UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS DIRECTIVE

8010.4
Rev. 5

4/28/17

REPORT OF INVESTIGATION

I. PURPOSE

This directive provides the methodologies that Office of Investigation, Enforcement and Audit (OIEA), Compliance and Investigations Division (CID) Investigators will apply when preparing a Report of Investigation (ROI). Investigators prepare an ROI to support findings of apparent violations, food safety incidents, or other allegations under the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), the Egg Products Inspection Act (EPIA), the Humane Methods of Slaughter Act (HMSA) (the Acts), and related laws and regulations. FSIS is reissuing this directive in its entirety to update information related to the ROI and to make additional clarifications.

KEY POINTS:

- *Defines an ROI and its components*
- *Clarifies ROI document, heading, and subheading formats*
- *Sets out the process for the review and submittal of the ROI*

II. CANCELLATION

FSIS Directive 8010.4, Revision 4, Report of Investigation, dated 4/24/14

III. BACKGROUND

The purpose of the ROI is to present findings and supporting evidence that Investigators develop in investigating apparent violations, food safety incidents, or other allegations relating to the Acts, using the methodology set out in FSIS Directive 8010.2, *Investigative Methodology*. The ROI provides FSIS a means to determine whether the evidence supports the findings, and whether the Agency will take action. The ROI is used to support Agency decisions, investigative findings, and enforcement or legal actions. The ROI is also used to document investigations that may not result in a violation.

IV. THE ROI

A. A well-written ROI chronicles the nature of the alleged violations and the applicable statutes and regulations, and organizes the findings and supporting evidence to allow the reader to evaluate and assess whether the ROI and evidence support the allegations and determine if a violation(s) occurred. The ROI is to be factually correct, impartial, concise, clear, logically organized, and completed in a timely manner.

B. Each ROI is to contain clear and concise statements of findings that present the relevant evidence, identify sources for the evidence, and report the evidence or other case information in context (e.g., fact as fact, observations as observations). The ROI is to be exhibit oriented. Therefore, the text narrative is to be a summary of the findings and is to refer the reader to particular exhibits for details.

C. Investigators are to ensure that the ROI:

1. Communicates the purpose, scope, sources of information, facts, and findings of the investigation appropriately and is restricted to items that are important and relevant to the scope and objectives of the investigation;

2. Sets forth facts in a manner that facilitates reader comprehension;

3. Includes a statement of the applicable law that was allegedly violated or that formed the basis for the investigation;

4. Is factual, objective, and does not contain personal opinions, views, or editorials;

5. Avoids unanswered questions and does not leave matters open to interpretation;

6. Records or references all pertinent evidence and investigative activities;

7. Contains enough relevant and reliable evidence to support the findings; and

8. Is completed within a timely manner (i.e., within 10 days of receipt of the last piece of evidence collected) so that investigators meet performance measures for timely completion and action on ROIs.

D. Investigators are to limit distribution of the ROI to officials responsible for taking action on the Matter investigated and to those having an official need to know the results of the investigation (e.g., an FSIS Assistant Administrator, OIEA Enforcement and Litigation Division (ELD) personnel, the USDA Office of General Counsel, or Assistant United States Attorney). Investigators are not to distribute the ROI without authorization.

V. ROI FORMAT

A. Title Page – Investigators are to use the AssuranceNet/In-Commerce System (ANet/ICS) to prepare and generate an ROI Title Page, FSIS Form 8500-1, Report of Investigation, for the ROI.

B. Title Page Contents – ANet/ICS auto-populates the Title Page, which includes the following information:

1. Agency organizational information, including the Region, City, and State of the CID Regional Office completing the ROI;

2. Title Block containing the following information:

    a. Investigation Number;

    b. Violation Date;

    c. Name and address of the primary violator (i.e., firm or individual that is the subject of the investigation); and

    d. Case type and violation type.

3. Signatures and date:

    a. ANet/ICS auto-populates the ROI Title Page with the name, electronic signature, and

signature date of the Investigator and Regional Director (RD).

b. ANet/ICS populates the signature and date based on:

i. The last Investigator to forward the investigation to a supervisor and the date the investigation was forwarded to the supervisor; and

ii. The last RD who checked the Signature Approval checkbox on the ROI Review tab and the date when the Signature Approval checkbox was checked.

C. Continuation Title Page – If the ROI involves multiple firms or individuals, Investigators are to prepare a separate, Continuation Title Page, using Microsoft Word, upload it with the ROI Title Page, label the Continuation Title Page with the heading "Title Continued," and enter the additional firm name(s) and firm address or individual/multiple individuals information under the heading. Investigators are not to include any other information on the continuation page.

D. ROI Document Format – Investigators are to prepare the ROI text and other documents created by Investigators for use in the ROI (e.g., Organizational Structure) using Microsoft Word.

1. The text of the ROI, including headings, and other documents created for the ROI, are to be in font type Times New Roman, font size 11 point; and

2. The text of the ROI and all other documents created for the ROI are to use 0.5" margin on all sides.

E. ROI Headings Format – Investigators are to prepare the ROI headings and any sub-headings using the following format:

1. Headings Format – Headings in the ROI are to be in uppercase, underlined, and aligned over each section on the left side of the page (e.g., PREDICATION). Investigators are to ensure that headings do not start at the bottom of a page.

2. Sub-headings Format – Sub-headings may be used to organize the Predication and Findings sections of the ROI and to aid the reader's comprehension (i.e., sub-headings are not to be used in the Summary and Background sections). When used, sub-headings are to be formatted in title case and underlined (e.g., ABC Sold Misbranded Product).

F. ROI Headings – Investigators are to prepare the ROI text to include the following components as headings:

1. Predication – A brief statement that identifies when and how the program area (e.g., OIEA) became aware of and involved in the issue;

2. Objective – A brief statement that identifies the purpose (one or more objectives) of the investigation or inquiry;

3. Summary – A brief statement of the investigation or inquiry with respect to the objectives, presented in the same order as the objectives, to answer whether the findings sustain or do not sustain the respective objectives;

4. Background – A brief statement that states the Agency's statutory and regulatory responsibilities and identifies relevant background information about the subject of the investigation (e.g., nature of business operations, organization, responsible officials).

Investigators also may use background, when necessary, to explain any unusual, confusing, or complex regulatory or other issues (e.g., issues concerning Specified Risk Material (SRM) or humane handling).

5. Findings – Organization and content of the findings are critical to the ROI. Findings are to be organized as follows:

    a. Include the Firm Information and Subject of Investigation;

    b. Include a paragraph that charges the elements of the statutory or regulatory violation;

NOTE: Investigators may need to address a factual situation that may not involve violations, but an ROI is necessary to show a completed inquiry (e.g., Office of Inspector General (OIG) Hotline Complaint with no violation).

    c. Cite the relevant section of the statute or statutes and quote or paraphrase the language of the statute (e.g., TITLE 21 UNITED STATES CODE § 610 (a) and (c)) and link to the appropriate violator if more than one violator included;

    d. Present the findings and evidence developed in response to each statutory violation or factual situation; and

    e. Include, for each finding, a specific reference to the supporting evidence in an exhibit or exhibits.

6. Product Disposition – A brief, specific statement of the products dispositions, if applicable, including whether the Investigator witnessed the disposition actions.

7. Compliance History – Include relevant compliance history for the subjects of the ROI. Include any known violations of the FMIA, PPIA, EPIA, or HMSA; relevant administrative enforcement actions; or relevant violations of other Federal or State laws. Include the file number (e.g., ANet/ICS Investigation Number, ANet/ICS Enforcement Number), type of case (e.g., Criminal – Adulterated – Food Safety), closing action (e.g., Notice of Warning, Injunction), and date closed. If none, state "No record of past violations."

NOTE: Subject, Witnesses, Firms – When a subject, witness, or firm is mentioned more than once in the ROI, Investigators are to write the full name of the person or firm the first time it is used in the ROI; thereafter, they are to use uppercase letters to abbreviate and reference names of those persons and firms (e.g., John Smith (SMITH); Clyde's Meat Company (CLYDES). Investigators are not to use this abbreviation method for Federal, State, and local government employees.

G. List of Exhibits – The "List of Exhibits" is the list of evidence included as exhibits in the ROI.

1. The list of exhibits is auto-populated with information entered by the Investigator into ANet/ICS and is generated by and printed from ANet/ICS;

2. Exhibits are to be presented in an order that facilitates an understanding of the findings and the evidence in the ROI. Exhibits may be placed in the order referenced in the text of the ROI or organized by exhibit type (e.g., statements, invoices);

3. All exhibits used in the ROI are to have an evidence collection date, as required by FSIS

Directive 8010.3, *Procedures for Evidence Collection, Safeguarding and Disposal*. The evidence collection date is the date the Investigator obtained the evidence. For organizational structure, flow charts, summary tables, and other demonstrative or informational documents created by Investigators, the evidence collection date is the date the Investigator collected the information from an individual, firm, or government entity to support creating the document, not the date the document was created; and

4. The exhibits may be ordered in various ways. One example of a possible exhibit order is:

    a. A flow chart with a graphic representation of the step-by-step progression of the alleged statutory or regulatory violation;

    b. Memorandum of Interview, a Statement, or a Shipper's or Receiver's Certification (FSIS Form 8050-2) from the subject of the investigation;

    c. Relevant photographs, which must be entered on FSIS Form 8000-7B, Compliance Photographic Report and FSIS Form 8000-15, Photographic Log (see FSIS Directive 8010.3);

    d. Relevant business records (e.g., invoices, bills of lading, storage temperature charts, or formulation records);

    e. Relevant Agency records (e.g., FSIS Laboratory Sample Forms, Notice of Detention, Termination of Detention, voluntary disposition forms, Grant of Inspection, and other Federal, State, or local agency records);

    f. Other evidence that is relevant; and

    g. The legal structure of each alleged violator's business or organization (e.g., sole proprietorship, partnership, corporation, L.L.C.), if relevant. If the firm is a corporation, the company structure information is to be included as evidence. The company information is generally available on the website of the State where the business entity is registered.

H. List of Evidence Not Included – The "List of Evidence Not Included" is a list of evidence and any non-evidentiary materials obtained in the investigation but not included as exhibits in the ROI. The list of evidence not included is also generated by and printed from ANet/ICS.

I. Exhibits – Exhibits supplement and support findings. Each ROI is to include exhibits that are relevant and necessary to facilitate an understanding of the findings and evidence.

1. All exhibits (evidence) included in the ROI are to be identified under an Exhibit Cover Sheet, FSIS Form 8000-7. ANet/ICS will generate the Exhibit Cover Sheet, Form 8000-7, for each exhibit, based on information entered by the Investigator into the investigative record in ANet/ICS.

2. Each Exhibit Cover Sheet is to include:

    a. A description of the evidence (copy or original);

    b. Name and address of the person, entity, or place (e.g. where digital photographs were taken) from whom or from which the evidence was obtained;

    c. Name, title, and badge number of the Investigator who obtained the evidence (or took

the photographs);

d. Date the evidence was obtained;

e. Location of the original evidence; and

f. The appropriate sequential exhibit number.

3. Exhibit Legibility – Exhibits are to be legible. When a document is not legible, the Investigator is to copy or reproduce the document, make the copy legible by writing in the information or by otherwise reproducing the information, and include both the original document and the legible copy or reproduction with the exhibit. When a signed statement, or Shipper's or Receiver's Certification, is handwritten, the Investigator is to include a verbatim, typed copy as part of the exhibit.

J. Witness List – A witness list needs to be compiled only when a case is referred for prosecution consideration. At that time, ELD, the USDA Office of General Counsel, or the United States Attorney's Office may request that the Investigators prepare and provide a list of all witnesses with knowledge of the case. When requested, the witness list is to be prepared in the following format:

1. Identity of each witness (name, title);

2. Residence address, if known (street, apt. number, city, state, zip code);

3. Business address (street, suite number, city, state, zip code);

4. Telephone number and e-mail address, if known;

5. A short summary of what the witness can attest to; and

6. Any information that could bear on the credibility of the witness.

VI. REFERRAL AND TRANSFER OF ROI

A. At times, it is necessary to refer and transfer an ROI to another Regional Office or program area (e.g., State Meat and Poultry Inspection (MPI) Program) for completion. When the ROI is referred to another Regional Office or program area, the assigned Regional Office or program area is responsible for adding its findings to the current ROI. Only one ROI is to be included in the final investigative record.

B. The Regional Office or program area responsible for completing the ROI is to complete the following steps when the ROI is referred and transferred:

1. Complete the ROI and ensure it satisfies all parts of this directive;

2. Determine the proper order of the exhibits and prepare the list of exhibits;

3. Only the completing Regional Office is to sign the ROI Title Page (check the RD Review signature approval box in ANet/ICS which automatically signs the ROI Title Page). Print the signed and dated ROI Title Page for all referrals outside of ANet/ICS. Scan the Title Page and attach it in the File Attachments tab in the Investigation record in ANet/ICS; and

NOTE: Step 3 is not required for transfers between CID regions or between CID and States with access

to ANet/ICS because the file is transferred electronically in ANet/ICS.

4. Complete a referral letter as described in FSIS Directive 8010.5, *Case Referral and Disposition*. Only the most current referral letter should be included with the final investigative record.

VII. ROI SUBMITTAL AND REVIEW

Investigators and supervisors are to use the following process for review and submittal of the ROI in ANet/ICS:

1. Investigators are to submit the ROI in ANet/ICS to his or her supervisor.

2. The supervisor is to review and evaluate, as necessary, the ROI to ensure that it has been prepared in accordance with this directive. CID has established management controls and performance measures for supervisor and RD review of the ROI.

3. The supervisor is to return the ROI to the Investigator if changes are needed. If no changes are necessary, or after revisions are received, the supervisor is to submit the ROI in ANet/ICS to the RD with his or her recommended action.

4. Based on the findings and evidence in the ROI, the RD is to make a determination (e.g., issue a Notice of Warning, refer the ROI to ELD for administrative, civil or criminal prosecution consideration, close with no action) in accordance with the criteria in FSIS Directive 8010.5 and enter the action in ANet/ICS.

VIII. QUESTIONS

Refer questions regarding this directive through supervisory channels.

Assistant Administrator
Office of Policy and Program Development