

**Hazardous Materials**

Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675.

Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9671–9675.

Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992k.

**Executive Orders Relating to Eligible Projects**

E.O. 11990, *Protection of Wetlands*

E.O. 11988, *Floodplain Management*

E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*

E.O. 13112, *Invasive Species*

**Title 49**

- 2. Add 49 CFR part 264 to read as follows:

## PART 264—SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM APPLICATION REQUIREMENTS AND TERMINATION

Sec.

264.101 Procedures for complying with the surface transportation project delivery program application requirements and termination.

**Authority:** 23 U.S.C. 327; 49 CFR 1.81.

### § 264.101 Procedures for complying with the surface transportation project delivery program application requirements and termination.

The procedures for complying with the surface transportation project delivery program application requirements and termination are set forth in part 773 of title 23 of the Code of Federal Regulations.

## PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

- 3. The authority citation for part 622 is revised to read as follows:

**Authority:** 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303 and 5323(q); 23 U.S.C. 139, 326, and 327; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.81, 1.85; and Pub. L. 112–141, 126 Stat. 405, sections 1313 and 1315.

- 4. Revise § 622.101 to read as follows:

### § 622.101 Cross-reference to procedures.

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and related statutes, regulations, and orders are set forth in part 771 of title 23 of the Code of Federal Regulations. The procedures for complying with 49 U.S.C. 303, commonly known as “Section 4(f),” are set forth in part 774 of title 23 of the Code of Federal Regulations. The procedures for complying with the surface transportation project delivery

program application requirements and termination are set forth in part 773 of title 23 of the Code of Federal Regulations.

This final rule is being issued pursuant to authority delegated under 49 CFR 1.81.

Issued on September 10, 2014.

**Gregory G. Nadeau,**

*Acting Administrator, Federal Highway Administration.*

**Therese McMillan,**

*Acting Administrator, Federal Transit Administration.*

**Joseph C. Szabo,**

*Administrator, Federal Railroad Administration.*

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## DEPARTMENT OF TRANSPORTATION

### 49 CFR Part 109

#### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 171–180

[Docket No. FMCSA–2014–0343; Docket No. PHMSA–2014–0116]

#### Hazardous Materials: Emergency Restriction/Prohibition Order

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Emergency Restriction/Prohibition Order.

**SUMMARY:** This document announces Emergency Restriction/Prohibition and Out-of-Service Order CA–2014–9002–EMRG, issued to National Distribution Services, Inc., TankServices, LLC, and Carl Johansson. This Order was issued by the Field Administrator for FMCSA's Western Service Center and prohibits the filling, offering, transportation, and welded repair of cargo tank vehicles by National Distribution Services, Inc., TankServices, LLC, and Carl Johansson. Additionally these parties are prohibited from conducting inspections and/or testing of any cargo tank or cargo tank motor vehicle unless such inspection and/or testing is conducted by a Registered Inspector.

**DATES:** The Emergency Restriction/Prohibition Order became effective on August 14, 2014.

**ADDRESSES:** You may view material bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2014–0343 and PHMSA–2014–0116 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for viewing material.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**Privacy Act:** Anyone may search the electronic form of all material received into any of our dockets by the name of the individual submitting material (or of the person signing the material, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this activity, contact Nancy Jackson, Attorney, Office of the Chief Counsel, FMCSA, (303) 407–2350. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Legal Basis

This document is based on 49 U.S.C. 5121(d), which authorizes the Secretary of Transportation to issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders without notice or an opportunity for a hearing if the Secretary determines that a violation of 49 U.S.C. chapter 51 or a regulation issued under that chapter, or an unsafe condition or practice constitutes an imminent hazard, as defined in 49 U.S.C. 5102(5). The Secretary's authority to carry out section 5121(d) has been delegated to the Federal Motor Carrier Safety Administration by 49 CFR 1.87(d)(1). The procedures implementing the Secretary's emergency authority are codified in 49 CFR 109.17; the procedures for petitions of review of emergency orders are specified in 49 CFR 109.19; this **Federal Register** document is required pursuant to 49 CFR 109.19(f)(2).

##### II. Text of Emergency Restriction/Prohibition CA–2014–9002–EMRG

This document constitutes an Emergency Restriction/Prohibition

Order and Out-of-Service Order (“Order”) by the United States Department of Transportation (USDOT) pursuant to 49 U.S.C. 5121 and 49 CFR 109.17; and pursuant to delegation of authority to the Administrator, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (Administrator). This Order is issued to National Distribution Services, Inc., Tank Services, LLC Carl Johansson, and any other person(s) that use or have in their possession cargo tanks and/or cargo tank motor vehicles used, or that have been used, to transport hazardous materials, and that are owned, leased and/or otherwise operated by or for National Distribution Services, Inc., specifically including, but not limited to, the cargo tanks set forth in Appendices A and B. Upon information derived from an ongoing investigation, the Administrator has found that violations of Federal Hazardous Materials law (49 U.S.C. 5101, *et seq.*) and/or the Hazardous Materials Regulations (49 CFR Parts 171 to 180) (HMRs), an unsafe condition, or an unsafe practice is causing or otherwise constitutes an imminent hazard.<sup>1</sup>

#### **Effective Immediately Any Person Identified by This Order**

(1) Is prohibited from filling and/or offering, and/or requiring, permitting or allowing any other person to fill and/or offer, any cargo tank or cargo tank vehicle owned, leased, and/or operated by or on behalf of National Distribution Services, Inc., specifically including, but not limited to, the cargo tanks listed in Appendices A and B of this Order, for the transportation of hazardous materials;

(2) Is prohibited from transporting, and/or requiring, permitting or allowing any other person to transport, hazardous materials in any cargo tank or cargo tank motor vehicle owned, leased, and/or operated by or on behalf of National Distribution Services, Inc., specifically including, but not limited to, the cargo

<sup>1</sup> The ongoing investigation progressed from its initial focus on TankServices, LLC, the facility initially associated with the May 2014 cargo tank explosion to National Distribution Services, Inc. when the investigator discovered its association with TankServices, LLC, and that Carl Johansson was conducting operations as National Tank Distribution Services, Inc. Carl Johansson is known to the Department from his prior companies involved in transportation of hazardous materials using cargo tanks, including Atlas Bulk, Inc. in Montebello, California, where a catastrophic explosion occurred in September 1993 resulting in the death of a welder when the welder, at Carl Bradley (Brad) Johansson’s direction, conducted unauthorized welding on a gasoline cargo tank that had not been cleaned and purged.

tanks listed in Appendices A and B of this Order;

(3) Is prohibited from conducting any welded repair to any DOT specification cargo tank, specifically including, but not limited to, the cargo tanks listed in Appendices A and B of this Order;

(4) Is prohibited from requiring, permitting or allowing any other person to conduct any welded repair to any cargo tank or cargo tank motor vehicle unless such repair is conducted in accordance with 49 CFR 180.413; and

(5) Is prohibited from conducting any inspection and/or testing on any cargo tank or cargo tank motor vehicle and/or permitting any person to conduct any inspection and/or testing on any cargo tank or cargo tank motor vehicle unless such person has current valid registration in accordance with 49 CFR Part 107, and inspections and tests are conducted by a Registered Inspector familiar with DOT-specification cargo tanks, trained and experienced in the use of the inspection and testing equipment needed, and has the training and experience required to meet the definition of “registered inspector” as set forth in 49 CFR 171.8.

#### **Also Effective Immediately the Cargo Tanks Identified in Appendices A and B of This Order Are Declared Out-of-Service**

(1) The cargo tanks identified in Appendices A and B are removed from transportation until they are brought into compliance with this Order and the HMRs;

(2) Any person in possession of, or responsible for, any of the cargo tanks listed in Appendices A and/or B must remove the cargo tank from transportation until it is brought into compliance with this Order and the HMRs; and

(3) A cargo tank listed in Appendices A and/or B may only be moved to the nearest location where it may be brought into compliance and only after written notice is made to the Field Administrator no less than 72 hours prior to the move and such notice includes:

a. The current location of the cargo tank;

b. A description of the contents of the cargo tank;

c. The location where the cargo tank will be moved;

d. The registration number of the cargo tank facility to which the cargo tank will be moved; and

e. The name of the Registered Inspector that will test and/or inspect the cargo tank.

#### **Within Forty-Eight (48) Hours of the Issuance of This Out-of-Service Order, National Distribution Services, Inc. Shall Provide in Writing the Current Location of Each Cargo Tank Listed in Appendix A and Appendix B**

This Order shall have the force and effect of any other Order issued by FMCSA. This Order applies to, and is binding on, National Distribution Services, Inc., TankServices, LLC, Carl Johansson, any other aliases or affiliated or successor companies, and all owners, officers, directors, members, employees, contractors, subhaulers, and agents. This Order may attach to and apply to any entity established and/or used to evade or avoid the consequences of this Order. This Order also applies to cargo tanks identified in Appendices A and B of this Order.

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

#### **I. Jurisdiction**

National Distribution Services, Inc. and Carl Johansson offer for transportation or transport hazardous materials in commerce within the United States, and inspect, test, and/or repair DOT specification cargo tanks; Carl Johansson directs the operation of National Distribution Services, Inc. TankServices, LLC inspects, tests, and/or repairs DOT specification cargo tanks; Carl Johansson directs the inspection, test, and repair of DOT specification tanks. The cargo tanks listed in Appendices A and B are used by National Distribution Services, Inc. for the transportation of hazardous materials. Accordingly, National Distribution Services, Inc., TankServices, LLC and Carl Johansson are therefore “persons,” as defined by 49 U.S.C. 5102(9), in addition to being “persons” under 1 U.S.C. 1. Cargo tanks and cargo tank motor vehicles are packages under 49 U.S.C. 5121(c)(1)(C). National Distribution Services, Inc., TankServices, LLC and Carl Johansson, and cargo tanks and cargo tank motor vehicles offered, used, inspected, tested and/or repaired by them, are subject to the authority and jurisdiction of the Administrator, including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard (49 U.S.C. 5121(d)).

## II. Basis for Order

National Distribution Services, Inc. owns, leases and/or otherwise controls DOT specification cargo tanks and cargo tank motor vehicles used to transport hazardous materials in commerce in the United States. Carl Johansson manages and directs National Distribution Services, Inc.'s operations. TankServices, LLC, at the request of and/or under the direction of National Distribution Services, Inc. and/or Carl Johansson, tests, inspects and/or repairs DOT specification cargo tanks.

On May 6, 2014, a cargo tank catastrophically exploded while employees of National Distribution Services, Inc. and/or TankServices, LLC were welding on the shell of the cargo tank, resulting in the death of one of the welders and serious injuries to the other. The welding repair work was directed by Carl Johansson for National Distribution Services, Inc. Investigation conducted by FMCSA shortly after the explosion indicated that the cargo tank had not been cleaned and purged prior to the welding.<sup>2</sup> On July 8, 2014 FMCSA initiated an investigation on TankServices, LLC and determined that TankServices, LLC is co-owned by an employee of National Distribution Services, Inc., and she is paid to be a payroll service issuing TankServices, LLC checks to National Distribution Services, Inc. employees. Upon reliable and credible information received in the course of the investigation, FMCSA learned that welded repairs had been performed on the shell and/or head of DOT specification cargo tanks by or for National Distribution Services, Inc. Further, the welded repairs are not made in accordance with the requirements of 49 CFR 180.413, the repairs were not certified by a Registered Inspector, and neither National Distribution Services, Inc. nor TankServices, LLC is a repair facility holding a National Board Certificate of Authorization "R" stamp or a valid ASME Certificate of Authorization "U" Stamp.<sup>3</sup> The Investigator discovered at least 7 other DOT specification cargo

<sup>2</sup> Pursuant to 49 CFR 180.413(a)(2), prior to each repair, the cargo tank or cargo tank motor vehicle must be emptied of any hazardous material lading, if used to transport flammable or toxic lading, it must be sufficiently cleaned of residue and purged of vapors so any potential hazard is removed.

<sup>3</sup> In accordance with 49 CFR 180.413, any repair work on DOT specification cargo tank must be performed by a repair facility registered with USDOT and holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp; any repair of a non-ASME stamped DOT specification cargo tank may be performed by a cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp or a repair facility holding a valid National Board "R" stamp.

tanks for which welded repairs have been conducted which were not made in accordance with the requirements of 49 CFR 180.413; the cargo tanks are currently being used to transport hazardous materials.

Further, National Distribution Services, Inc. and its contractors and subhaulers are filling or allowing to be filled, offering and/or transporting hazardous materials, including petroleum distillate fuel products such as crude oil, gasoline and jet fuel, in cargo tanks that have not been inspected and tested as required. At least 35 of the DOT specification cargo tanks owned, leased, and/or operated by National Distribution Services, Inc. being used to transport hazardous materials on a daily basis have not been inspected or tested as required by 49 CFR 180.407.<sup>4</sup> Neither National Distribution Services, Inc. nor TankServices, LLC is currently registered to perform inspections and tests on DOT specification cargo tanks, and neither has current registration nor employs a Registered Inspector. Additionally, during the investigation, DOT specification cargo tanks with evidence of dents, cuts, gouges, and corroded or abraded areas were observed for which no inspection and testing have been completed. Moreover, National Distribution Services, Inc. has been cited during roadside inspections for violations of the HMRs, including violations for damage to the cargo tank, the cargo tank not having current inspection markings, and releases of hazardous materials. For example, on July 14, 2014 National Distribution Services, Inc.'s vehicle was placed out of service after the Inspector observed hazardous materials leaking from a control valve under the middle tank of three tanks.

The condition of the cargo tank operations and cargo tanks of National Distribution Services, Inc., TankServices, LLC and/or Carl Johansson, including unauthorized welding repairs on cargo tanks, including when the tanks have not been cleaned and purged as required, and daily transportation of hazardous material in cargo tanks that have not been inspected and tested as required to ensure that they will not fail, rupture and/or release hazardous materials during transportation, present a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur

<sup>4</sup> A DOT specification cargo tank for which a test or inspection has become due may not be filled and offered for transportation or transported until the test or inspection has been successfully completed. 49 CFR 180.407.

before the reasonably foreseeable completion date of the conclusion of these proceedings.

## III. Remedial Action

To eliminate or abate the imminent hazard and/or meet the conditions of the out-of-service order, you are prohibited from filling or otherwise loading, offering, or transporting any hazardous material in any DOT specification cargo tank or cargo tank motor vehicle that has been repaired or modified unless and until you can demonstrate to FMCSA that: (1) The repair or modification was performed in conformance with the requirements of 49 CFR 180.413, and/or (2) any welded repair of a cargo tank involving welding on the shell or head has been certified by a Registered Inspector.

Further, to eliminate or abate the imminent hazard and/or meet the conditions of the out-of-service order, you are prohibited from filling or otherwise loading, offering, or transporting any hazardous material in any DOT specification cargo tank or cargo tank motor vehicle, specifically including, but not limited to, the cargo tanks listed in Appendix A and/or Appendix B of this Order, unless and until the tank has been successfully tested and inspected as required 49 CFR 180.407(c) by a Registered Inspector that has current valid registration in accordance with 49 CFR Part 107, is familiar with DOT-specification cargo tanks, is trained and experienced in the use of the inspection and testing equipment needed, and has the training and experience required to meet the definition of "registered inspector" as set forth in 49 CFR 171.8.

## IV. Rescission of Order

Before any person identified in this Order may fill or otherwise load, offer, or transport any hazardous material in any DOT specification cargo tank or cargo tank motor vehicle, such person must adequately demonstrate to FMCSA that they have taken the actions listed above and that the actions taken have, in fact, resulted in abatement of the imminent hazard.

Any person identified in this Order is subject to this Order unless and until the Order is rescinded in writing by FMCSA. This Order will not be rescinded until the Field Administrator for FMCSA's Western Service Center has determined that the Remedial Action requirements specified in Paragraph III of this Order have been fully satisfied and acceptable documentation submitted.

Any request to rescind this Order, and documentation demonstrating

satisfaction of the Remedial Action requirements, must be directed to the Field Administrator, Western Service Center with a copy of the request and documentation submitted to the Division Administrator, California Division, at the following addresses: Terry D. Wolf, Field Administrator, Western Service Center, Federal Motor Carrier Safety Administration, 12600 West Colfax Avenue, Suite B-300, Lakewood, Colorado 80215.

Steven M. Mattioli, Division Administrator, California Division, 1325 J Street, Suite 1540, Sacramento, California 85814-2941.

Rescission of this Order does not constitute a grant of required registration to any person, and does not modify any requirement for registration(s) as set forth in Title 49, Code of Federal Regulations.

#### V. Failure To Comply

Any person failing to comply with this Order may be subject to civil penalties of up to \$175,000 for each violation. (49 U.S.C. 5123). A person violating this Emergency Order may also be subject to criminal prosecution, which may result in fines, imprisonment of up to ten years, or both. (49 U.S.C. 5124). Failure to comply with the provisions of this Order may also result in an action in the United States District Court for equitable relief and punitive damages.

#### VI. Penalties for Violations

Any person that violates Federal hazardous materials statutes and/or regulations is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal statutes and regulations are separate and distinct from this Order. Penalties may be assessed for the violations of Federal requirements, including the Federal Hazardous Materials Regulations (HMRs) and Orders of the FMCSA, previously discovered, discovered after

the service of this Order, and/or discovered during subsequent investigations.

#### VII. Right To Review

Any person to whom the Administrator has issued an Emergency Order or an Out-of-Service Order is entitled to review of the order pursuant to 49 U.S.C. 5121(d)(3) and in accordance with section 554 of the Administrative Procedure Act (APA), 5 U.S.C. 500 *et seq.* A request for administrative review must be in writing and may be made within 20 days of the date this Order is issued.

Any request for review must be addressed and sent by commercial delivery service or submitted electronically to the Chief Safety Officer, United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, and filed with USDOT Docket Operations/Docket Services, with a copy concurrently sent to FMCSA's Office of Chief Counsel at the Western Service Center at the following addresses:

1. Chief Safety Officer (Attn: Office of Chief Counsel), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, or by email to: *PHMSAChiefCounsel@dot.gov*.
2. USDOT Docket Operations/Docket Services, M-30, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.  
Under Docket Number: PHMSA-2014-0116.
3. Office of Chief Counsel, Western Service Center, Federal Motor Carrier Safety Administration, 12600 West Colfax Avenue, Suite B-300, Lakewood, Colorado 80215.  
All documents filed with the USDOT Docket Operations/Docket Services will be published on the Department's docket management Web site, <http://www.regulations.gov>.

A petition for review must state each part of the emergency order and/or out-of-service order for which amendment or rescission of the order is sought. The petition must also include all information, evidence and arguments to be considered, and whether a formal hearing is requested. If the petition requests a formal hearing, the petition must set forth the material facts in dispute giving rise to the request for a hearing.

A petition for review must be accompanied by a certificate of service specifying the manner in which and the date on which service was made, and must be filed and served in accordance with the requirements of 49 CFR 109.19(f). If the petition requests a formal hearing, an additional copy of the petition must also be concurrently served and addressed to the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, M-20, 1200 New Jersey Avenue SE., (E11-310), Washington, DC 20590 (FAX: (202) 366-7536).

Within 30 days from the date the petition for review is filed, the Chief Safety Officer will issue an administrative decision on the petition for review. If the petition for review requests an administrative hearing and alleges a material fact in dispute, the Chief Safety Officer will immediately assign the petition to the Office of Hearings unless the Chief Safety Officer issues an order stating that the petition fails to set forth material facts in dispute.

#### Terry D. Wolf,

*Field Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration.*

Issued on September 9, 2014.

#### T. F. Scott Darling, III,

*Chief Counsel.*

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