

## CHAPTER 8

### RECORDING INSPECTIONS AND INVESTIGATIONS

#### SECTION 8.1 - REPORTING REQUIREMENTS

Reporting inspections and investigations is an important element of field operations. The usefulness of the information that is collected in the field depends to a large extent on how well the inspection or investigation is documented. The information must be recorded in a manner that provides a permanent, easy to understand record, furnishes an accurate assessment of conditions at the time of inspection or investigation, makes information readily available for a variety of uses, and is easily verified and updated.

- (a) Reports should be 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 - Reports should present tangible factual material supported by necessary evidence; i.e., photos, statements, shipping papers, interviews, etc. Do not theorize, speculate or hypothesize. Reports should be objective rather than subjective. Each violation must stand alone, based on the evidence presented.
  - (3) Thoroughness - A report should be detailed but concise. It should include everything pertinent and nothing more. Avoid general, abstract or vague discussion. Include documentation to support the findings.
  - (4) Style - Reports should be written with a formal tone using an appropriate subject rather than the first-person-singular point of view. Write in the active voice as much as possible. (Example: The investigator examined and photographed.. He/She observed that...)
  - (5) Coherence - Write in chronological order and to the general audience. A report should flow. The reader should be able to move smoothly from paragraph to paragraph and section to section. Signal the continuity of thoughts from paragraph to paragraph within a section. Use transition words like, next, and for example. Repeat important words and pronouns to create links.

- (6) Grammar - Check punctuation, capitalization, and spelling.

## SECTION 8.2 - INSPECTION/INVESTIGATION REPORT (General)

Information concerning each field inspection or investigation, whether or not non-compliance was found, must be recorded and promptly submitted. The basic document used is called an inspection/investigation report. If violations are discovered, the inspection report with attached evidentiary exhibits is called an enforcement report. If it is necessary to provide supplemental reports, they should be attached to the report as exhibits in accordance with the procedures prescribed in this manual.

The report(s) should contain sufficient detail to completely describe and support the inspection/investigation activity. Data contained on the report will be entered in the HMIS system to permit the generation of management and field reports. Such information is vital for determining the effectiveness of the enforcement program and the degree of voluntary compliance.

### Preparation of the Inspection/Investigation Report

#### (a) General Instructions

- (1) Ensure that all markings which are stamped, printed, embossed, or labeled are recorded including dashes (-), dots (.), plus signs (+), and slashes (/);
- (2) Narrative portions of the report must be understandable to everyone including someone who may not have knowledge of transportation or industry practices;
- (3) Photographs and hand drawings should be used in conjunction with narratives to better explain packaging configurations (See shipment observation reports in appendix A);
- (4) Documentation concerning the inspection, such as shipping papers, purchase orders for containers, invoices, container specification sheets, container test reports, chemical analysis of materials, material safety data sheets, photos, etc., should be attached to the report as exhibits supporting the evidence. Also, include calculations in support of a violation. All calculations should be shown and explained. Show the math.

#### (b) Definition of Legal Entity

- (1) There are three basic entities which conduct business and are recognized by the law, which can enter into contracts, sue, be sued, be held responsible for compliance with the regulations, and be cited for noncompliance.

These entities are:

- (i) Individual - business conducted by a single natural person.
  - (ii) Partnerships - business conducted usually by several natural persons under an agreement (written or oral) in which each owns a predetermined portion of the business. A corporation may also be a partner in a partnership.
  - (iii) Corporation - sometimes referred to as unnatural person which can only exist or be created by a political subdivision (State or Federal Government) through issuance of a charter which authorizes it to conduct a particular type of business. Other types of organizations, such as cooperatives or authorities, may be encountered. For our purposes, they may be considered similar to corporations.
- (2) If a business is operating as a sole proprietor (a natural person), the sole proprietor is the only one who is cited for non-compliance if the action is to be brought against the business entity.
  - (3) In a partnership, which conducts business as a manufacturer, carrier or shipper, the partners may be cited individually or collectively for violation of the regulations. Usually, the action is brought against all partners collectively. The name of every partner must be included in either the name and address block or the summary of operations.
  - (4) If a corporation is the business being inspected, then the corporation would be cited, not the stockholders who are the owners or, in most cases, the corporate officials who act on behalf of the stockholders.
  - (5) Investigators must not be confused by the names and other identifications used by these legal entities, such as branches, divisions, and subsidiaries:
    - (i) Branches are part of legal entities, but usually do not have any independent standing separate from that entity.
    - (ii) Divisions are the same as branches; however, occasionally the investigator may find the word "division" used to describe a separate legal entity, such as a corporation wholly owned or controlled by another corporation. In that case, the wholly owned or controlled corporation does exist independently of the owning corporation and is a separate legal entity and must be cited if it is the violating company.

- (iii) Subsidiaries are separate corporations either wholly owned or controlled by another corporation. Subsidiary corporations that are manufacturers or shippers are responsible for compliance and are cited for non-compliance. The owning corporation cannot be held responsible for the acts of the subsidiary except in unusual instances. Those instances would be when it can be shown that the subsidiary exists in name only, and was created to escape some lawful duty and in truth and in fact, the owning corporation is the carrier or shipper. These instances would occur rarely.

The investigator should advise the Office of the Chief Counsel if he or she believes the subsidiary is fraudulent, and seek legal advice as to what the report should include.

### SECTION 8.3 - INSPECTION/INVESTIGATION REPORT (Specific)

All reports are prepared in the Hazardous Materials Information System (HMIS). However, be advised that the HMIS does not possess the features of a word processor. It is strongly recommended that reports be written in Microsoft Word, then copy and paste them into the report.

#### **(a) Company Page**

Report Number: An individual identification number will be assigned to each inspection or investigation that is conducted. The number need only be entered once. This number is automatically recorded on each page of the report.

- (1) CALENDAR YEAR - Enter the last two-digits of the year.
- (2) CODE NUMBER & SERIES - Enter the three digit routing number assigned to the investigator.
- (3) REPORT NO. - Each report will receive a separate sequential number reverting to the number "001" at the beginning of each calendar year (January 1).

For example, 10423052 (This would represent the 52nd ININREPT prepared by investigator, 42.3, in 2010).

Company Name & Address:

Name: Enter the complete and correct name of the entity which is the subject of the report. This entry must be the name recognized as the legal name of the business exactly, to include Inc., Corp. LLC, or other identifiers that are part of the legal company name.

Address: 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 known it should be in Company Mailing Address section immediately following the company contact information on the form

City, State and Zip Code: 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, enter the name of the Post Office that is responsible for delivery of the mail to that address.

Telephone: Enter the telephone number including the area code (Example: 202-366-4700).

Fax Number: Enter the fax number including the area code.

Company Contact: Enter the name and title of the person the company has designated as their contact for the purpose of the investigation. This is generally the person that was assigned as the escort during the inspection. Be sure to include the prefix such as Mr., Ms., Dr., etc.

Company Mailing Address: If company has a post office box list that information here. Be sure to list the proper zip code since that may differ from the zip code for the physical address.

Type of Operation: Enter the type of business the company is involved in, i.e., Steel Drum Manufacturer, Cylinder Manufacturer or Requalifier, Shipper, etc. Up to 3 codes can be selected. The first code is the primary code and identifies the primary function of the entity that is the subject of the report.

Initial Contact Date: Enter the date the inspection or investigation began. In the case of activities lasting 2 or more days, this is the first day of the inspection or investigation. The completion date for multi day inspections will be listed in the summary field of the report.

Follow-up Date: This date is the first day of follow-up activity done at a location other than the initial inspection or investigation site. In cases where several follow-up activities were required, this is the date the last

follow-up activity began. The remaining dates will be listed in the summary field of the report.

Inspection Date: The Inspection Date field is automatically populated by the HMIS system. Supervisors have the authority to change the default date which is by default the initial contact date. The unit supervisor will discuss the total activity required for the investigator to complete a thorough inspection/investigation and will, from that discussion, ascertain when it is reasonable that the investigator could have begun work on the inspection/investigation report in earnest. That date will be entered as the inspection date.

DOT Permits: Enter all of the DOT Permit Number(s) that the company has in effect. Enter expired DOT Permit numbers only when they are pertinent to the report.

Principal Office: This entry is used only when the parent office is located somewhere other than the inspection or investigation site. When the inspection location is the principal office leave this section blank.

Principal Office Contact: Whenever possible ask for a name of the person at the principal office that we should contact for information.

Tax ID #: Obtain and enter the Tax ID # of the company being inspected.

#### **(b) Interviews/Investigators Page**

Persons Interviewed: List the name, title, and organization of each person interviewed or participated in the inspection; i.e., Mr. John Doe, President, XYZ, Inc. Then click on the “add” button. This process may be repeated for as many names as needed to enter.

Investigator: Below the persons interviewed block, there are 2 places for investigator information, Insp1 and Insp2. The primary investigator will always be listed as Insp1. If there was a second investigator, add their name in Insp2. Select the name from the drop down list and the rest will auto populate. If there were other personnel that participated in the inspection/investigation, list their names in the Summary section of the report.

Action: Select the resulting action agreed upon by the region supervisor during preliminary discussions. The supervisor retains the right to change the action after reviewing the final report and supporting evidence.

**(c) Attributes Page**

Carriers Used: Check the box for Air, Water, Rail, and Highway for each mode of transportation used. Check as many boxes as are applicable.

Additional Company Information: This list provides additional information about the inspected entity. The choices include “hazmat offered under the terms of a permit” (Special Permit); “Foreign Carrier”; “Small Business”; “Greater than 10 employees”; “and Packaging Manufacturer (not specified by code number).

Priority Activity: Check “Yes” in the “Priority Activity” box when the entity is listed on the priority inspection list. If “Yes” is selected, then select the appropriate priority Category and Reason from the drop-down boxes, and list the actions taken to address the priority in the Details block.

Reinspect/Joint Activity: The left column offers a selection of “Reinspect,” “Joint Inspection,” and “Complaint.” Select any that apply. The right Column “Prior Case/Ticket” and “Joint Inspection Agency Organization.” If “Reinspect” was selected in the prior column, the prior case or ticket number must be entered in the area provided. If “Joint Inspection” was selected, enter the agency or organization that participated in the inspection

**(d) Summary Page**

Summary of Inspection: Tell a short general summary to orient the reader. This is the executive summary of your report. The reader should get a general idea of what the report is all about and what happened during the inspection/investigation. The following is an example of what might go in the summary field. This field supports 80,000 characters or approximately 20 pages so write as much as needed.

Summary Example:

On (Date)\_\_\_\_\_, Hazardous Materials Investigator (Name)\_\_\_\_\_, conducted a compliance inspection at (Company Name, City, State)\_. Mr/Ms. (Names)\_\_\_\_\_ represented the company and provided necessary documentation. (Explain what the company does) Ex: (ABC Resin Company)\_\_\_\_\_ is a (ex: shipper/retester/manufacturer of hazardous materials; manufacturer of hazardous materials packagings,etc). (Company ships hazardous materials classed as 3, 8, etc, packaged in 5, 35, 55 gallon drums, IBCs, etc). ABC Resin Company makes approximately ### hazardous materials shipments per (week/month/year).

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

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

Internal Inspection Investigation Summary: This page is intended to communicate anything about the inspection/investigation that is not intended to be printed 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.”

#### **(e) Package Testing Page**

The package testing page is self explanatory. The data requested is information describing the packaging purchased. Most of the information needed to complete this page is obtained at the time the packaging is purchased. However, be certain to go back and finish the data entry once the package test report is received. A full explanation of the package testing program is contained in Chapter 12 of this manual.

#### **(f) Product Testing Page**

The product testing page is nearly identical to the package testing page. The data needed to complete the entries on this page will be known at the time the product is purchased. Once again, be certain to go back and complete the data entry once the product testing report is received. The product testing program is described in detail in Chapter 11 of this manual.

#### **(g) Violations Pages**

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

49 CFR Section: Enter the specific section number(s) covering the violation being reported. For example: 171.2(a)&(b) and 172.202(c)(1). Enter only 1 section number per space provided, for a maximum of 5 section numbers.

Number Discovered: Enter the number of times the violation was repeated. This must be supported by the evidence. An asterisk indicates that the violation is a process violation. Process violations are usually associated with packaging manufacturers and indicates that the violation occurs repeatedly as a result of an error in the manufacturing process.

Severity Range: This entry is subjective. Select high, medium, or low from the drop down menu to communicate your opinion of how severe the violation was in reference to the total operation.

Exhibit Numbers: Enter the specific exhibit numbers being used to support this violation.

Citation Summary: Enter the citation for the violation being reported. Example: *Offering hazardous materials for transportation in commerce in unauthorized, non-UN standard packaging in violation of 49 CFR §§ 171.2(a), (b)&(e), 173.22(a)(2) and 173.150.*

Evidence Summary: Write a detailed narrative describing the violation. Include reference to supporting exhibits; i.e., The drum was rusted (Exhibit 2).

#### **(h) Internal Leads Page**

The internal leads page is intended to communicate a lead observed or obtained to other regions or divisions.

#### **(i) AAHMS/OHME Page**

This page is designed to auto populate information about the subject of your report from other parts of the HMIS. The types of information include approvals, special permits, and prior enforcement history.

#### **(j) Narrative Page**

The narrative page is used for a multitude of purposes. It is additional space to write information in your report which may not fit in other areas of the report. For example, this page should be used to describe the manufacturing process for cylinders and explosives. This page should also be used to write an evaluation of corrective action submitted.

#### **(j) Exhibits Page**

The Exhibits page shall be used to identify evidence and other documents submitted with an enforcement report. These documents are the facts that a witness can testify to, and to describe violations. Documentary evidence may consist of bills of lading, 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.

Submit originals, if available, and/or legible photocopies of documents in preparing enforcement reports. The copies should be carefully prepared and should be complete, including all notations or remarks. Do not make any notes or entries on the face of the copy.

If a copy cannot be reproduced that is legible, either make an additional copy for touching up illegible portions; prepare a hand written 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. However, a conventional photograph may be scanned and imported into the report.

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

U.S. DOT/PHMSA/OHMS/EA  
 Report # \_\_\_\_\_  
 Exhibit # \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_

Some regions have a stamp for this purpose (Note: Please do not stamp over critical information). Others use labels printed from Microsoft Word.

The Exhibits page is divided into 3 parts; the provider, the exhibit information, and the digital picture information section.

Provider: In this section, list the source of the exhibit. Specifically, enter the name of the company, city, state, first name, middle initial, last name and job title of the person providing the exhibit. This field will remain populated until a change is made, so it is a good idea to group exhibits by where they were obtained.

Exhibit Information: In this section, list the exhibit number assigned to the exhibit. Under exhibit type, select regular size image, legal size image, or digital picture. Image orientation is the orientation of the scanned image, portrait or landscape. Image file name is a bit misleading. Click on the "Browse" button and select the file to be imported as an exhibit. Description tells the reader what the exhibit is. This should be a brief general description; i.e., Bill of Lading dated July 12, 2009.

Digital Picture Information: This section is intended to identify photographs. Leave the section blank when importing documents or Microsoft Word photo exhibit forms. The information required is camera type, location, date, city and state where the photo was taken, and name of the photographer.

Remember to click on the save button after filling out all blocks. Repeat the process for each exhibit. The system will compile a list of exhibits at the bottom of the page.

#### (k) **Document Links Page**

Not all data entered into the system will print in the final report. This page will allow viewing the report in draft in the manner it will print. There are 2 choices; reports may be viewed

with or without exhibits.

### **(1) Submit Report Page**

On this page submit the report to the supervisor by clicking the “Submit” button. Reports may be un-submitted on this same page. Notes may be made to the region supervisor in the space provided. The system automatically e-mails the region supervisor that the report is submitted, and includes any notes entered.

The following reports are considered supplemental reports and are submitted as exhibits in the Inspection/Investigation Report.

#### **SECTION 8.4 - SHIPMENT OBSERVATION REPORT**

The purpose of this form is to record, in an orderly fashion, data concerning shipments of hazardous materials or containers suitable or used for the shipment of hazardous materials. The form may be used alone during shipment observations at various facilities or inspections. This form may also be used to record information concerning carrier violations observed so that they can be forwarded to the proper modal administration. The Shipment Observation Report is found in Appendix A of this manual.

#### **SECTION 8.5 - BOX OBSERVATION REPORT**

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

#### **SECTION 8.6 - DRUM OBSERVATION REPORT**

The purpose of this form is to record, in an orderly fashion, data concerning drums used in the shipment of hazardous materials. The form may be used alone during drum manufacturer inspections or in conjunction with the General Shipment Observation Report Form during shipment observations at various facilities or inspections. A Drum Observation Report Form is found in Appendix A of this manual.

#### **SECTION 8.7 - IM PORTABLE TANK OBSERVATION REPORT**

The purpose of this form is to record, in an orderly fashion, data concerning IM Portable tanks used in the shipment of hazardous materials. The form may be used alone during IM Portable Tank manufacturer inspections or in conjunction with the General Shipment Observation Report Form during shipment observations at various facilities or inspections. An IM Portable Tank Observation Report Form is found in Appendix A of this manual.

## SECTION 8.8 - CYLINDER OBSERVATION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning compressed gas cylinders used for the shipment of hazardous materials. The form may be used alone during shipment observations at various facilities or inspections, or may be used in conjunction with the Enforcement Report Form during cylinder manufacturer, requalifier, rebuilder, or repairer inspections. A Cylinder Observation Report Form is found in Appendix A of this manual.

## SECTION 8.9 - CYLINDER REQUALIFIER INSPECTION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning inspections of high-pressure cylinder requalification facilities. This report outlines the equipment, documentation and reference material required by the regulations in performing visual and hydrostatic testing required by the HMR. Testing personnel must be able to demonstrate their knowledge of testing requirements set forth in the HMR and the Compressed Gas Association Pamphlets which are incorporated by reference. They must also be able to demonstrate the capability of the testing equipment to perform the required tests to the degree of accuracy required by the regulations. A Cylinder Requalifier Inspection Report Form is found in Appendix A of this manual.

## SECTION 8.10 - CYLINDER REPAIR & REBUILD FACILITY INSPECTION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning inspections of cylinder repair or rebuild facilities. This report outlines the equipment, documentation and reference material required by the regulations in repairing or rebuilding cylinders as required by the HMR. Testing personnel must be able to demonstrate their knowledge of the HMR and the Compressed Gas Association Pamphlets C-1, C-6, C-6.1 and C-6.2. They must also be able to demonstrate the capability of the testing equipment to perform the required tests to the degree of accuracy required by the regulations. A Cylinder Repair & Rebuild Facility Inspection Report Form can be obtained from the Cylinder Program Manager.

## SECTION 8.11 - DOT 39 CYLINDER MANUFACTURER INSPECTION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning inspections of DOT 39 specification cylinder manufacturers subject to the Hazardous Materials Regulations. This report outlines the equipment, testing, and documentation required by Section 178.65 of Title 49, Code of Federal Regulations. A DOT 39 Cylinder Manufacturer Inspection Report can be obtained from the Cylinder Program Manager.