

## **Criteria for Determining When Termination Proceedings Against any Holder of an Approval are Appropriate and Procedures for Implementing Termination Proceedings**

### **I. Applicability**

These criteria apply to all entities that receive an approval from RSPA.

### **II. Policy**

When an inspector determines that one of the criteria under Section III is met, the inspector may implement the steps under Section IV. However, meeting one or more of the criteria does not necessitate RSPA initiation of a show-cause proceeding. Each case must be individually evaluated.

### **III. Minimum Criteria**

A. The three basic criteria for determining if RSPA should consider an approval termination proceeding are:

1. Capability. A person or an entity is not capable of performing the duties or other requirements of the approval, and termination of the approval is necessary to prevent continued non-compliance or additional violations of the regulations (e.g., lack of properly trained staff, lack of proper testing equipment).
2. Gravity. There is a strong probability that continued violations could cause serious physical or economic hardship to the public (e.g., safety considerations, customers' or users' receipt of improperly tested packages that may require a recall, unusable inventory, Department of Justice decision to proceed with a criminal action).
3. History. Evidence that a company or a company's officials have sufficient current and prior violations to reflect a disregard for, or intent to not comply with, the regulations (e.g., excessive prior violations, a habitual violator who appears to have no intention of complying).

B. Generally, at least one of the three criteria must be met. However, this list is not exhaustive, and other circumstances may justify a show-cause proceeding.

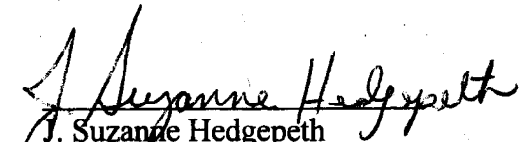
### **IV. Implementation Process**

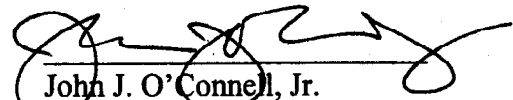
A. Initial Discussion. Once an inspector determines that sufficient evidence exists to demonstrate one of the criteria in Section II, the inspector meets with his or her Unit Chief to discuss whether to initiate show-cause proceedings.


- B. Unit Chief Review and Initial Drafting of the Show-cause Letter. If the Unit Chief determines that sufficient evidence exists to initiate a show-cause proceeding, the Unit drafts the initial show-cause letter.
- C. Office of Hazardous Materials Safety (DHM) Review. The Unit submits the draft show-cause letter and all supporting documentation to the Office of Hazardous Materials Enforcement (DHM-40) for an initial review.
- D. General Review. If DHM-40 is satisfied that a sufficient basis exists for a show-cause proceeding, DHM-40 submits the draft show-cause letter and all supporting documentation to the Office of Hazardous Materials Exemptions and Approvals (DHM-30), the Office of Hazardous Materials Technology (DHM-20) and the Office of the Chief Counsel (DCC) for review.
- E. Comments and Preparation of Final Draft. DHM-20, DHM-30 and DHM-40 submit all comments on the draft show-cause letter to DCC. DCC prepares the final version of the letter and routes the letter to DHM-20, DHM-30 and DHM-40 for concurrence and to the Associate Administrator for Hazardous Materials Safety (DHM-1) for signature.
- F. Oversight and Management of the Show-Cause Proceeding. DCC, in consultation with DHM-20, DHM-40 and the appropriate Unit, oversees, manages, and carries out the show-cause proceedings on behalf of DHM-1.

V. Related Issues

- A. Notice of Probable Violation. When a Notice of Probable Violation is appropriate, DCC and DHM should strive to issue the Notice of Probable Violation at the same time as the show-cause letter.
  - 1. The inspector submits his or her inspection report to the Unit Chief at the same time as the draft show-cause letter.
  - 2. The Unit Chief reviews the inspection report and refers the case to DHM-40 at the same time he or she refers the draft show-cause letter.
- B. Enforcement Proceedings. Show-cause proceedings are separate from enforcement proceedings, such as issuance of a Notice of Probable Violation. The resolution of one proceeding will not negatively affect the other proceeding.
- C. Criminal Prosecutions. DCC, in consultation with other appropriate offices, will discuss with the Department of Justice the issue of whether to initiate show-cause proceedings when there are contemporaneous criminal prosecutions.

  
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