

**TEXAS DEPARTMENT OF STATE HEALTH SERVICES
MEAT SAFETY ASSURANCE
AUSTIN, TEXAS**

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| <h1 style="margin:0;">MSA DIRECTIVE</h1> | 8010.5 Revision 5 | 12/4/14 |
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CASE REFERRAL AND DISPOSITION

I. PURPOSE

This directive describes the procedures and methodologies that are to be followed by the Texas Department of State Health Services (DSHS); Policy Standard, Quality Assurance (PSQA) Meat Group and Compliance Officers (CO) for determining actions on Reports of Investigations (ROI), including referral to the PSQA Enforcement Review Committee (ERC) for criminal, civil, and administrative enforcement actions.

KEY POINTS

- *Types of criminal, civil, and administrative enforcement actions*
- *How to refer ROI, AER, or other case documentation to ELD*
- *Policies for Notices of Warning (NOW) and Letters of Information (LOI)*
- *Procedures for action on appeals of NOW*
- *Responsibilities of authorized OIEA and OFO program employees*

II. CANCELLATION

MSA Directive 8010.5, Revision 4, Case Referral and Disposition

III. BACKGROUND

The TMPIA, FMIA, and the Poultry Products Inspection Act (PPIA), (the Acts) provide PSQA with the authority for criminal, civil, and administrative enforcement actions and sanctions against individuals and firms that have violated these statutes. Criminal, civil, and administrative enforcement actions help to prevent adulterated, misbranded, or otherwise unsafe meat and poultry products from reaching consumers; gain compliance; restrain and deter violations; and, in appropriate cases, sanction violations of the TMPIA, TAC, FMIA, and PPIA. FSIS takes administrative enforcement actions and recommends criminal and civil enforcement actions through ERC, or the Texas Attorney General Office (AG).

IV. REVIEW OF THE ROI

- A. Compliance Officers are to complete the "Report of Investigation" (ROI) and submit it to the PSQA Meat Group Manager or designee for review and action in accordance with MSA Directive 8010.4, "Report of Investigation." Compliance Officers are to make recommendations for escalated enforcement actions based on the compliance history of the violator, severity of the violation, actions that cause or are intended to cause adulteration, and acts of fraud.
- B. PSQA Meat Group Managers (or designees) are to:

1. review the ROI for completeness and make a determination on the appropriate action or referral;
2. refer the ROI to ERC when it describes violations that warrant evaluation for criminal, civil, or administrative enforcement action;
3. issue a LOW (see section XI.) letter for minor violations; and
4. issue an LOI (see section XII.), recommend continued verification through in-commerce surveillance activities, or close the case with no action.

V. ROI CASE REFERRAL TO ERC

- A. An ROI that describes repeated or serious violations of the TMPIA, TAC, FMIA, or PPIA that warrant evaluation for criminal, civil, or administrative enforcement action is to be referred to ERC. Examples of situations in which an ROI is to be referred to ERC for evaluation for enforcement action include, but are not limited to, violations involving product adulteration or misbranding that pose a threat to the health and safety of consumers; distribution of adulterated products; gross negligence in sanitation, handling, or storage that causes or has the effect of causing product adulteration; violations involving economic fraud or intent to defraud; and convictions of applicants for or recipients of State or Federal inspection.
- B. PSQA Meat Group Managers (or designees) are to refer the ROI to the ERC when it describes violations that warrant evaluation for criminal, civil, or administrative enforcement action. They are to do so by:
 1. preparing an ERC Summary Sheet and transmitting the information to the attention of the ERC and
 2. sending a copy of the ROI or other documentation to support the recommended action to the ERC.
 3. Present the ROI and recommendations to the ERC

VI. ENFORCEMENT ACTIONS

- A. PSQA Meat Group Manager (or designee) will:
 1. review the case evidence and recommendations to determine whether to take administrative enforcement action; initiate criminal or civil enforcement action through ERC to the AG; issue a LOW; close the case if the evidence does not support enforcement action; or, take other action;
 2. when necessary, contact the Compliance Officer to discuss the case findings and the sufficiency of the evidence upon completion of the case review;
 3. refer criminal, civil, and administrative cases to ERC and the AG, when appropriate;
 4. coordinate communication between ERC and AG to discuss evidence sufficiency or address any concerns;
 5. assist the ERC in the preparation of a formal referral to the AG or in the preparation of other documents or correspondence;

6. coordinate communication between ERC, AG, Meat Group Manager, or Investigator to discuss case presentation strategies, desired outcomes, and other issues, before presenting the case to the AG
7. work with ERC and the AG office to draft supporting affidavits, complaints, indictments, and other documents or to develop disposition proposals such as plea agreements, pretrial diversions, consent decrees, and other proposed actions;
8. ensure consistency and effectiveness in criminal, civil, and administrative enforcement actions and sanctions; and
9. coordinate follow-up surveillance or other activities with the Compliance Officer, such as to determine compliance with case settlement terms once actions are completed.

B. PSQA Meat Group Managers (or designees) are to:

1. participate in conference calls with ERC and AG to discuss case findings and evidence sufficiency and to address any concerns after completion of the case review;
2. provide direction to the Compliance Officer in the development of case presentation strategies when requested by ERC;
3. as necessary, participate with the Compliance Officer in presenting the case to the ERC or AG; and
4. monitor the status of cases referred to the ERC or AG.

C. Investigators are to:

1. participate in conference calls with ERC and AG to discuss case findings and evidence sufficiency and to address other questions or concerns;
2. participate in developing case presentation strategies to present case findings to the AG;
3. present or participate in presenting case findings to the ERC or AG
4. obtain information from ERC regarding precedent cases involving similar violations that have led to successful outcomes;
5. as necessary, serve legal documents, attest to case evidence, or serve as a witness in legal proceedings;
6. obtain certified copies of court documents and provide copies to ERC as soon as practical;
7. verify compliance of settlement terms by firms and individuals once actions are completed; and,
8. fully and timely inform ERC about case activities and developments.

VII. SEIZURES

For case actions regarding seizure requests, refer to MSA Directive 8410.1, "Detention and Seizure."

VIII. CUSTOM EXEMPT OPERATIONS

For case actions regarding custom exempt operations, refer to MSA Custom Exempt Review Glossary.

IX. LETTER OF WARNING

A LOW provides notice of violations to firms and responsible individuals. The LOW identifies the violative conduct, condition, practice, or product; provides the opportunity to achieve voluntary compliance; and is sent to the firm and the most responsible official. Situations where a LOW is issued include, but are not limited to, situations involving improperly labeled product with no intent to defraud and no public health risk.

A. PSQA Meat Group Manager (or designees) are to:

1. prepare the LOW for issuance to each subject of the ROI within ten (10) days of the completion of the ROI by the Compliance Officer.
2. The LOW is to:
3. include the name of the firm, responsible official and title, and the address of the firm or responsible official;
4. state that there is an ROI that evidences that a violation of one or more of the Acts has occurred;
5. use TMPIA, TAC, FMIA, PPIA, U.S. Code, and regulatory citations, as appropriate;
6. include a specific description of the alleged violation (i.e., who, what, when, and where) and the date the violation was discussed with the subjects;
7. briefly explain the requirements of the Acts and regulations, as applicable, and PSQA enforcement authorities; and
8. explain the Agency's expectations of compliance and advise of possible penalties or future sanctions.

B. Follow these guidelines when the individual or firm receiving the LOW questions the issuance of the LOW in writing.

1. proceed to explain the violations and reason for issuance;
2. prepare a memorandum of conversation summarizing the discussion; and
3. issue a letter to the individual or firm summarizing the discussion and advising that if the individual or firm wishes to appeal the decision, he or she is to prepare a letter of appeal and submit it to the Director of MSA. The letter from the PSQA Meat Group Manager should provide contact information for the Director of MSA.

C. The ERC (or designee) is to:

1. issue a "Present Your Views" (PYV) or "Show Cause" letter to the responsible individuals, when applicable. The PYV or "Show Cause" letter affords the responsible individuals and firms the opportunity to present their views and information regarding the allegations in question or to show cause as to why enforcement proceedings should not be initiated;

2. Remand the case to the PSQA Meat Group Manager when the case does not rise to the level of administrative or criminal enforcement
3. issue a Notice of Violation (NOV) when the ROI documents violations of the Act when administrative penalties are proposed
4. prepare and refer the case to the AG, when warranted.

D. Follow these guidelines when the individual or firm receiving the NOV submits an appeal:

1. review the letter and contact the Meat Group Manager or designee, as necessary, to obtain a copy of the ROI and discuss any findings;
2. evaluate and determine whether the evidence in the ROI supports the NOV letter;
3. if necessary, work with AG and other program areas to gather additional information or make any legal determinations;
4. deny the appeal if the ERC determines that the evidence in the case supports the issuance of the NOV;
5. rescind the NOV if he or she determines that the evidence in the case does not support the issuance of the NOV letter;
6. inform the Meat Group Manager or designee that the NOV appeal is to be denied or that the NOV is to be rescinded; and
7. issue a written response to the individual or firm advising him or her, or the firm, of the Agency's decision to deny the appeal or rescind the NOV, and provide a copy of the written response to the Meat Group Manager.

X. LETTERS OF INFORMATION

PSQA may issue LOI when it has determined that an enforcement action is not warranted, but that it is necessary to advise an individual or firm of the requirements under the statutes or regulations and to urge compliance. The main purpose of a LOI is to establish awareness of statutory and regulatory requirements. A Meat Group Manager, or designee, or ERC may issue a LOI.

XI. ISSUING ENFORCEMENT LETTERS

LOW, NOV, and LOI letters are sent to the recipient by certified or registered mail. When the recipient of the LOW, NOV or LOI does not claim the letter, CO generally will not hand-deliver the letters. Instead, PSQA may send the letter by regular mail to the last known place of business or mailing address of the firm or to the last known residence of the individual.

XII. REFERRING ACTIONS TO OTHER AGENCIES

PSQA Meat Group Manager and ERC are to determine whether to refer the information obtained in an ROI concerning an alleged violation of the Acts to Texas Office of Inspector General. The OIG will determine whether to investigate (e.g., open a case memorandum) and, if appropriate, notify other Federal, State, or local law enforcement officials or authorities.

When appropriate, PSQA officials will coordinate with other Federal or State agencies (e.g., FDA) on possible referrals for investigations or enforcement actions under other Federal and State programs.

XIII. QUESTIONS

Refer questions through supervisory channels.

A handwritten signature in blue ink that reads "James R. Dillon". The signature is written in a cursive style with a large initial 'J' and 'D'.

James R. Dillon, DVM, MPH
Director, Texas State Meat and Poultry Inspection Program
Department of State Health Services