

2257 INSPECTIONS

WHAT TO DO
IN THE EVENT OF AN
INSPECTION

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GUIDE TO 2257 INSPECTIONS

This presentation has been created to give you a quick overview of what to anticipate and what to do in the event that your business is subjected to an inspection under Section 2257.

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2257 INSPECTION PROCEDURE INTRODUCTION – THE INSPECTORS ARRIVE

- **They Arrive**
 - It will likely be a team.
 - Be suspicious of a lone “agent.”
- **Take a Deep Breath**
 - **Be calm** – Being nervous will contribute to you making mistakes and making the inspectors nervous / suspicious.
 - **Be courteous** – the inspectors may not be your friends, but they are not your enemies at this point.
 - **Be ready** - for this to take all day.

2257 INSPECTION PROCEDURE

INTRODUCTION – THE INSPECTORS ARRIVE

- **Your Receptionist should:**
 - Ask the agents to be seated
 - Call the records custodian
 - Notify your attorney **IMMEDIATELY**
- **Records Custodian**
 - Review this document
 - Don't show it to the Agents
 - Make it clear that you are making sure that the inspectors follow the list your attorney gave you
 - Don't make it seem like you are second guessing them, you are just doing what your lawyer told you to do.

2257 INSPECTION PROCEDURE

INTRODUCTION – THE INSPECTORS ARRIVE

- **Records Custodian**
 - Make sure the inspection team follows procedures
 - BUT: DO NOT INTERFERE – If the inspectors are told to allow immediate access to the records, do not interfere or attempt to stop them.
 - *Interference with an inspection is a violation in itself*
- **Your Lawyers:**
 - As soon as the inspectors arrive:
 - **CALL YOUR ATTORNEY**
 - An attorney with experience in this area

2257 INSPECTION PROCEDURE

WHO CAN INSPECT?

- **Any officer of the Department of Justice**
 - Any FBI Agent
 - Any attorney with the Dep't of Justice
 - Any other individual with “comparable credentials”
- **Other authorities**
 - Anyone designated by the Dep't of Justice as an “inspector”
 - This individual will have some document that will be signed by an official at the Dep't of Justice
 - The type and form of the document is not yet determined

2257 INSPECTION PROCEDURE

WHAT IS AUTHORIZED IN AN INSPECTION?

- **Inspectors may:**
 - Enter without delay
 - No advance notice may be given – it will always be a surprise inspection.
 - Inspect during “normal business hours”
 - This means from 9-5 M-F, or:
 - Any other time that you are actually conducting business.
- **The inspectors should not “unreasonably” disrupt the operations of your business.**
 - If it does, make note, politely tell them, but do not interfere.

2257 INSPECTION PROCEDURE

UPON COMMENCEMENT THE INSPECTOR SHALL:

- **Present his or her credentials to you**
- **Explain the nature and purpose of the inspection**
 - The limited nature of the records inspection
 - The records required to be kept
 - The scope of the specific inspection
 - The records that he or she wishes to inspect
- These are **REQUIRED** by law.
- If the inspector fails to do any of the above:
 - Politely ask the inspector to do the above
 - Whether they do or not, do not interfere, but keep detailed notes of the failure to do so, witnesses, time, date, etc.

2257 INSPECTION PROCEDURE

WHAT CAN THE INSPECTOR DO?

- **Inspect your 2257 Records**
 - But this is not “carte blanche” to inspect the entire facility
- **Make copies of the records**
 - At no expense to you
 - Any record that is subject to the inspection
- **Seize evidence**
 - If they see any evidence of any felony, they may seize that
 - And it will be used against you
 - **KEEP YOUR RECORDS CLEAN, AWAY FROM EVERYTHING ELSE IN YOUR OFFICE, AND NOT INTERMINGLED WITH ANY OTHER RECORDS.**
 - **This includes your model releases – although they may have 2257 information on them, do NOT keep them with your 2257 records.**

2257 INSPECTION PROCEDURE

YOU ARE BEING INSPECTED, NOW WHAT?

- **Where should you allow the inspector to go?**
 - To wherever 2257 records are kept
 - The rest room
 - **Nowhere else unless they have a warrant**
- **What if they want to look elsewhere?**
 - Ask if they have a warrant
 - Say *“With all due respect, my understanding is that Section 2257 only allows access to the portion of our facility where records are kept, and no records are kept in the _____ room.”*
- **What if they insist?**
 - Say: *“You do not have our permission to enter that portion of the premises. I will not physically interfere with your doing so, but you do not have our permission and we object to any inspection beyond what is authorized by Section 2257.”*
 - **Try and say this in front of some witnesses who are not part of the inspection team.**

2257 INSPECTION PROCEDURE

YOU ARE BEING INSPECTED...

- **Stick around**
 - Do not leave the inspectors unattended at any time
 - You have the right to be present during an inspection
- **Resist the temptation to talk too much**
 - If they ask about anything other than the 2257 records
 - Say: *“I am sorry; I am not permitted to discuss any company operations or policies.”*
 - Make it lighthearted. *“That is above my pay grade”* or something like that.
 - If they ask about you personally:
 - Tell them your name and give them your ID, *if they ask for it.*
 - If they ask any other questions, say *“I would prefer not to talk about myself, it makes me feel funny.”* Or *“My attorney told me that I shouldn’t disclose any personal information.”*
 - Play dumb, if you like. *“I don’t understand why, but here is my lawyer’s phone number if you would like to speak to him _____.”*

2257 INSPECTION PROCEDURE

YOU ARE BEING INSPECTED...

- **Records – What if they want *additional* records?**
 - What if they want model releases, payroll records, etc?
 - **First:** These should NEVER be kept with 2257 records.
 - **Second:** Say “*Because those records are not part of the records required by Section 2257, I do not have those records available.*”
 - Note that they asked for them, who asked for them, and at what time.
 - Try and keep your notes private.

2257 INSPECTION PROCEDURE

YOU ARE BEING INSPECTED...

- **Photographs**
 - They will take a picture of the 2257 area
 - They will take a picture of your facility
 - This is allowed
 - Don't pose for a picture – It may seem silly but:
 - What if he says:
“*Hey, my college buddies will love this, me with the guy who runs _____ website, film company etc.*”
 - He is really saying:
“*Lets get a picture of you to place in our files just in case we need it to use against you.*”
- **Copies**
 - They will make copies
 - They will bring their own copier
 - They will decline to use yours
 - They have no need/right to copy anything but 2257 records

2257 INSPECTION PROCEDURE

REMEMBER AND RESIST THE TEMPTATION

- **REMEMBER:** These inspectors *might not* be your enemy, but they *definitely* are not your friends. NO MATTER HOW PAINLESS THEY MAKE IT, THIS IS SERIOUS BUSINESS.
- **RESIST:** Inspection techniques to be aware of:
- **RESIST: Being Overly Friendly and Chatty**
 - These inspectors are *at work*.
 - They may play friendly with you, but remember why they are there
- **RESIST: Answering Seemingly Innocuous Questions:**
 - Every bit of information can be used elsewhere, and can come back to haunt you, or another producer: For example:
 - **Question:** What is a good restaurant around here?
 - **Use:** You probably eat there, speak with your guard down, meet others from the industry there. Thinking that you were “just being friendly,” You just created a “listening post.
- **REMEMBER - *Anything you say can, and will, be used against you.***

2257 INSPECTION PROCEDURE

REMEMBER AND RESIST

- **REMEMBER:** These inspectors *might not* be your enemy, but they *definitely* are not your friends. NO MATTER HOW PAINLESS THEY MAKE IT, THIS IS SERIOUS BUSINESS.
- **RESIST:** Being too accommodating and making a dumb mistake.
- **Example: Giving away other information**
 - An inspector asks to use a note pad. This seems harmless.
 - He writes something on the pad and takes the paper.
 - Back at headquarters, they can analyze the paper and tell what was written on the pages that came before it, as many as 10 pages deep!
- **Example: Giving away fingerprints**
 - You’ve seen it on TV. You hand them a soda, and they take the can back and get fingerprints from it.
 - You may have done nothing to warrant fear of this, but it is just an example of how innocuous actions can be used to help the government and harm your interests.

2257 INSPECTION PROCEDURE

REMEMBER AND RESIST

- **What if they want to look elsewhere?**
- **Where should you allow the inspector to go?**
 - To wherever 2257 records are kept
 - The rest room
 - Nowhere else unless they have a warrant
 - **REMEMBER** – If they have a right to search an area, they will do it without asking. If they ask, they don't have a right – but if you allow it you waive potentially valuable defenses.
 - **RESIST** – Don't do anything foolish, but make sure you *make it clear that they do not have your consent*

2257 INSPECTION PROCEDURE

THE INSPECTION IS OVER - GOOD

- **The inspection ends favorably:**
 - The inspectors may tell you that you “passed.”
 - Thank them.
- Compile your notes into a detailed account of everything that happened and email or fax it to your attorneys immediately.

2257 INSPECTION PROCEDURE

THE INSPECTION IS OVER - BAD

- The inspection ends unfavorably:
 - There is a violation, and they arrest you
 - There is no violation, but they arrest you for something else they found
- Remain calm
- Do not resist the arrest
- **Shut up.** Don't say another word except "My name is _____ and I wish to have an attorney present during questioning."
- Do not consent to searches of any other areas, your car, NOTHING.
- If they say "can we look in here?" Say "No, I do not consent to any searches of any kind." Then repeat the request for your lawyer.
- Stay calm, collected, composed.
- Do not get angry. It will not help.

2257 INSPECTION PROCEDURE

THE INSPECTION IS OVER - BAD

- Make sure that someone knows your lawyer's phone number
- Make sure that this person is dependable
- Preferably, that person should be nearby or on-site
- That person should be instructed to call your lawyer
- That person should also compile detailed notes of everything they can remember from the encounter

2257 INSPECTION PROCEDURE CONCLUSION

- This may all seem intimidating, but:
 - If you have followed proper record keeping and indexing procedures, you should be fine. **If you are unclear about these procedures, you need to talk to an attorney as soon as possible.**
 - To date, inspectors do not seem overly gung-ho about this task, and they have been reasonable so far.
- Also:
 - Make sure that you are represented by experts in this area of law
 - Get their advice *before* you have an inspection to minimize the chance that an inspection will end badly.

2257 INSPECTION PROCEDURE FOR MORE INFORMATION

- See our website:
www.firstamendment.com
- Call us:
800.530.8137

