Administrative Enforcement Reporting (AER)

EIAO Training
Objectives

Upon completion of this module, you will be able to:

- Describe the purpose of the AER system.
- Describe the primary role of the EIAO in the AER system.
Introduction to AER

• The AER system:
  • was implemented to ensure all administrative actions are fully supported.
  • provides a place to maintain accurate documentation for administrative cases.
Introduction to AER

- FSIS Directive 5100.3
  - Administrative Enforcement Action Decision Making and Methodology
- FSIS Form 5400-9
  - Administrative Enforcement Report
  - The electronic 5400-9 is maintained in AssuranceNet
AER Initiation

- The AER is prepared to include the supporting documentation and evidence that was used to support the action.

Administrative Enforcement Report
AER Report and Exhibits

- Demonstrates FSIS had sound basis
  - provides an outside reader such as a judge an understanding of the key events associated with the case
Other Actions that Require an AER

- Recall effectiveness checks
- Prohibited activities as indicated FMIA Sec 610 & PPIA Sec 458-459
- Appeals to the District Manager
- Requests to withdraw custom exemption
- Requests to withdrawal of inspection services
The case management component of the AssuranceNet is used to:

- Maintain an “electronic” copy of the AER including:
  - FSIS Form 5400-9
  - A list and description of each exhibit
  - The exhibit documents
- Search and review of AER information
During All Phases of Enforcement

• Develop and compile supporting documents for decisions reached

• Examples
  • Noncompliance Records
  • Food Safety Assessments
  • Establishment Records
  • Lab Reports
  • Photographs
  • Letters/MOIs
Supporting Documents

- Described in the AER system in a way that make the facts of the case clear
  - Who
  - What
  - When
  - Where
  - and How of the alleged violation

- For enforcement actions, the documents are to link the alleged violations with FSIS statutory and regulatory requirements
AER Case File

• For each administrative action:
  • One “hardcopy” is prepared and maintained in the District Office including:
    • Signed copies of Agency enforcement letters
    • Other FSIS letters pertaining to action
    • Any responses from establishment officials
    • Any responses to the establishment
Appeals

• If an establishment appeals
  • Decision will be made based on the appeal and the AER in support of the action/decision
  • A copy of decision to deny or sustain the appeal along with supporting documentation must be included as an exhibit in the AER
District Case Specialist

- DCS has primary responsibility to ensure:
  - All AER information is entered in AssuranceNet
  - Official hardcopy of the report is maintained
Entering the AER in AssuranceNet

The procedure for entering information into AssuranceNet may vary.

- If an EIAO has the necessary computer equipment and internet access, they may enter AER information directly into the system.
- Other times, it may be more efficient for the DCS to enter the information into the system in the District Office.
Entering the AER in AssuranceNet

- The DCS will discuss with you the method used in your District for entering cases into AssuranceNet.
Time Frames for Entry

- FSAs that result in enforcement action should be entered into AssuranceNet within 48 hours of the exit conference.
- As new information is gathered; this information should be added to keep the AER up to date.
AER Numbering System

- Numbered by Report Type
- Examples
  - NOIE AER
    - 80-16-N003

3rd NOIE that was created nationally during the FY
AER Report Types

- **N** NOIE 80-16-N003
- **S** Suspension 80-16-S001
- **R** Reinstatement 80-16-R001
- **A** Appeals to DM
- **REC** Recall Effectiveness Checks
AER Report

NOIE  
Suspension  
Reinstatement
EIAO Role – Perform FSA

- Performs PHREs, FSAs, investigations, and administrative activities, analyzes and documents findings
- Recommends appropriate enforcement action
- Collects all relevant information and evidence to support the AER
EIAO Role – Communicate Findings

- Communicates findings to the IPP, FLS, SEIAO, District Case Specialist, DDM/DM, and establishment
  - Information used to support enforcement must be documented in one of the following:
    - PHRE
    - FSA Report
    - MOI
    - Other documents
EIAO Role – Seek Expert Advice

- For clarification of scientific or technical issues prior to recommendation
  - Contact OPPD or OPHS, use “Ask FSIS”
  - Document guidance and include in AER
- For expedited help in any unusual cases contact the District Office
EIAO Role – Draft Letters

- Draft NOIE and Suspension letters or other documents associated with an AER
EIAO Role – Verification Plan

- Develop a Verification Plan when a deferral or abeyance decision is made
- Discuss the VP with the DCS, FLS, IPP, and establishment
EIAO Role – Follow-up Visits

- Conduct follow-up visits at 30, 60, and 90 day intervals
  - Evaluate generated data
  - Determine if corrective actions are effective
  - Provide recommendations and decide next steps
District Case Specialist

- The DCS takes the lead in developing the AER strategy and assuring that the AER has all documents to support enforcement or other action
- The DCS communicates with EIAOs as AER cases are in progress
District Case Specialist

- Serves as the designed Evidence Officer and maintains AER system
- Ensures the integrity of all documentation
- Reviews PHRE and FSA and ensures recommendations are supportable
- Responsible for the final AER
District Case Specialist

- Ensures proper distribution of the enforcement letters
- Includes all relevant documents are in AER case file
District Manager

- Ensures administrative enforcement actions are consistent with policy
- Communicates with the DCS and EIAO about case strategy
- Correlates with the OFO AERO
- Refers the case to ELD/CID for violations that require administrative enforcement action, seizure, or other issues as needed
Exhibit Examples

- FSIS Form 5400-9 and accompanying exhibit list
- FSA Report
- Copies of HACCP, SSOP, prerequisite records
- Decision documents, MOIs
- Guidance from OPHS, OPPD or AskFSIS
- Lab results
- Relevant photographs
- Establishment responses to agency letters
- Communications regarding actions
- Any document that supports decisions
Order of Exhibits

- First exhibit should be the letter to establishment notifying them of the action or intended action
- Last exhibit should be the document closing out the action
Example NOIE AER

- Initial Exhibit - NOIE letter
- Final Exhibit
  - Letter of Warning
  - Notice of Suspension
Example Suspension AER

- Initial Exhibit – Notice of Suspension
- Final Exhibit
  - Letter of Warning
  - Notice of Reinstatement of Suspension
  - Referral Letter
  - Voluntary Withdrawal of Inspection Letter
Evidence Procedures

- EIAOs must collect, maintain, and safeguard evidence.
- Follow FSIS Directive 8010.3, Procedures for Evidence Collection, Safeguarding and Disposal, when sending evidence you collect that is associated with an AER to the District Office/District Case Specialist.
Workshop – Directive 5100.3

1. List types of enforcement letters EIAOs may draft
2. Describe the exhibits that may close a Reinstatement AER
Questions