



## EPA Issues Final Rule for Civil Compliance Inspection Procedures

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EPA recently issued a final rule governing how EPA personnel are to conduct certain inspections at regulated facilities. The rule was developed in response to an Executive Order issued by President Trump, and it sets forth protocols EPA inspectors must follow before, during and after a civil compliance inspection. The rule does not replace EPA's media specific compliance inspection manuals, which provide detailed inspection guidelines for specific program areas, but rather provides a broad-brush standard for what every EPA inspection should look like. In addition, the rule does not apply to the investigation of potential environmental crimes.

The rule sets forth "a general overview of the process for conducting on-site civil inspections" and instructs agency personnel to conduct a civil compliance inspection in the following manner:

### 1. Timing of Inspections and Facility Notification

Although emergency situations may require otherwise, inspectors should attempt to conduct inspections during normal work hours and work with the facility to agree on a schedule for the inspection. However, the rule notes EPA maintains authority to conduct inspections without prior notice.

### 2. Inspector Qualifications

The rule requires that EPA inspectors must have "valid credentials" to perform the inspection. Valid credentials are media-specific and are issued to inspectors only when they have completed training in the relevant statutory program. If an EPA inspector is trained in air compliance inspections, but not in NPDES permit compliance, that inspector may not conduct an NPDES compliance inspection.

### 3. Obtaining Consent To Enter

EPA inspectors must present their "valid credentials" to the facility and describe both the authority for and purpose of the inspection. The inspector should first seek the facilities' consent to enter. If consent is denied, EPA may then seek a warrant for entry. Some statutes also require the facility to sign a "Notice of Inspection" form at the time of entry.

### 4. Opening Conference

Whenever possible, the inspector should request an opening conference with facility representatives. The opening conference is an opportunity for EPA to present the objectives of the inspection. During the opening conference, the inspector may request interviews with facility employees, access to facility

records, and a facility tour.

## **5. Physical Inspection**

The inspector must inspect those areas, units, sources and processes relevant to the scope of the inspection. The inspector will document their observations with photos and notes.

## **6. Managing Confidential Business Information (CBI)**

The inspector must manage any documents or information produced by the facility during inspection and claimed as Confidential Business Information in accordance with 40 CFR Part 2, subpart B.

## **7. Interview Facility Personnel**

The inspector may conduct interviews with any employees or contractors working in the area or areas of interest to the inspection. Names and titles of those interviewed must be documented, along with the places and dates of the interviews.

## **8. Records Review**

The inspector may request copies of reviewed records, including those produced as paper documents and those electronically scanned or downloaded. The inspector should also make a record of the copies of documents taken from the facility. Records may be requested before, during, or after an inspection.

## **9. Sampling**

The inspector may take samples and should offer facility personnel the opportunity to obtain split samples or collect duplicates.

## **10. Closing Conference**

Whenever possible, a closing conference should be conducted to discuss outstanding issues and the process for follow up. The closing conference may also include a summary of any potential “areas of concern” identified by the inspector. Finally, the rule requires EPA to produce and share an inspection report with the facility following the inspection.

Most of the procedures set forth in the rule were already being followed by agency personnel during civil compliance inspections. Until now, however, these steps were articulated in various ways, such as through media-specific inspection manuals and guidance documents, but were not standardized. Although the final rule does not fundamentally alter the typical civil inspection process, it gives facilities a template by which to hold an EPA inspector accountable. Facilities should review the final rule in detail and train environmental personnel on EPA inspection requirements.

**[On-site Civil Inspection Procedures, Final Rule, 85 Fed. Reg. 12224 \(March 2, 2020\); Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication, Executive Order 13892 \(October 9, 2019\).](#)**

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