

CHAPTER 7

CONDUCTING THE INSPECTION

SECTION 7.1 - OPENING INTERVIEW

At the beginning of each inspection an opening interview will be conducted. This interview will be with a responsible person, preferably a supervisor, probably who the business assigns as your point of contact. Briefly describe the purpose of the inspection and outline the inspection procedure to include any of the following that are applicable:

- (1) Areas to be inspected - manufacturing, filling, shipping, retest, etc.
- (2) Testing to be observed - type test, type container
- (3) Records to be examined - shipping, billing, receiving
- (4) Personnel to be interviewed - production staff, retest operator
- (5) Exit interview - results of the inspection and possible actions

Obtain background information concerning the firm operation and record it on the Inspection/Investigation report Form provided in Appendix A of this manual. Important information that should be obtained includes: the mailing address if different than the physical address, telephone and fax numbers, email address, tax identification number, and corporate headquarters mailing address and contact name if different than the inspected location.

If, during the inspection, the investigator is accompanied by one or more parties, everyone must be identified by obtaining names and titles.

If company officials refuse entry, or, having consented to the start of an inspection and it is suddenly interrupted, consult Chapter 5 of the manual for instructions.

SECTION 7.2 - THE INSPECTION

Conduct the inspection and record findings on the inspection and observation forms in accordance with the procedures prescribed in the manual. Copies of forms are located in Appendix A.

If a situation arises during an inspection which is not adequately addressed in the manual, suspend the inspection and immediately contact supervisor for instructions before resuming it.

SECTION 7.3 - INTERVIEWS

Most inspections involve subject or witness interviewing. Interviewing is particularly important because it assists in describing the operation, providing leads, identifying physical confirmation and establishing knowledge or lack thereof.

When conducting an interview, the Investigator should be interested in what the interviewee did, saw, or heard, rather than his opinion or conclusion as to what occurred. Remember, a conclusion without an adequate basis is useless. If there is an adequate basis, the conclusion will be self-evident.

Effective interviewing can often reveal 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.

Investigators must carefully document explanations and statements relating to probable violations or issues of concern. The statements may provide substantive support of meeting a knowing or willful legal standard. Evidence, oral and physical, may also provide insight to the extent and gravity of an alleged violation. Also, these items may in turn have significant and wide ranging safety and enforcement implications.

Generally, one can establish the basis for most conclusions by asking the following questions:

1. What? (What happened?)
2. When? (When did it happen?)
3. Where? (Where did it happen?)
4. Why? (Why did it happen?)
5. How? (How did it happen?)
6. Who? (Who was involved?)
7. Which? (Which one did the testing?)
8. How Many? (How many were involved?)

SECTION 7.3.1 - GENERAL INTERVIEW RULES

- Listen more than talk - keep your eyes and ears open. Allowing the subject to do most of the talking will yield most necessary information.
- Do not ridicule, bully, or belittle the interviewee or his information. Do not become angry, argumentative, or antagonistic - this could lead to a complaint of bias. Be frank, knowledgeable and assertive. Always maintain a professional demeanor.

- Ask simple direct questions that involve one subject or item under investigation - if the answer is vague or evasive, you may have touched on an area that requires further investigation. It may also be helpful to ask the same question several times.
- Follow up questions requiring a yes or no response with more open-ended ones, such as: How often do you calibrate your equipment? How do you calibrate it?
- Avoid leading questions which will allow a simple response, such as: You do calibrate your equipment, don't you?
- Avoid personal discussions as well as discussions about religion, politics, and similar controversial matters.
- Avoid creating an impression that you are only interested in a confession or conviction.
- Impress the interviewee with the fact that you only identify compliance and make note of any possible regulatory or safety concerns.

SECTION 7.4 - WRITTEN STATEMENTS

7.4.1 - 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 on which it is based.

(a) Techniques of Preparing a Statement

- (1) Whenever possible, have the interviewee make the statement in his or her own handwriting and have him or her sign it. This precludes him or her from later saying that it was not his or her own statement.
- (2) Instruct the interviewee to limit his statement to elements of the violation(s) and the facts the interviewee can contribute to prove those elements. As in the case of the interview, instruct the interviewee to limit the statement to what he or she did, saw, or heard, and avoid opinions and conclusions.

(b) Statement Format

- (1) Introductory data - the date, time, location, and names and titles of the interviewer and interviewee, and a declaration that the statement is voluntarily made without promises, threats, or coercion of any kind.

- (2) Body - the narrative statement should provide the facts that will prove the elements of the violation(s) and will answer any or all of the seven basic questions: Who? What? When? Where? Why? How? and Which?
- (3) Conclusion - a declaration that the interviewee has read the statement, "that it is correct to the best of his or her knowledge," and it is voluntarily given without promises, threats, or coercion of any kind.
- (4) Signature - the interviewee should sign the statement and initial each page and correction. If the interviewee refuses to sign the statement, ask if the statement is incorrect or untrue in any respect. Make a note of the reply and the reasons for refusal to acknowledge receipt, and include this as an exhibit with the enforcement report. All signatures should be witnessed.

(c) Distribution

The Signed Statement should be attached to the Enforcement Report as an Exhibit in accordance with the procedure prescribed in this manual. The Statement Form is found in Appendix A of this manual and is the only form authorized for use as adjusted by unit of assignment location.

7.4.2 - Oral Statements

Personal interviews throughout the compliance inspection provides for Oral Statements.

- (a) Oral statements are paraphrased in the inspection report to support the violation.
- (b) When used, provide an Oral Statement Exhibit in a question and answer format to support the violation. (Note: Should be prepared immediately while thoughts are fresh)

SECTION 7.5 - PHOTOGRAPHS

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

Photographs substantiate probable violations, confirm observations and provide visual details for review during preparation of Enforcement Reports, informal meetings, conferences or hearings. Photos should not replace a narrative description of the violation but should be used as a detailed complement to it.

(a) Planning the Photograph

- (1) Pre-plan your photos when possible. Determine what you want the finished photo to show prior to taking it. Detail markings, stamps, and embossments must be accompanied by an observation form prepared at scene and if possible signed by the respondent.
- (2) Show the relationship of scene, situation, possible areas of concern, accident components or variables, and gravity and extent of potential issues.
- (3) Include a reference to size in your photographs such as a ruler, coin, pen, clipboard, etc. This will tie the specific item into the overall scene and emphasizes the size and the distortion, or lack of distortion, of the item photographed.
- (4) Do not try to show too much in each picture. Use as many additional photos as necessary to illustrate important details that may be difficult to see. Be sure to photograph all sides of a package even if they are blank. Failure to do so leaves the reader to wonder if the required markings or labels were on the side not photographed.
- (5) Take a series of shots from far to near and/or wide to narrow. A series of photos will help to explain the area of concern. There are no limits to the number of photos that can be digitally acquired.
- (6) Be sure that flash or spark-producing equipment can be used in the area you are photographing. Do not use flash equipment around employees using machinery or operating equipment without their knowledge (e.g., explosives, flammable gases or liquids, etc.).

Investigators are highly encouraged to develop a filing system that permits the retrieval of photographs at a later date. Photographs are sometimes needed years after an inspection/investigation to support an action under appeal. In some instances a photograph may not have been incorporated in an ININREPT at the time of submission could contain critical information needed to answer specific questions. Photographs can also serve as invaluable training aids.

SECTION 7.6 - EXIT BRIEFING

Following each inspection, complete the Exit Briefing Form in accordance with the procedures prescribed by this manual. Afterwards, confer with the owner, supervisor or company representative(s), and discuss the findings of the inspection and inform such persons of any actions or sanctions that may result.

At the conclusion of the exit briefing, request that the 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. If the signature request is denied, please note this on the form. 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 enforcement report.

Always make yourself available to help the inspected parties understand what the HMR requires. Remember, our goal is compliance. Take as much time as you need to set the inspected party on the right path to correct any deficiencies.

If, after you return to the office, discussions between you, your supervisor, and/or the Enforcement Officer result in deletions from, additions to, or modifications of the exit briefing, you are required to send a revised exit briefing to the appropriate company official indicating any changes from the original exit briefing.

SECTION 7.7 - FOLLOW-UP INSPECTIONS

The primary purpose of a follow-up inspection is to determine if an observation at another location constitutes a probable violation of the Hazardous Materials Regulations. When sufficient information exists at the observation site to support a probable violation, the decision as to whether to proceed with an enforcement action or schedule a follow-up inspection will be made by the responsible supervisor. This decision is based on the level of risk involved.

In general, the routine follow-up inspection is conducted to determine whether a company is in compliance with the safety standards and regulations required by the Federal hazmat law or to evaluate any potential safety risk that might have occurred at an originating facility but there was not enough substantive information at that facility to confirm or refute.

Remember, the inspection of a company with a prior enforcement action is considered a “reinspection” and is addressed in Chapter 14.