

Current Teams that have been chartered are:

- Cylinder Inspection Team
- Explosive Inspection Team
- Lithium Battery Team
- National Packaging Team
- Nurse Tank Inspection Team
- Intermodal Inspection Team
- Radioactive Materials Team
- Select Agent Infectious Substance Team

SECTION 4.7 - ASSIGNMENT OF STAFF AND DETACHED OFFICE CODES

As delegated by the Director of Field Operations, the unit supervisor is responsible for the assignment of code numbers to staff members. Assigned code numbers will remain with the person for the duration of his or her employment.

Staff code and unit code numbers must be shown on all inspection or investigation report forms as provided in the instructions for preparation of such forms. No other identification code number will be used to identify the member performing a given function.

A series of code numbers has been designated for each unit. The designated codes were taken from Department's routing symbols. Personnel assigned to remote locations will be assigned a code and series by the regional supervisor to whom they are assigned.

<u>Unit of Assignment</u>	<u>Routing Symbol</u>	<u>Code</u>	<u>Series</u>
Headquarters	PHH-40	40	.1 - .20
Special Investigations	PHH-41	41	.1 - .20
Eastern Region	PHH-42	42	.1 - .20
Central Region	PHH-43	43	.1 - .20
Western Region	PHH-44	44	.1 - .20
Southwest Region	PHH-45	45	.1 - .20
Southern Region	PHH-46	46	.1 - .20

CHAPTER 5

GENERAL INSPECTION PROCEDURES

SECTION 5.1 - DEFINITIONS

For purposes of this chapter, the following definitions apply:

- (1) **INSPECTION** - The term “inspection” includes inspections authorized under Section 5121(c) and investigations authorized under Section 5121(a) of the Federal hazmat law (49 U.S.C. § 5101 et seq.).
- (2) **PERSON** - The term “person” as defined in the Federal hazmat law means an individual, firm, co-partnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, includes a government, Indian tribe, or authority of a government or tribe that offers a hazardous material for transportation in commerce, transports a hazardous material to further a commercial enterprise, or 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; but such term does not include the United States Postal Service, and, for purposes of imposing civil or criminal penalties, a department, agency, or instrumentality of the Federal Government. 49 U.S.C. § 5102(9)
- (3) **IMMINENT HAZARD** - The term "imminent hazard" means 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 reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment. 49 U.S.C. § 5102(5).

SECTION 5.2 - INVESTIGATOR’S DUTY

The investigator’s duty is to determine compliance with the safety standards by inspection or investigation of a person who offers a hazardous material for transportation, manufactures, reconditions, or requalifies packaging used to transport hazardous materials, and facilitates or handles inter-modal transfers of hazardous materials.

SECTION 5.3 - ADVANCE NOTICE OF INSPECTION

Investigators are not required to give a person advance notice of an inspection. Moreover, the policy of the PHMSA hazardous materials enforcement program is to conduct unannounced inspections. This affords the investigator a candid view of normal business operations. If advance notice is necessary in order to conduct an effective inspection, prior approval must be obtained from a field supervisor or the Director of Field Operations (Director). Advance notice of inspections may be given only in the following situations:

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

Inspections will be conducted during the regular working hours of the facility inspected, except in special circumstances.

SECTION 5.4 - ENTRY ON THE PROPERTY

The official credential is the investigator's authority to enter upon, to inspect, and 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. Upon entry, the investigator(s) will immediately identify him/her self in a courteous manner, state the purpose of the visit and present a business card.

Investigators shall display official credentials when requested by the facility, or when determined that it is necessary to carry out official duties. Credentials may not be reproduced, photocopied, photographed, or any other form of reproduction.

SECTION 5.5 REFUSAL TO PERMIT INSPECTION

If a person refuses to allow an inspection, the investigator should tactfully but firmly advise the person that Federal hazmat transportation law authorizes such inspections, and should present the Letter of Introduction which was prepared for this purpose. Investigators may obtain a copy of the Letter of Introduction at the SharePoint site:

<http://tcapp.phmsa.dot.gov/PHC/PHC-10/Shared%20Documents/Denied%20Entry%20Letter.pdf>

If permission is still denied, the investigator shall, when possible, ascertain the reason for such refusal and shall then leave the premises and immediately report the circumstance to a field supervisor. The supervisor shall consult with the Director of Field Operations and the Assistant Chief Counsel for Hazardous Materials Law, or their staff. Under no circumstances are investigators to engage in a dispute after being denied permission to conduct an inspection.

If the Director of Field Operations and the Assistant Chief Counsel determine that an inspection must transpire, the Assistant Chief Counsel or his staff will prepare documentation to support a warrant to inspect the facility, and will provide instructions regarding how to obtain the warrant. After the warrant has been obtained, 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/her supervisor.

SECTION 5.6 - INTERFERENCE WITH AN INSPECTION

In a case where entry to the premises has been allowed and the person interferes with or limits an important aspect of the inspection (failure to produce vital records or other documents, failure to answer material questions, or failure to give statements or be interviewed), the investigator should determine whether to complete or discontinue the inspection. The investigator shall notify the field supervisor of the circumstances and include the information in the Enforcement Report.

If the Director of Field Operations, Region Chief, and the Assistant Chief Counsel determine that additional information is necessary to complete an inspection, the Office of Chief Counsel will prepare documentation to support a warrant or subpoena, as appropriate.

If the investigator encounters forcible resistance in the performance of his/her official duties or threatened in any manner, immediately withdraw from the scene and report the circumstances to the region supervisor immediately.

SECTION 5.7 - WAIVER OF RESPONSIBILITY

The investigator shall not sign any form of release or waiver. This applies either before or after entering the premises of each person who is subject to the Hazardous Materials Regulations. Statements may be signed in which agreement to abide by the safety rules established by the company, which could include attending a safety briefing, viewing safety films or videotapes, or wearing specified safety equipment.

Investigators may sign a visitor or guest register used to control entry to the premises, provided that this signature does not constitute any form of release or waiver of responsibility, and does not limit or prohibit your access to the areas that must be entered to conduct official

business. If unsure of the legal effect of the document to be signed, consult with the region supervisor prior to signing the document.

When a person expresses concern over proprietary considerations, the investigator may indicate that results of an inspection are disclosed only as required by law. In addition, any request for documents under a Freedom of Information Act (FOIA) request is screened for proprietary information prior to release. The person who provides the information to the government is advised of the request and given an opportunity to state why the material should not be released to the requester.

SECTION 5.8 - STRIKE OR LABOR DISPUTE

Do NOT conduct an inspection on the property of a person during a strike, work stoppage, or picketing at that property except under the guidance of the region supervisor.

SECTION 5.9 - UNUSUAL PROBLEM OR OCCURRENCE

Notify a field supervisor of any unusual problem or occurrence related to an inspection. If required, the supervisor shall consult with the Director. Unusual occurrences should be documented on the "Internal Summary" portion of the Enforcement Report in HMIS.

SECTION 5.10 - IMMINENT HAZARD/POTENTIAL VIOLATIONS

- * DO: Advise parties of regulatory requirements and penalty consequences of non-compliance. If no one else has advised an emergency response agency of an imminent hazard, do so.

- * DO NOT: Order or direct a party to take or not take any specific action.

Occasionally, a situation may be encountered involving an imminent hazard or the possibility that someone intends to violate, or continue to violate, the regulations. Appropriate action should be taken to promote safety, but be careful to do so in an appropriate manner. If an imminent hazard exists and no one else has advised an appropriate emergency response agency, the investigator should do so immediately.

Investigator should ensure that involved parties are aware of their responsibilities under the regulations, but should not take charge or attempt to carry out the responsibilities of regulated parties. Although involved parties may be advised of applicable regulatory requirements and prohibitions, be very careful not to order, direct, instruct, or mandate that particular actions be taken or not taken.

Ordering, directing, instructing, or mandating that an action be taken or that an action not be taken is beyond the scope of the investigator's authority and could result in personal legal liability.

Instead of giving orders or directions, advise involved parties what the regulations require to enable those parties to comply with the regulations. Investigators may advise a party that failure to comply with the regulations could result in the imposition of civil penalties. Where a party appears to need additional reasons for complying with the regulations, investigators may certainly state that, because the party has now been advised about what the regulations require or prohibit, the party's subsequent violation of those regulations could be considered "willful" and thus subject to possible criminal prosecution.

There is a significant difference between (1) telling someone what the regulations require or prohibit, and (2) ordering someone to do something or prohibiting someone from doing something. The latter actions carry much greater risk of lawsuit or liability for alleged damages.

The following example demonstrates the difference:

- Assume that hazardous materials are discovered on a company's shipping dock in non-UN standard packaging that do not comply with the regulations and it appears that a shipment of them is likely.
 - The investigator should advise the company
 - (1) of the shipping requirements for the hazardous materials involved,
 - (2) that failure to comply with those regulations could result in a substantial civil penalty for the shipper and carrier,
 - (3) (if necessary) advise that the company and its individual employees may be subject to criminal prosecution if they proceed to violate the regulations---because they have just been told what the regulations require and any violation thus would be willful.
- On the other hand, investigators 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/she is not ordering or prohibiting a specific action.
- In the example, therefore, 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 \$50,000 per violation, and \$100,000 if someone is injured or killed. Also, the carrier is likely to be subject to similar civil penalties.
- In addition, because I have now told you what the regulations require, if you go ahead and ship these hazardous materials in this packaging, you personally and the company may be subject to criminal penalties involving up to five years imprisonment and fines of up to \$250,00 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?” Any listener should clearly understand that the investigator is not ordering anything to be done or not done.

- Because of the importance of what is said, write down the statement just before or just after making it. Also, attempt to make these statements in front of another investigator, a law enforcement official, or some neutral party, because a witness other than affected parties may later prove to be useful.