mitigation efforts to bring your shipment into compliance, you must notify this office and request a re-inspection. A re-inspection will be required prior to the issuance of the In-Service order. Prior to your shipment being released into transportation you must obtain a written In-Service order thereby rescinding this Out-of-Service order.

Failure to comply with this order may under the provisions of Title 49 U.S.C. Sections 5123 and 5124 provide for civil and criminal penalties for violation of the HMR. A civil penalty of not more than $175,000 per violation, per day, may be imposed through administrative proceedings initiated by the Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration. When a criminal violation has been determined by a court, a fine, or imprisonment for not more than five years, or both, may be imposed for each violation. This order is issued without prejudice as to the initiation of civil penalty proceedings for any violations that may have previously occurred.

You have the right to appeal this action in accordance with 49 CFR xxx; however, all conditions of the order remain in effect while such appeal is being processed unless

specifically stayed by the Associate Administrator, Office of Hazardous Materials Safety. The appeal must be in writing and sent to: U.S. Department of Transportation Attention: Deputy Associate Administrator, Field Operations, 1200 New Jersey Avenue SE (E21-306), Washington, DC 20590-0001.

If you have any questions regarding this order, please contact me at *insert signatory number here*.

Sincerely,

John Doe
Director, XX Region

In-Service Order Letter

ABC Corporation
1234 Highway
Anywhere, TX 00000

PHMSA IN-SERVICE-ORDER: 00-000

To Whom It May Concern:

On April 10, 2016, investigators from the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety, Field Operations, conduced freight container inspections in accordance with 49 U.S.C. Section 5121(c) at ZYZ Container Terminal, Houston, TX. During these inspections the investigators inspected container number 12345678, and noted serious safety violations of the Hazardous Materials Regulations by your company.

Your shipment was deemed an imminent hazard, and was taken Out-of-Service under the provisions of Title 49 Code of Federal Regulations, Part xxx until corrective measures were taken to ensure your shipment was brought back into compliance and safe for transportation.

After review of your company's corrective measures, it has been determined that your shipment no longer poses an increased risk to the public and environment, therefore PHMSA's Emergency Order # XXXXX, has been rescinded.

If you have any questions regarding this order, please contact me at *insert signatory number here*.

Sincerely,

John Doe
Director, XX Region

Recall Order Letter

ABC Corporation
1234 Highway
Anywhere, TX 00000

PHMSA RECALL ORDER: 00-000

To Whom It May Concern:

On April 10, 2016, investigators from the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety, Field Operations, conducted a compliance inspection in accordance with 49 U.S.C. Section 5121(c) at ABC Corporation, Anywhere, TX. During the inspection, the investigators noted serious safety violations of the Hazardous Materials Regulations (HMR) regarding DOT-3HT specification cylinders that were requalified and returned to service by your company when test records indicated the cylinders should have been condemned.

It has been deemed that the cylinders that have been returned to service present a significant risk to people, property, and/or the environment. ABC Corporation is hereby ordered to initiate an immediate recall of such materials and packages and provide a written recall strategy to the Associate Administrator, Office of Hazardous Materials Safety, PHMSA, no later than two business days of the date of this recall order.

The Office of Hazardous Materials Safety will review the proposed recall strategy, but do not delay in the initiation of the recall pending the review and approval of the recall strategy.

You may request termination of this recall by submitting a written request to the Associate Administrator or his designee stating that the recall is effective in accordance with the approved recall strategy and by accompanying the request with the most current recall status report, including the description of the disposition of the recalled material and/or packages, and evidence that the hazard no longer exist.

Written notification that a recall is terminated will be issued by the Associate Administrator or his designee to the recalling responsible party when PHMSA determines that all reasonable efforts have been made to remove or correct the material and/or packaging subject to the recall no longer presents a significant risk to people, property, and/or the environment.

Failure to comply with this order may under the provisions of Title 49 U.S.C. Sections 5123 and 5124 provide for civil and criminal penalties for violation of the HMR. A civil penalty

of not more than $175,000 per violation, per day, may be imposed through administrative proceedings initiated by PHMSA's Office of Chief Counsel. When a criminal violation has been determined by a court, a fine, or imprisonment for not more than 5 years, or both, may be imposed for each violation. This order is issued without prejudice as to the initiation of civil penalty proceedings for any violations that may have previously occurred.

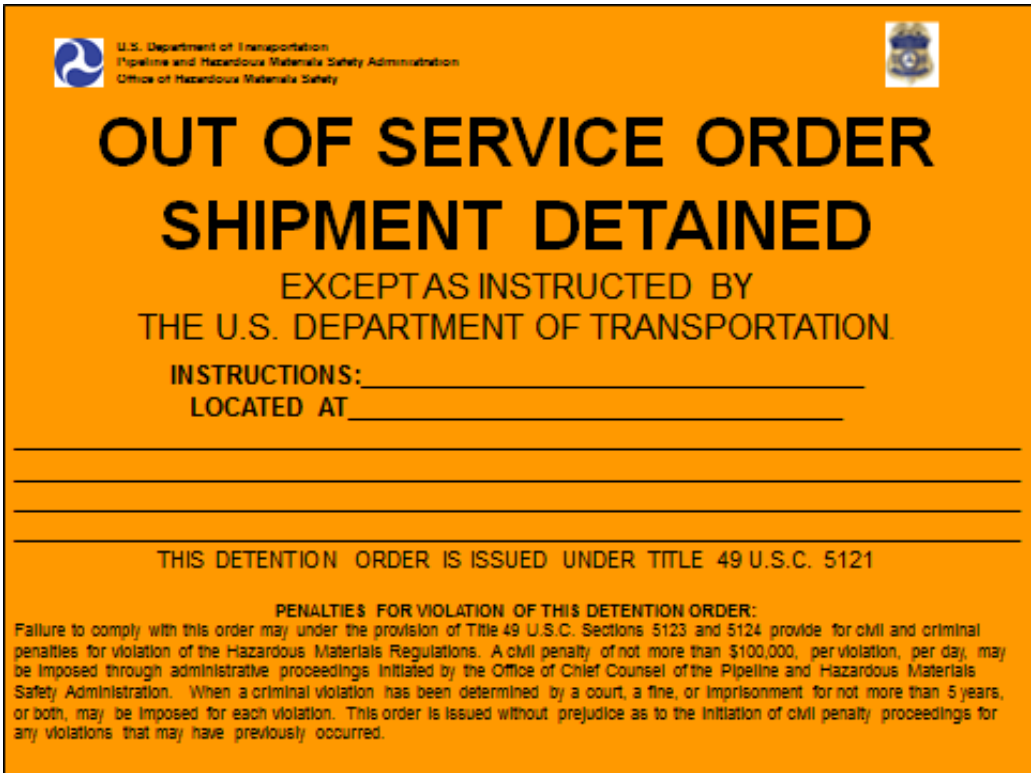
You have the right to appeal this action in accordance with 49 CFR xxx; however, all conditions of the order remain in effect while such appeal is being processed unless specifically stayed by the Associate Administrator, Office of Hazardous Materials Safety. The appeal must be in writing and sent to: U.S. Department of Transportation Attention: Deputy Associate Administrator, Field Operations, 1200 New Jersey Avenue SE (E21-306), Washington, DC 20590-0001.

If you have any questions regarding this order, please contact me *at insert signatory number here*.

Sincerely,

John Doe
Deputy Associate Administrator, Hazardous Materials

Out of Service Order/Shipment Detained



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

OUT OF SERVICE ORDER
SHIPMENT DETAINED

EXCEPT AS INSTRUCTED BY
THE U.S. DEPARTMENT OF TRANSPORTATION

INSTRUCTIONS:_____
LOCATED AT_____

THIS DETENTION ORDER IS ISSUED UNDER TITLE 49 U.S.C. 5121

PENALTIES FOR VIOLATION OF THIS DETENTION ORDER:
Failure to comply with this order may under the provision of Title 49 U.S.C. Sections 5123 and 5124 provide for civil and criminal penalties for violation of the Hazardous Materials Regulations. A civil penalty of not more than $100,000, per violation, per day, may be imposed through administrative proceedings initiated by the Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration. When a criminal violation has been determined by a court, a fine, or imprisonment for not more than 5 years, or both, may be imposed for each violation. This order is issued without prejudice as to the initiation of civil penalty proceedings for any violations that may have previously occurred.

Written Statement Form

U.S. Department
Of Transportation
Pipeline and Hazardous
Materials Safety Administration

Location: _____

_____

Date: _____

Statement of _____

I _____, of _____,

make the following voluntary statement to _____, who has identified him/herself to me as an Investigator for the United States Department of Transportation. No threats or promises have been made to me.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

I certify under penalty of perjury that the foregoing is true and correct. Executed on _____, 20___.

Statement by: _____

Signed in the presence of _____, this _____

day of _____, 20___

Page _____

Statement of _____ continued

I certify under penalty of perjury that the foregoing is true and correct. Executed on _____, 20___.

Statement by: _____

Signed in the presence of _____, this _____

day of _____, 20___.

Oral Statement Form

U.S Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Safety, Field Operations

Oral Interview Form

Investigator Conducting Interview: Name: Title: Report Number:	**Respondent:** Company: Address:
Person Interviewed: Name: Title: Company: City/State:	**Date and Type of Interview:** Date: In Person: X Telephone:

SUBSTANCE OF INQUIRY AND ANSWER GIVEN (NOT A TRANSCRIPT)

US DOT/PHMSA/OHMSFO	
Report Number:	15
Exhibit Number:	
Page Number:	1 of 1

Exit Briefing Form

U.S. Department of Transportation

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety
Field Operations

1200 New Jersey Avenue, SE
East Building, Second Floor
Washington, DC 20590
Telephone: 202-366-4700
Fax: 202-366-7435

EXIT BRIEFING

COMPANY NAME _____ DATE _____

ADDRESS _____

COMPANY WEB ADDRESS_____ TAX ID# _____

NAME OF INDIVIDUALS RECEIVING THE BRIEFING:

Name: _____ Title: _____

Name: _____ Title: _____

Name: _____ Title: _____

This has been a compliance inspection conducted in accordance with Title 49 U.S.C. Section 5121(c). This exit briefing addresses only the areas noted, and it is not a finding of general compliance in any other areas covered by the Hazardous Materials Regulations that were subject to the inspection.

During the course of the inspection the following probable violations of 49 CFR and/or quality control items were noted:

PROBABLE VIOLATIONS:

Section:

Explanation:

PROBABLE VIOLATIONS:

Section:

Explanation:

Section:

Explanation:

Section:

Explanation:

QUALITY CONTROL ITEMS:

The following is a list of items observed which could become probable violations of 49 CFR:

Section:

Explanation:

Section:

Explanation:

Section:

Explanation:

This document is not a final report. The information gathered at this inspection and any probable violations noted will be reviewed prior to finalizing the report. Probable violation(s) may be removed or others may be added during this review. In addition, quality control items may be revised to become probable violations, or vice-versa, during this review.

Upon determination that a probable violation exists, the Associate Administrator for Hazardous Materials Safety is authorized to impose certain sanctions, including warning letters, tickets, compliance orders, and civil penalties. In addition, legal action, including injunctive or criminal proceedings, may be initiated. Title 49 U.S.C. Sections 5123 and 5124 provide for civil and criminal penalties for violation of the Hazardous Materials Regulations.

A civil penalty of not more than $78,376, but not less than $471 when related to training, per violation may be imposed through administrative proceedings initiated by the Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration. In addition, if a violation results in death, serious illness, or severe injury to any person or substantial destruction of property, the agency may increase the amount of the civil penalty for each violation to not more than $182,877. When a criminal violation has been determined by a court, a fine of up to $250,000 for an individual and up to $500,000 for a company, imprisonment for not more than 5 years, or both, may be imposed for each violation. The maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person.

The investigator does not determine which sanction, if any, may be imposed and cannot provide information concerning what proceedings will be initiated or sanctions imposed.

Documentation of corrective action submitted in writing to the investigator within 30 days of the inspection may be considered for mitigation should the sanction imposed result in the issuance of a notice proposing a civil penalty. However, any documented corrective action would not eliminate or preclude the initiation of a civil penalty proceeding, a finding of violation, or assessment of a civil penalty.

Our objective is to ensure a fair regulatory enforcement environment. If you feel you have been treated unfairly or unprofessionally, you may contact William Schoonover at 202-366-4700, or e-mail us your concern at HM-Enforcement@dot.gov. You also have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR, or 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.

I certify that I received the above briefing as it appears on this form. I understand that by signing this form I am in no way expressing agreement with its contents. I am only acknowledging that I have reviewed it and have received a copy.

_____	_____
Signature of Investigator(s)	Signature of Representative(s)
Date: _____	Date: _____

Shipment Observation Report

HAZARDOUS MATERIALS ENFORCEMENT
SHIPMENT OBSERVATION REPORT

Pipeline and Hazardous
Materials Safety Administration

USDOT/PHMSA
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Date: _____ Time: _____

OBSERVED AT:

Company Name: _____

Address: _____

_____

Contact: _____ Title/Position: _____

SHIPMENT OBSERVED:

Classification: _____ Type Material: _____ UN/NA_____Type

Container: _____ Size/Weight: _____

Box/Drum/Cylinder Observation Report (Attached): Yes____ No__

Container Manufacturer: _____

Address: _____

_____

Container Certifier: _____

Address: _____

_____

Shipper of Material: _____

Address: _____

_____

SHIPPING DOCUMENT:

Type: _____ Date: _____ No. _____

Shippers Name: _____

Address: _____

_____

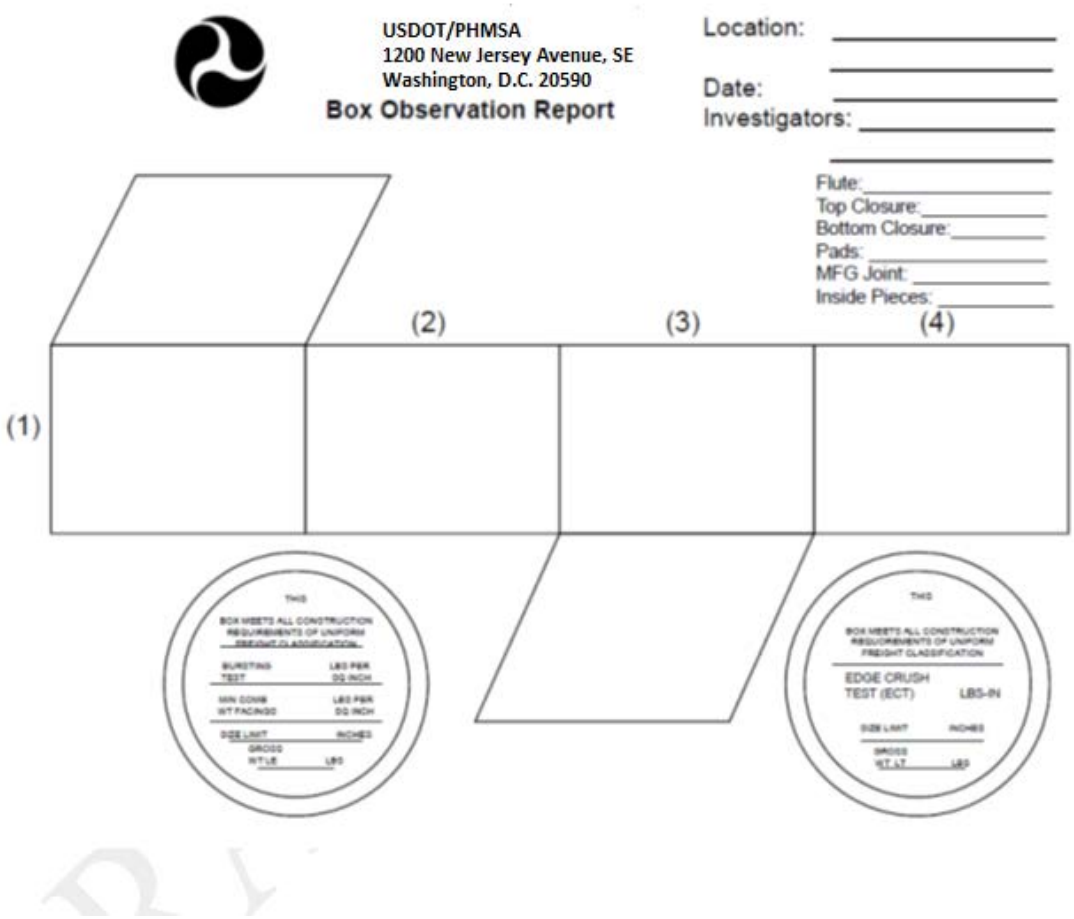
Classification: _____ Type Material: _____

Copy of Shipping Document Attached: Yes_____ No _____

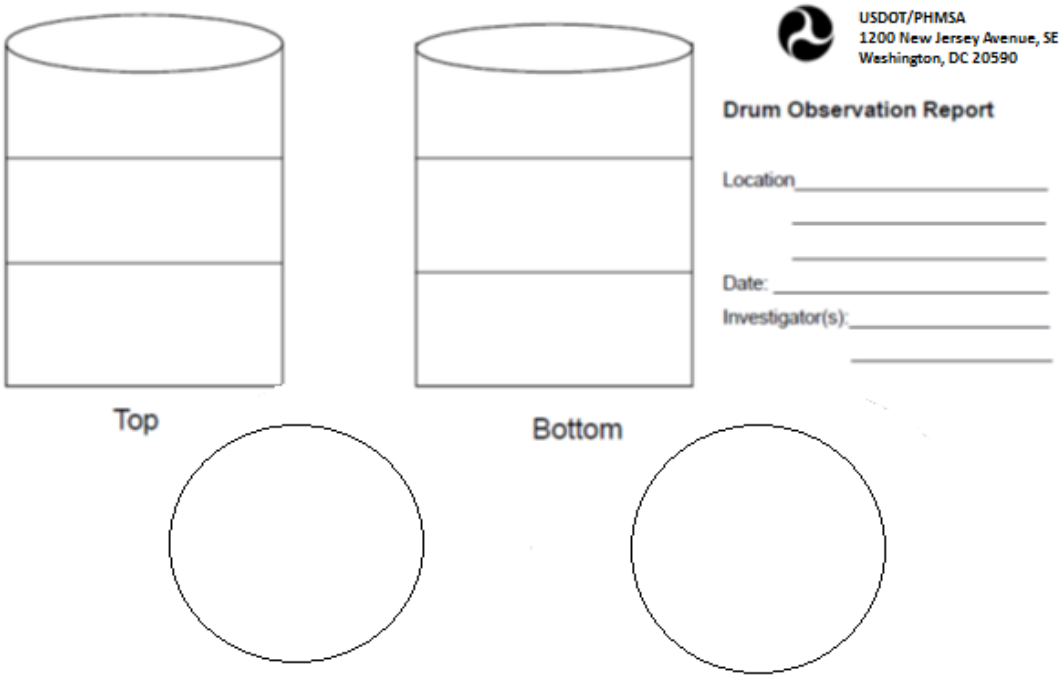
Investigator: _____ Report No. _____

PHH-_____ Hazardous Materials Investigator

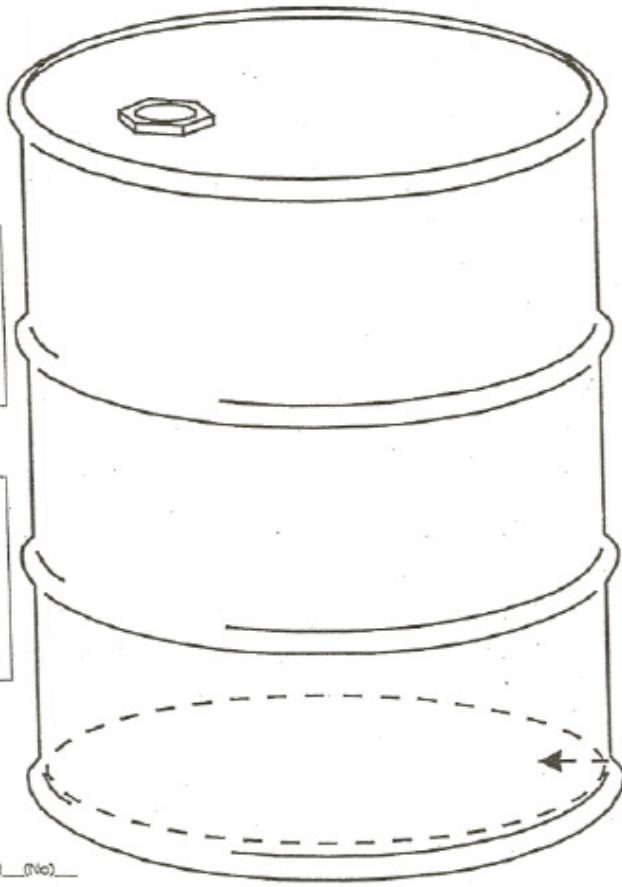
Box Observation Report



Drum Observation Report Form



DrumObservation



Drum Closure Rings

- ☐ Nut & Bolt Style
- ☐ Lever Locker Style
- ☐ Other_____

Drum Plugs (Bungs)

Number of Bungs _____

Location of Bungs_____

Capacity _____(Liters)

Salvage Drum (Overpack) (Yes)___(No)___

COMPLIANCE SPECIFICATION MARKING

United Nations Symbol (u n)	Packaging Code	Performance Level	Gross Weight kilogram	Solid's or Inner Pkg's	2-digit Year of Manufacturing (Month, if applicable)	Country of Authorization	Name and Address of Manufacturer	Manufacturer's Registered Symbol

Marking of Packagings

Proper Shipping Name_____

Technical Name_____

Hazard Class/Division_____UN/NA Number_____

Label(s) - Primary _____Subsidiary _____

Reconditioned Containers

Country of Reconditioning _____

Name or DOT Registered Symbol_____

2-Digit Year of Reconditioning (Month, if applicable)_____

Reconditioned Package Marks (RL) _____

Company Name: _____

Address:_____

Inspection Date:_____/_____/_____
(MONTH) (DAY) (YEAR)

Inspector: _____

Pail Observation Report

INVESTIGATIVE NOTES
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES

PIPELINE AND HAZARDOUS MATERIAL SAFETY ADMINISTRATION
PAIL OBSERVATION REPORT

U N

U N

Location: _____

_____

Date: _____

Inspector: _____

Cap/Lid/Gasket: _____

Other: _____

_____

_____

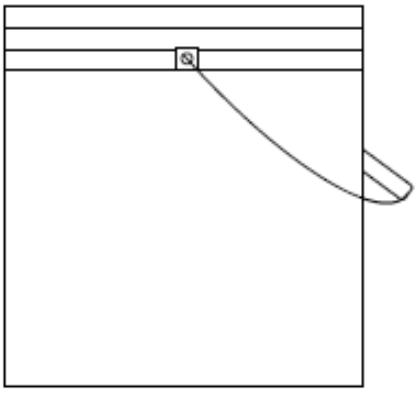
_____

_____

_____

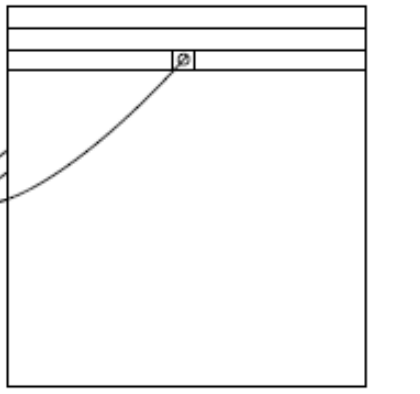
(Lid Outside)

(Lid Inside)



(Bottom)

U.S.
____ GAL.



Intermodal (IM) Portable Tank Observation Report

IM PORTABLE TANK OBSERVATION REPORT

U.S. Department of Transportation

Pipeline & Hazardous Materials Safety Admin.

Location: _____

Date: _____ Time: _____

F/B# _____ Date # _____ Booking # _____

Shipper:

Consignee:

Forwarder:

Water Carrier:

Surface Carrier:

Vessel & Voyage:

Port of Loading:

Port of Discharge:

Owner or Lessee Name: _____

Proper Shipping Name: _____ On Tank _____ B/L _____

Hazard Class _____

UN No. _____ On Tank _____ B/L _____

Placards Front _____ Rear _____

Side (Driver) _____ Side (Passenger) _____

Tank No. _____ Chassis No. _____

DOT Special Permit _____

Cylinder Observation Report Form

OFFICE OF HAZARDOUS MATERIALS SAFETY

Inspector of Record: _____ Inspection Date: _____

Company Name and Address: _____

Hazard Warning Labels

Primary Hazard

Subsidiary Hazard

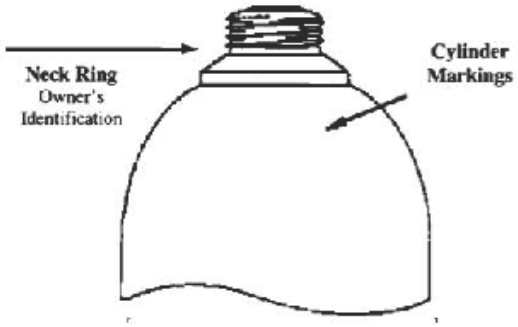
Packaging Data

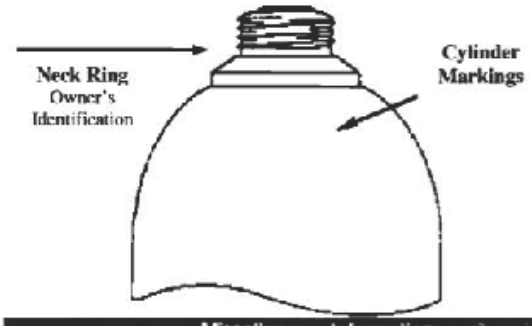
DOT/ICC Markings							
Serial Number							
Manufacturing Data	Date of Mfg:			Mfg. ID Symbol:			
Retest Markings	Mo	RIN	Yr	Mo	RIN	Yr	
Retest Markings	Mo	RIN	Yr	Mo	RIN	Yr	
Cylinder Mark with	+ (10% overfill) q yes q no			* (10 yr. reuest) q yes q no			
Cylinder Size							
Shipping Name							
Technical Name							
UN/ID Number							
Miscellaneous							

ICC/DOT Specification	Service Pressure (p.s.i.g.)	Serial Number	Testing Agency Stamp	Original Hydro Date	Collar Marking

Attachments or Tags Yes No

Description _____





Miscellaneous Information

Nominal Dimensions _____ Outside Diameter(In.) _____ Length(In.)

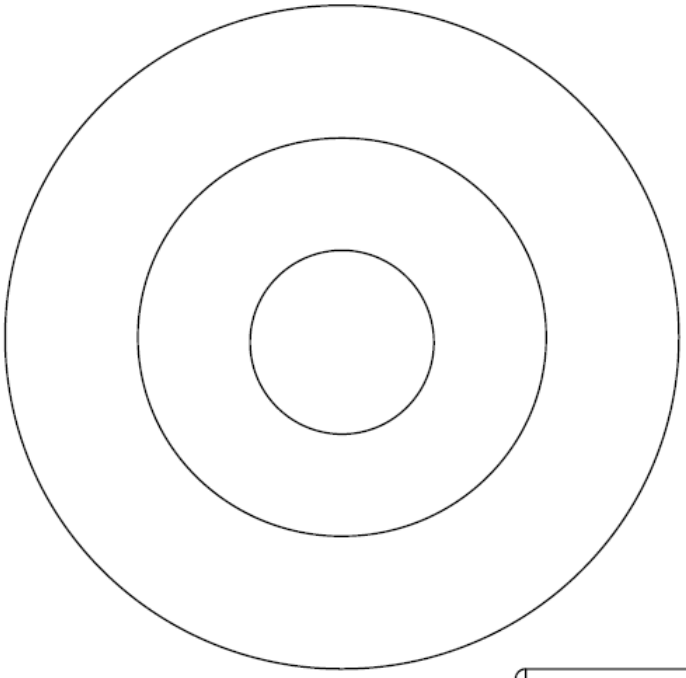
Cuts, digs, gouges _____ Length _____ (In.)

Corrosion _____ (Kind) _____ Depth(In). _____ Length ____ (In.)

Dents _____ Depth(In.) **Foot Ring** (Yes) ___ (No) ___

Cylinder Observation Report

USDOT/PHMSA/OHME/Eastern Region
820 Bear Tavern Road, Suite 306
West Trenton, NJ 08628



Investigators:_____

Location: _____

_____

Phone: _____

Contact: _____

Date: _____

Time: _____

Size: _____Height

_____ Diameter

Paint: _____

Misc.: _____

_____

_____

Intermediate Bulk Container Inspection Form

OFFICE OF HAZARDOUS MATERIALS SAFETY

Inspector of Record: _____ Inspection Date: _____

Company Name and Address: _____

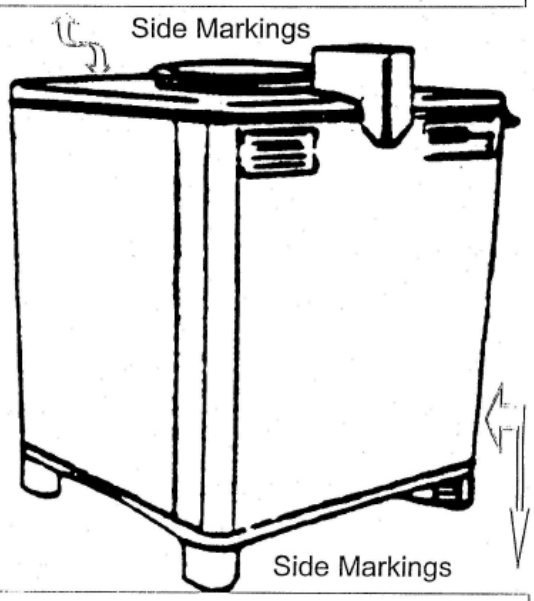
Hazard Warning Labels or Placards

Primary Hazard | Subsidiary Hazard

Packaging Data

Specification	Serial Number
Manufacturer	Owner/Lessee Name
Original Test Date	Current Retest Date
Design Pressure	Gauge Test Pressure
Date of Leakproofness Test	Tare Mass, kg
Rated Capacity, liters of water	Maximum Loading/discharge pressure
Body Material/Min. thickness, mm	
Shipping Name	Technical Name
UN/ID Number	Exemption Number
Misc.	Misc.

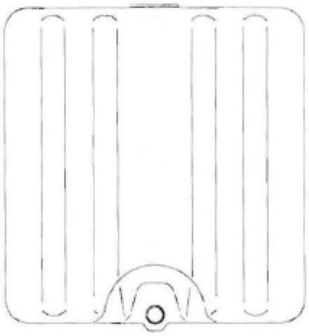
Exhibit	Tab	Report Number



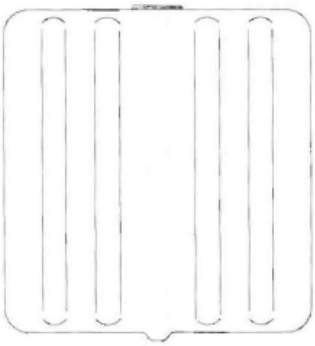
INTERMEDIATE BULK CONTAINER & PORTABLE TANK OBSERVATION

U.S. DOT/ PHMSA
IBC
Observation Report PG 1

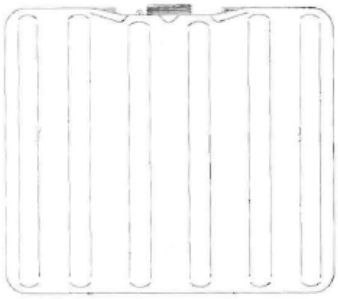
Location: _____
Date: _____
Investigators: _____
_____



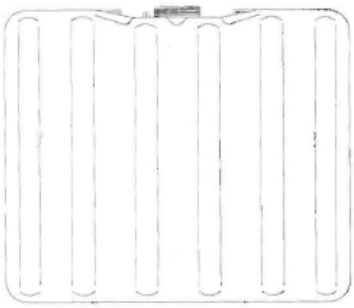
FRONT



BACK



LEFT SIDE



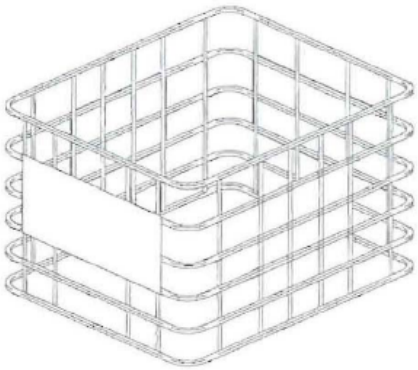
RIGHT SIDE

US DOT/PHMSA/OHME/WESTERN REGION

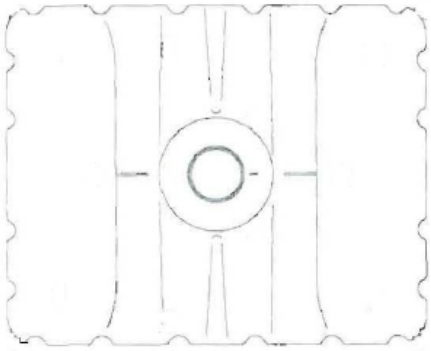
REPORT NUMBER _____
EXHIBIT NUMBER _____
PAGE NUMBER _____ OF _____

U.S. DOT/ PHMSA
IBC
Observation Report PG 2

Location: _____
Date: _____
Investigators: _____
_____



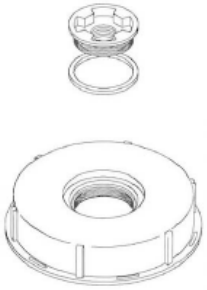
CAGE



TOP

REMARKS

_____
_____
_____
_____
_____



REMARKS

_____
_____
_____
_____
_____

US DOT/PHMSA/OHME/WESTERN REGION

REPORT NUMBER _____
EXHIBIT NUMBER _____
PAGE NUMBER _____ OF _____

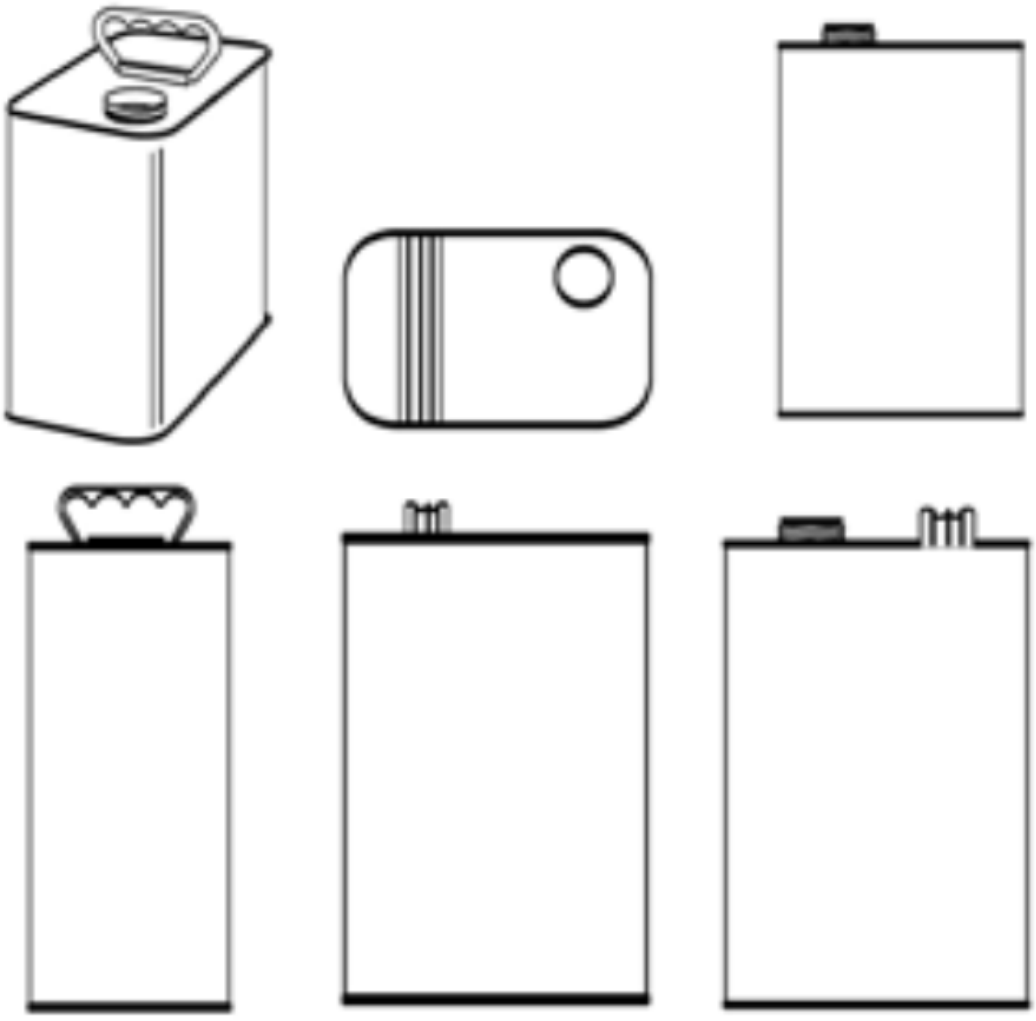
F Style Metal Can Observation Form

Location _____

Date _____

Investigator _____

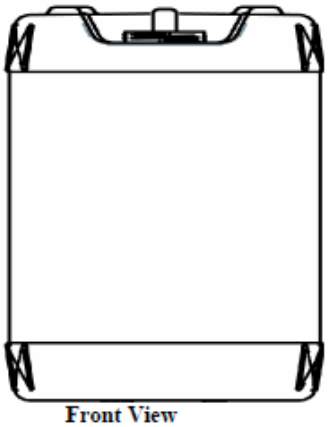
1 Gallon F Style Metal Can



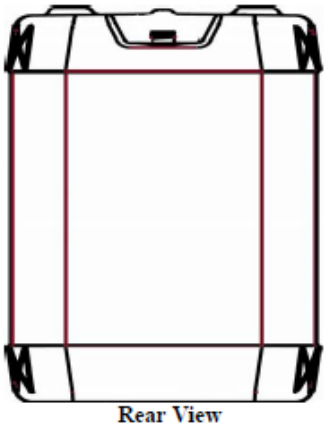
Jerrican Observation Form

U.S. DOT/ PHMSA
Plastic Jerrican
Observation Report

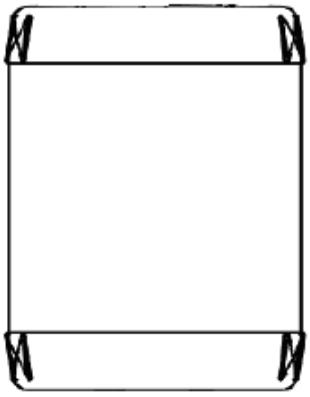
Location: _____
Date: _____
Investigators: _____
_____



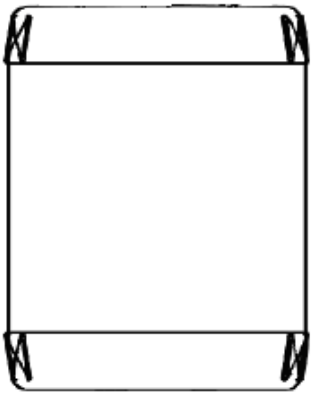
Front View



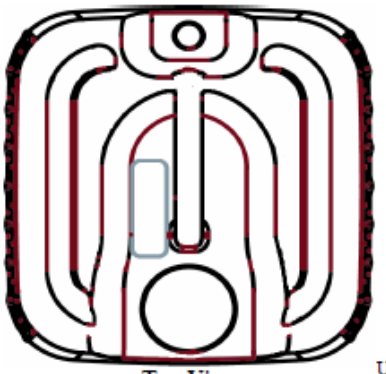
Rear View



Side View



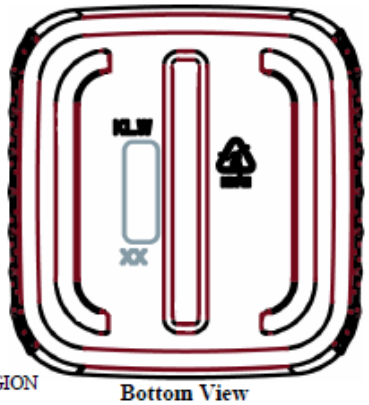
Side View



Top View

REMARKS

_____
_____
_____
_____
_____

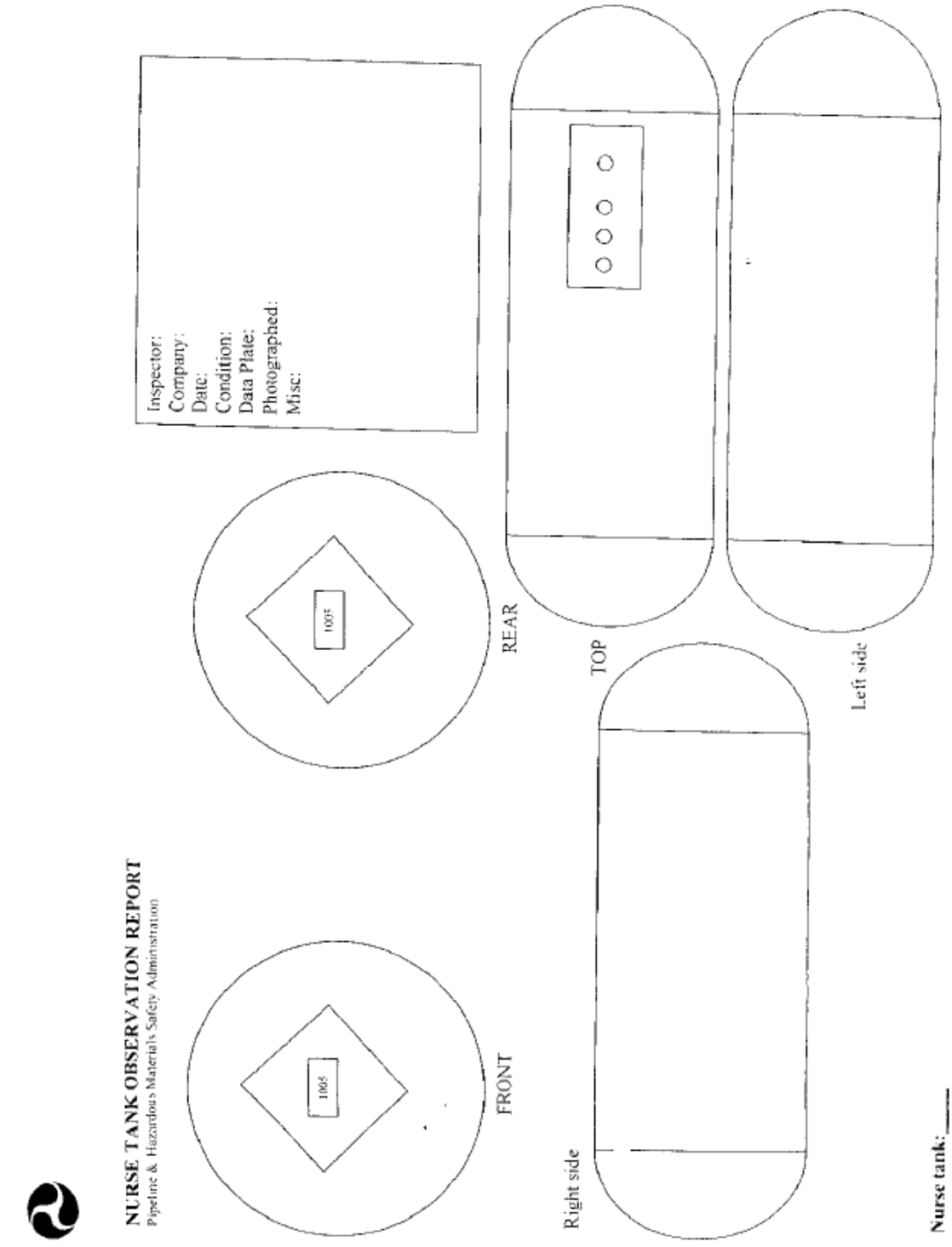


Bottom View

US DOT/PHMSA/OHME/WESTERN REGION

REPORT NUMBER _____
EXHIBIT NUMBER _____
PAGE NUMBER _____ OF _____

Nurse Tank Observation Form



Security Inspection Report

INVESTIGATIVE NOTES
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES

PIPELINE AND HAZARDOUS MATERIAL SAFETY ADMINISTRATION
HAZMAT SECURITY INSPECTION REPORT

Inspection Date: _____

Facility Name and Address: _____

_____

_____

Company Officials Interviewed: _____ Title: _____

_____ _____

_____ _____

SECURITY PLAN

Identify the material(s) below requiring a Hazardous Materials Security Plan:		
	1.1, 1.2, 1.3	Any quantity.
	1.4, 1.5, 1.6	Placarded quantity.
	2.1	A large bulk quantity.
	2.2	A large bulk quantity of material with an oxidizer subsidiary. Any quantity PIH (e.g. Anhydrous ammonia).
	2.3	Any quantity.
	3	PG I and II in a large bulk quantity. Placarded quantity desensitized explosives.
	4.1	Placarded quantity desensitized explosives.
	4.2	PG I and II in a large bulk quantity.
	4.3	Placarded quantity.
	5.1	PG I and II in a large bulk quantity. PG III perchlorates, ammonium nitrate, ammonium nitrate fertilizers, or ammonium nitrate emulsions, suspensions, or gels in a large bulk quantity.
	5.2	Any quantity of Organic peroxide, Type B, liquid or solid, temperature controlled.
	6.1	Any quantity PIH. A large bulk quantity of a material that is not a PIH.
	6.2	Any quantity of a select agent or toxin listed by CDC or USDA (42 CFR, Part 73 or 9 CFR, Part 121).
	7	International Atomic Energy Agency Category 1 & 2 sources. Highway Route Controlled Quantities. Known Radionuclides in forms listed as Quantities of Concern by the Nuclear Regulatory Commission. Placarded quantity of uranium hexafluoride.
	8	PG I in a large bulk quantity.

"Large Bulk Quantity" refers to a quantity greater than 3,000 kg (6,614 lbs) for solids or 3,000 L (792 gal) for liquids and gases in a single packaging such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container.

		Yes	No	N/A
1.	Does the company have a written Security Plan?			
2.	Has it been approved by another Federal Agency?			
	a. If yes, name of Agency and date approved:			
3.	Does the plan include a security assessment of possible transportation security risks, including site-specific or location-specific risks associated with facilities at which hazardous materials are prepared for transportation, stored, or unloaded incidental to movement?			
4.	Does the plan include measures to address the assessed risk(s)?			
5	Does the plan address **Personnel Security**?			
6.	What method is in place to confirm information provided by employees hired for positions that involve access to or handling of materials covered by the security plan?			
7.	Is the company adhering to its personnel security plan?			
8.	Does the plan address **Unauthorized Access**?			
9.	Does the company adhere to the plan to prevent unauthorized persons to gain access to hazmat covered by the plan or transport conveyances being prepared for transportation?			
10.	Does the plan address **En Route Security**?			
11.	Does the company adhere to its en route security plan from origin to destination, including private/contract/common carrier?			
12.	Does the plan include identification by job title of the senior management official responsible for overall development and implementation of the security plan?			
13.	Does the plan include security duties for each position or department that is responsible for implementing the plan or a portion of the plan and the process of notifying employees when specific elements of the security plan must be implemented?			
14.	Does the plan include a plan for training hazmat employees in accordance with §172.704 (a)(4) and (a)(5)?			
15.	Has the company conducted in-depth security training (plan specific) for all HM employees?			

		Yes	No	N/A
16.	Does the in-depth training program include the following:			
	a. Company security objectives?			
	b. Organizational security structure?			
	c. Specific security objectives?			
	d. Specific security duties?			
	e. Employee specific responsibilities?			
	f. Actions to take in the event of a security breach?			
17.	Has the company created and retained records of in-depth security training?			
18.	Is the security plan reviewed at least annually and revised and/or updated as necessary to reflect changing circumstances?			

ADDITIONAL NOTES:

_____

_____

_____

_____

_____

_____

Based on the current U.S. Department of Transportation Security Plan requirements, I hereby certify that the documented responses in the preceding checklist on pages two and three of this document are true to the best of my knowledge.

Person(s) Interviewed:

Signature _____ Date _____

Signature _____ Date _____

Investigator(s):

Signature _____ Date _____

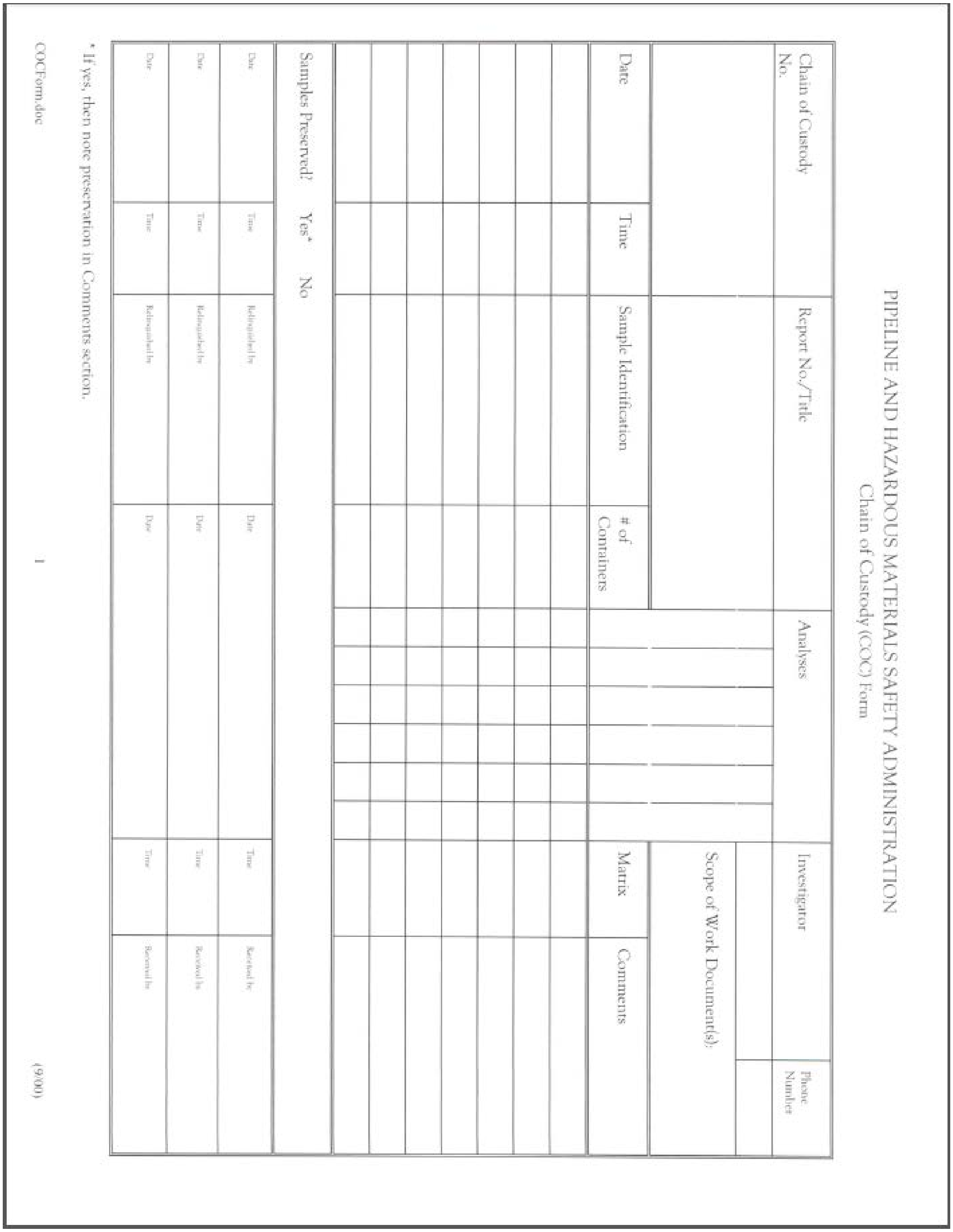
Signature _____ Date _____

This inspection report and any comments made during this evaluation do not constitute an endorsement or approval of your security program in whole or in part. Do not send a copy of your Security Plan as a part of corrective action. If we need a copy of your Security Plan we will specifically request a copy in writing.

The following website may be helpful in the development and administration of security requirements:

http://phmsa.dot.gov/hazmat/security

Chain of Custody Report



PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
Chain of Custody (COC) Form

Chain of Custody No.	Report No./Title	Analyses	Investigator	Phone Number
			Scope of Work Document(s):	

Date	Time	Sample Identification	# of Containers							Matrix	Comments

Samples Preserved? Yes* No

Date	Time	Relinquished by	Date	Time	Received by
Date	Time	Relinquished by	Date	Time	Received by
Date	Time	Relinquished by	Date	Time	Received by

* If yes, then note preservation in Comments section.

COCForm.doc 1 (9/00)

Instructions for Use of the Chain of Custody Form

Chain of Custody No.: Provide a unique identification for each Chain of Custody (COC) submitted.

Report No./Title: Specify the Inspection Report number and title.

Analyses: List the analyses requested for each sample submitted.

Scope of Work Document(s): Specify the Statement of Work associated with the project's analytical request and any other related documents.

Investigator: Usually the PHMSA Investigator; includes their phone number.

Sample Identification: Provide a unique identification for each sample submitted for analysis. This may include the date and time of sampling.

# of Containers: Indicate the number of containers the sample is contained in.

Matrix: Indicate the type of the sample (e.g., package containing solid, aqueous, sludge).

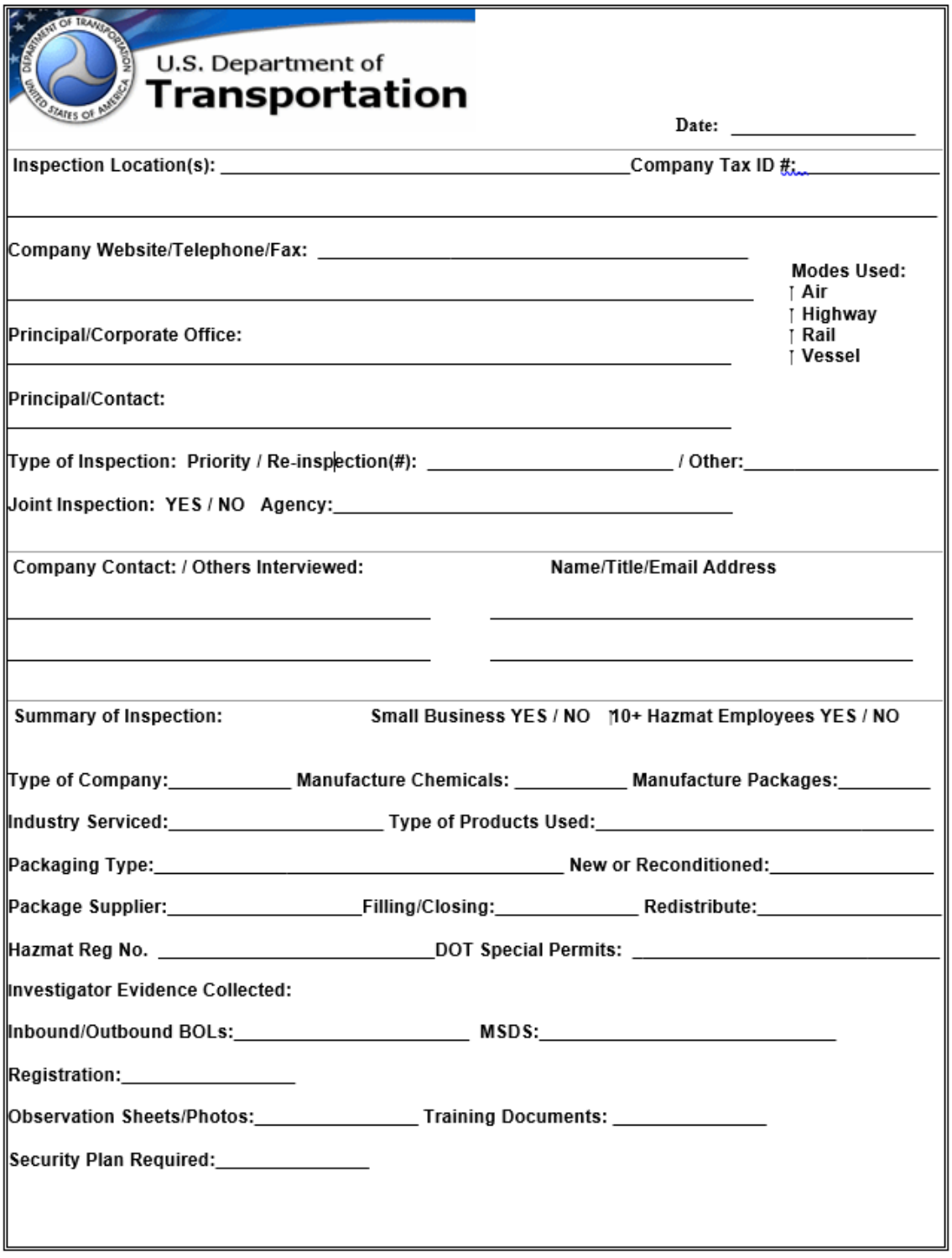
Comments: Provide any additional information/instructions/comments for the samples submitted.

Samples Preserved?: Indicate by circling "Yes" or "No" and indicate the preservative in the Comments block.

Relinquished By: The relinquisher of the samples signs, dates and indicates the time of sample transfer.

Received By: The receiver of the samples signs, dates and indicates the time of sample receipt.

Inspection Report Checklist



U.S. Department of Transportation

Date: _____

Inspection Location(s): _____ Company Tax ID #: _____

_____

Company Website/Telephone/Fax: _____

_____

Modes Used:
- Air
- Highway
- Rail
- Vessel

Principal/Corporate Office:

_____

Principal/Contact:

_____

Type of Inspection: Priority / Re-inspection(#): _____ / Other: _____

Joint Inspection: YES / NO Agency: _____

Company Contact: / Others Interviewed: Name/Title/Email Address

_____ _____

_____ _____

Summary of Inspection: Small Business YES / NO 10+ Hazmat Employees YES / NO

Type of Company: _____ Manufacture Chemicals: _____ Manufacture Packages: _____

Industry Serviced: _____ Type of Products Used: _____

Packaging Type: _____ New or Reconditioned: _____

Package Supplier: _____ Filling/Closing: _____ Redistribute: _____

Hazmat Reg No. _____ DOT Special Permits: _____

Investigator Evidence Collected:

Inbound/Outbound BOLs: _____ MSDS: _____

Registration: _____

Observation Sheets/Photos: _____ Training Documents: _____

Security Plan Required: _____

Additional Information Pertaining to the Inspection/Investigation

CFATS Regions and DHS Regional Field Contacts

Region	States	Regional Director	Email
1- Boston	VT, RI, ME, NH, CT, and MA	Charles Colley	Charles.Colley@hq.dhs.gov
2- New Jersey	VI, PR, NJ, and NY	Don Keen	Donald.Keen@hq.dhs.gov
3- Philadelphia	DC, DE, WV, MD, VA, and PA	Garret Hansen	Garret.Hansen@hq.dhs.gov
4- Atlanta	MS, SC, AL, KY, FL, NC, TN, and GA	Tony Deas	William.Deas@hq.dhs.gov
5- Chicago	MN, WI, IN, MI, IL, and OH	Kathryn Young	Kathryn.Young@hq.dhs.gov
6- Houston	NM, OK, LA, AR, and TX	Richard Cary	Richard.Cary@hq.dhs.gov
7- St. Louis	NE, KS, IA, and MO	David Martak	David.Martak@hq.dhs.gov
8- Denver	WY, ND, SD, MT, UT, and CO	Carlos Vazquez	Carlos.Vazquez@hq.dhs.gov
9- Los Angeles	HI, NV, AZ, CA, and Guam	Rodney Lockett	Rodney.Lockett@hq.dhs.gov
10- Seattle	AK, ID, OR, and WA	James Harksen	James.Harksen@hq.dhs.gov

Denial of Entry Letter

U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

Office of
Chief Counsel

1200 New Jersey Avenue, S.E.,
PHC-10, Room E26-331
Washington, D.C. 20590-0001
Phone: (202) 366-4400
Fax: (202) 366-7041

Hazardous Materials Safety
Law Division

Date: JUN 26 2017

To Whom It May Concern:

The Secretary of Transportation has the authority to oversee and regulate the transportation of hazardous materials in commerce. In accordance with this authority, the Secretary has the right to perform inspections to verify compliance with the Federal hazardous materials transportation law (49 U.S.C. §§ 5101-5128) and the Hazardous Materials Regulations (HMR; 49 C.F.R. Parts 171-180). Both Congress and the Commerce Clause of the United States Constitution grant this authority and the Federal courts have upheld it (*See New York v. Burger*, 482 U.S. 691 (1987); *United States v. V-1 Oil Company*, 63 F.3d 909 (9th Cir. 1995) (affirming an agency's right to perform unannounced inspections in highly-regulated industries, such as hazardous materials)).

The Secretary delegated this inspection authority to the Pipeline and Hazardous Materials Safety Administration (PHMSA) (49 CFR § 1.96(b)). To carry out this authority, PHMSA may inspect any individual or entity that transports, causes transport, prepares, accepts, certifies compliance of hazardous materials in commerce, or is responsible for the safety of such shipments, or that handles packages used for such shipments (49 U.S.C. § 5103(b)). Entities that are subject to these inspections include corporations, companies, associations, firms, partnerships, societies, joint stock companies, governments, Indian tribes, and agencies of a government or tribe (49 U.S.C. § 5102(9)).

PHMSA has identified you as an individual or entity that is subject to this inspection authority. We are delivering this letter because PHMSA attempted to perform a compliance inspection and you denied access or imposed conditions or limitations on entry to a regulated facility or to the collection of property, which prevented PHMSA from exercising its regulatory authority.

As an entity that is subject to PHMSA's inspection authority, you must make records, property, reports, and information that relate to packaging or transporting hazardous materials in commerce available for PHMSA to inspect (49 U.S.C. § 5121(b) and (c)(l)). Included within our general authority, PHMSA may investigate, conduct tests, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities, as necessary (49 U.S.C. § 5121(a)). PHMSA may gather information by any reasonable method, including interviews, statements, photocopies, photographs, and recordings (49 CFR § 107.305(b)(3)).

Additionally, under appropriate conditions, PHMSA may open packages or arrange for them be transported for examination and analysis. Specifically, PHMSA may stop the transportation of a

package and gather information regarding the nature and contents of the package and may open any portion of the package that is not immediately adjacent to the hazardous material when there is an objectively reasonable and articulable belief that the package may contain a hazardous material and is not compliant with the HMR (49 U.S.C. § 5121(c)(l)(B) and (D); 49 CFR § 109.5(a)). PHMSA may direct the offeror, carrier, or other person responsible for a package to have it transported to a facility where the material can be examined and analyzed when it concludes that further examination of a package is necessary to determine whether it complies with the HMR, there is conflicting information about the package, or additional investigation is not possible on the immediate premises (49 U.S.C. § 5121(c)(1)(E); 49 CFR § 109.9). In order to obtain necessary information, carry out its investigation, and determine compliance with the HMR, PHMSA itself may also arrange for a package or sample of the hazardous material to be transported for examination and analysis.

Therefore, you may not:

- deny PHMSA's inspector access to a regulated facility;
- impose conditions on the inspector's entry; or
- limit the inspector's right to gather information, evidence or property by restricting the inspector's ability to take photographs, copy records or other documents, access or seize property (to the extent authorized by statute) for further inspection or testing (including obtaining samples of hazardous materials), conduct interviews, create video- or audio-recordings, or make notes or memoranda.

If you continue to deny access or impose conditions or limitations on an inspection, PHMSA may issue a subpoena (which may be enforced in Federal court) for documents or other evidence (49 CFR § 107.305(b)(4)). Also, any person or entity that obstructs an inspection, by preventing, hindering, or impeding the inspector's investigation, may be subject to civil penalties (49 U.S.C. § 5123(h)).

If you wish to ask for confidential treatment of records PHMSA gathers during a hazardous materials inspection, you should mark "confidential" on each page that you want to keep confidential and provide a written explanation of why the information is protected from disclosure under the Freedom of information Act (FOIA; 5 U.S.C. § 552) (see 49 CFR § 105.30 for the steps to request confidential treatment). Records (or portions of records) may be protected from public disclosure under FOIA if an exemption applies (for example, FOIA Exemption 6 protects personal privacy information and Exemption 4 protects confidential commercial information). If PHMSA receives a FOIA request for the records, we will consider all relevant FOIA exemptions to determine whether they apply.

You can find additional information about PHMSA's inspection authority at 49 CFR § 107.305 and at http://phmsa.dot.gov/hazmat. If you have any questions, please contact me, or my staff, at (202) 366-4400. I hope PHMSA's inspectors may rely on the full cooperation of your management and personnel in conducting a compliance inspection.

Sincerely,

Christina Tackett
Assistant Chief Counsel for Hazardous Materials Safety Law