

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

FSIS DIRECTIVE	8021.1	6/29/11
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NOTE: THIS DIRECTIVE BECOMES EFFECTIVE JULY 1, 2011.

**INVESTIGATIVE METHODOLOGY FOR CONDUCTING MISCONDUCT,
OIG HOTLINE, AND OTHER INVESTIGATIONS**

CHAPTER I – GENERAL

I. PURPOSE

This directive provides the methodology that the Food Safety and Inspection Service (FSIS), Office of Program Evaluation, Enforcement and Review (OPEER), Internal Control and Audit Division (ICAD) Personnel Misconduct Investigators (PMI), follow when conducting misconduct, USDA Office of the Inspector General (OIG) Hotline, and other investigations.

KEY POINTS

- *Receiving and assessing complaints and allegations;*
- *Preparing Investigative Plans;*
- *Initiating and conducting investigations;*
- *Collecting, safeguarding, and transferring evidence;*
- *Maintaining notes and working files*
- *Planning, conducting, and documenting interviews;*
- *Documenting the report of investigation; and*
- *Investigative analysis, decision-making, and closing out the investigation*

NOTE: For purposes of this directive, the term “PMI” includes other OPEER personnel (e.g., ICAD Management Control Branch and CID Compliance Investigators) when they are directed to conduct the types of investigations covered in this directive.

II. RESERVED

III. RESERVED

IV. REFERENCES

Federal Meat Inspection Act (21 U.S.C. 601 et seq.)
Poultry Products Inspection Act (21 U.S.C. 451 et seq.)
Egg Products Inspection Act (21 U.S.C. 1031 et seq.)
Humane Methods of Slaughter Act (7 U.S.C. 1901 et seq.)
9 CFR Parts 312, 329, 381, 500, 590
Inspector General Act, as Amended, of 1988 (5 U.S.C. Appendix 3)
USDA Office of Inspector General's "Employee Misconduct Investigations Handbook"
Whistleblower Protection Act of 1989
Memorandum of Agreement between FSIS and OIG, dated May 23, 2008
Privacy Act of 1974 (5 U.S.C. 552a)
USDA Department Regulation 1700-001, OIG Organization and Procedures
5 CFR, Chapter I, Office of Personnel Management, Part 735, Employee
Responsibilities and Conduct
5 U.S.C. Appendix, Inspector General Act of 1978, §4
Department Personnel Manual (DPM) Chapter 751 – Discipline, Subchapter 3 - Agency
Investigations of Employee Misconduct
FSIS Directive 1240.1, Communicating with External Entities
FSIS Directive 4735.3, Employee Responsibilities and Conduct
FSIS Directive 4735.4, Reporting Assault, Threats, Intimidation or Interference
FSIS Directive 4735.9, Ethics and Conflict of Interest
FSIS Directive 8010.3, Procedures for Evidence Collection, Safeguarding and Disposal

V. ABBREVIATIONS

AA	Assistant Administrator
CID	Compliance and Investigations Division, OPEER
CRD	Civil Rights Division
EED	Evaluation and Enforcement Division, OPEER
EPIA	Egg Products Inspection Act
FMIA	Federal Meat Inspection Act
HMSA	Humane Methods of Slaughter Act
HRFO	Human Resources Field Office
ICAD	Internal Control and Audit Division, OPEER
IB	Investigation Branch, ICAD
IBC	Investigation Branch Chief
LERD	Labor and Employee Relations Division
MOA	Memorandum of Agreement
MOI	Memorandum of Interview
OA	Office of the Administrator

OCIO	Office of the Chief Information Officer
OFO	Office of Field Operations
OHRM	Office of Human Resources Management, USDA
OIG	Office of Inspector General, USDA
OM	Office of Management
OPEER	Office of Program Evaluation, Enforcement and Review
OPHS	Office of Public Health Science
PMI	Personnel Misconduct Investigator
PPIA	Poultry Products Inspection Act
ROI	Report of Investigation

VI. FORMS

FSIS Form 4700-1, Request for Investigation
 FSIS Form 4735-4, Reporting Form for Assault, Harassment, Interference, Intimidation or Threat
 FSIS Form 8000-7, Exhibit Cover Sheet
 FSIS Form 8000-16, Evidence Log
 FSIS Form 8000-17, Evidence Receipt and Chain of Custody
 FSIS Form 8200-1, Property Receipt

VII. DEFINITIONS

Affidavit – A sworn statement of facts signed in person before an official who has the authority to administer an oath.

Allegation – An assertion or statement of claimed fact related to fraud, waste, abuse, or mismanagement in FSIS programs or operations that has yet to be proven.

Complaint – The report of allegations of fraud, waste, abuse, or mismanagement in FSIS programs or operations.

Declaration – A sworn statement of facts given under penalty of perjury and without the need for a witness.

Inquiry – A less formal gathering of information or examination into the facts or principles of a situation than an investigation.

Investigation – A formal fact-gathering and analytical activity conducted to develop and document facts relevant to particular allegations. The results of an investigation are used to support Agency decisions, investigative findings, and enforcement or legal actions.

Investigator – An impartial individual assigned to conduct an investigation.

Memorandum of Interview – A document written and signed by the interviewer that documents information gained from an individual not documented in a signed statement.

Misconduct – Activity involving violations of rules, regulations, laws, or standards of employee conduct.

Notification Letter – A letter issued by ICAD to the applicable program area AA informing him or her that an investigation will be conducted, and the subject and nature of the investigation.

Subject – The individual whom the allegations are against. This is the person being investigated.

Witness – A person who has first-hand knowledge of the allegations in the complaint.

Whistleblower – A person who alleges wrongdoing occurring by an individual, or in an organization or body of people.

VIII. AUTHORITY

Under 5 U.S.C. Appendix, Inspector General Act of 1978, §4, the FSIS Administrator is authorized to conduct employee misconduct, OIG Hotline, and other investigations to detect and deter fraud, waste, abuse, or mismanagement within the Agency. The FSIS Administrator delegated to OPEER the authority to conduct these investigations.

IX. BACKGROUND

A. FSIS Directive 4735.3, Employee Responsibility and Conduct, explains the conduct requirements that each FSIS employee must follow. All federal employees have a responsibility to adhere to the principles of ethical conduct and have an obligation to report fraud, abuse, waste, or mismanagement of public funds.

B. In addition to responsibilities of conduct, FSIS employees are required to cooperate during an investigation and be truthful and forthcoming with any knowledge they have regarding the allegations. Employees may be interviewed as (1) witnesses, or (2) subjects. Employees who refuse to cooperate or are found to be less than truthful may be subject to disciplinary action up to and including removal.

C. Allegations of misconduct, fraud, waste, mismanagement, or other allegations that impact FSIS programs or operations are investigated to determine their validity and to prevent misconduct, mismanagement, or other activity from continuing. ICAD conducts internal investigations of such allegations, per the MOA with OIG and USDA Department Manual 751, when the allegations are against FSIS employees.

D. During investigations, PMI or other OPEER personnel may interact with other FSIS program area staffs (e.g., OFO, OM, OCIO) or federal partners on misconduct or other investigations and activities.

1. **OPEER, CID:** CID has responsibility for surveillance, investigations, and other activities to ensure food safety and defense. CID conducts investigations of apparent violations, food safety incidents, and other allegations under the FMIA, PPIA, EPIA, and related laws and regulations. Some of these investigations are based on referral from OIG. When conducting these types of investigations, CID investigators follow the investigative methods in FSIS Directive 8010.2, Investigative Methodology. CID investigators also may assist ICAD with misconduct or other investigations. When CID assists ICAD with investigations, CID Investigators follow the methods in this directive.
2. **OPEER, EED:** EED has responsibility for Agency-wide criminal, civil, and administrative enforcement actions and related activities. Enforcement actions may be based on information gathered by ICAD personnel, CID investigations, OFO, OPHS, or joint activities with OIG. PMI or other ICAD personnel may contact EED to coordinate enforcement or related activities.
3. **OM, CRD:** CRD provides advice, guidance, and assistance on the implementation, management, and compliance with Equal Employment Opportunity programs. CRD's goal is to ensure fair and equal treatment for internal and external customers. PMI may contact the CRD while planning an investigation to determine if there are any related investigations in order to avoid or mitigate a potential conflict of interest or disruption of efforts to resolve matters.
4. **OM, LERD:** LERD develops, administers, and evaluates comprehensive labor relations, employee relations, and third-party hearing and appeals programs for FSIS. It receives complaints from FSIS employees and supervisors, which it then forwards to ICAD for investigation. PMI or other ICAD personnel may discuss the investigation with LERD to ensure sufficient information is gathered to prove or disprove an allegation.
5. **OM, Workplace Violence Prevention Branch:** The Mediation and Work/Life Services Division, Workplace Violence Prevention Branch, focuses on FSIS employee safety. All workplace violence incidents of assault, harassment, interference, intimidation, or threats must be reported immediately. OPEER may be asked, in accordance with FSIS Directive 4735.4, to review, when necessary, the seriousness of a reported incident and initiate appropriate action, including investigations, enforcement actions, and referrals for prosecution. Informal inquiries or official investigations authorized by management officials are initiated by ICAD IB.

6. **USDA, OIG:** USDA-OIG performs audits and investigations of USDA programs and operations to promote economy, efficiency, and effectiveness and to prevent and detect fraud, waste, and abuse. OIG makes determinations on investigative jurisdiction where there is a possible criminal violation; provides liaison with the appropriate U.S. Attorney in referrals for prosecution and in obtaining clearance for administrative action where there is a possible criminal violation; and provides training and certification, in accordance with OHRM, to Agency personnel who are designated to conduct misconduct investigations. OIG receives complaints and allegations of criminal activity, mismanagement, and misconduct (e.g., OIG Hotline Complaints), some of which are referred to ICAD for investigation. OIG also provides guidance and assistance to PMI and other Agency personnel.
7. **USDA, OHRM:** USDA-OHRM provides overall policy, direction, and assistance to agencies in developing investigative programs and in improving program effectiveness. In coordination with OIG, OHRM provides training and certification to PMI.
8. **OA, OCIO:** OCIO has the primary responsibility for information technology and information management for FSIS, both in headquarters and in the field. The office leads the development and maintenance of information technology and telecommunications infrastructure to support regulatory decision making and to support food safety, public health, and food security. The Information System Security Program (ISSP), which is part of OCIO, can monitor and detect an employee's misuse of his or her government computer. The ISSP receives alerts when an employee visits unauthorized sites. The Computer Forensic Examiner and ISSP work together to resolve these types of cases. The Computer Forensic Examiner's analysis is documented in a report, which supplements the Misconduct Investigation Report.

E. Alleged misconduct examples include absences without leave; falsification of official documents; conducting personal business during duty hours; fighting, threatening, or using abusive language toward coworkers, supervisors, or the public; refusal or failure to follow instructions or procedures; neglect of duty; misuse of government vehicles; off-duty conduct resulting in arrest or conviction; inappropriate use of government facilities, supplies, equipment, services, telephones, personnel, or IT equipment including excessive or inappropriate use of the Internet; worker compensation fraud; sexual harassment; falsification of an application for employment; intoxication or consumption of alcohol or drugs while on duty; or prohibited political activity.

F. ICAD endeavors to complete all misconduct investigations within 90 days of initiating an investigation. In determining investigative priorities, the Director or IBC will take into account the following criteria:

1. Seriousness of the allegations;

2. Program costs associated with investigative requests (e.g., an employee is on administrative leave or detailed outside of a commuting area pending an investigation);
3. ICAD resources; and
4. Other investigative priorities.

Therefore, complaints may not be investigated in the order in which they are received and the timeframe for completing an investigation may be less than 90 days or more than 90 days.

G. If the PMI receives media inquiries regarding misconduct or other allegations, he or she is to notify the IBC immediately. The ICAD Director, IBC, or PMI is to follow the procedures in FSIS Directive 1240.1, Communicating with External Entities, and refer such inquiries to the Congressional and Public Affairs staff.

X. RESPONSIBILITIES

A. ICAD is responsible for conducting investigations of allegations of fraud, waste, and mismanagement in FSIS programs; investigations in response to referrals by OIG (e.g., OIG Hotline Complaints); and other types of investigations or inquiries.

B. The employees listed below have specific responsibilities related to these investigations. This section contains broad areas of responsibility; details about responsibilities are in subsequent sections.

1. **ICAD Director.** The ICAD Director is to:
 - a. Monitor IB performance and provide guidance for investigative strategies to ensure effective operations;
 - b. Review monthly investigative statistics and resource expenditures to assess efficiency of investigative operations;
 - c. Provide feedback to the IBC; and
 - d. Sign notification letters that are sent to appropriate program officials.
2. **Investigation Branch Chief (IBC).** The IBC is to:
 - a. Provide supervision, technical direction, and coordination of PMI;

- b. Conduct management activities related to investigations in accordance with this directive;
- c. Review complaints and allegations that are sent to ICAD;
- d. Determine whether a PMI should initiate an investigation;
- e. Monitor each PMI's workload;
- f. Assign investigations by issuing an authorization letter to the PMI, which informs the PMI that he or she has been assigned to the investigation;
- g. Maintain communication with the PMI to provide guidance on investigations and related activities from the initiation of an investigation through the ROI;
- h. Review and approve Investigative Plans and ROI and provide appropriate feedback to the PMI;
- i. Ensure the quality, completeness, timeliness, and integrity of investigations, reports, and investigation files;
- j. Designate the Evidence Officer for each investigation;
- k. Oversee that the investigation file and evidence are properly maintained; and
- l. Draft notification letters and transmittal letters for the ICAD Director.

3. Personnel Misconduct Investigators. PMI are to:

- a. Write Investigative Plans;
- b. Conduct investigations and related activities in accordance with this directive;
- c. Inform the appropriate employee that he or she is the subject of the investigation at the beginning of his or her interview;
- d. Collect, maintain, and secure evidence in accordance with this directive;
- e. Conduct ongoing analysis of investigative data and refine their approach to ensure a thorough investigation;

- f. Maintain communication with the IBC regarding investigative activities from the initiation of an investigation through to the final report (ROI);
- g. Prepare investigation files and correspondence;
- h. Write the ROI; and
- i. Serve as the Evidence Officer, when designated.

4. Management Analysts. ICAD Management Analysts are to:

- a. Provide administrative support to the ICAD Director, IBC, and PMI;
- b. Assign investigation numbers and log investigations into the appropriate databases;
- c. Prepare files;
- d. Update and close investigation files;
- e. Assist with completing, issuing, and distributing investigation correspondence, such as the authorization and notification letters; and
- f. Serve as the Evidence Officer, when designated.

CHAPTER II - INVESTIGATIVE METHODOLOGY

I. GENERAL

A. Investigations are impartial, objective fact-gathering and analytical activities conducted to develop and document facts relevant to prove or disprove allegations or to support Agency decisions, or administrative or other legal actions. Often these investigations are used to determine whether an individual acted in a manner inconsistent with his or her duties and obligations to FSIS. If an investigation is required, ICAD determines the elements of intent for the allegations and possible charges (LERD makes the charges).

B. OIG and OHRM requirements describe the minimum standards for conducting misconduct investigations. This directive includes the specific instructions and procedures FSIS follows for misconduct investigations. Although the directive presents the steps sequentially, some aspects of the investigation may occur simultaneously. These methods also are used for other types of investigations conducted by ICAD (e.g., OIG Hotline Complaints, non-misconduct investigations).

C. Investigations are confidential. Disclosure of investigative information may be detrimental to the investigation, the individuals involved, and the Agency. To maintain confidentiality, communications about the investigations are on a need-to-know basis. Therefore, all documents related to the investigation are considered strictly confidential internal documents. The release of any information is restricted to approval by the ICAD Director or IBC.

II. RECEIVING A COMPLAINT

A. ICAD receives complaints of misconduct or other allegations from within FSIS (e.g., LERD or other FSIS program areas), from OIG (e.g., referrals from OIG Hotline Complaints), or as special requests from other sources. Complaints from OFO usually are received on FSIS Form 4700-1, Request for Investigation.

B. Requests for investigations may go directly to the ICAD Director or through the OPEER AA to the ICAD Director. LERD will send their requests for investigations directly to the IBC.

III. ASSESSING A COMPLAINT

A. The ICAD Director or IBC assesses the allegations of the complaint and available facts to determine whether the facts establish apparent misconduct or another incident that requires investigation.

B. If the ICAD Director or IBC determines that there is not sufficient information to establish the need for an investigation, he or she is to:

1. Contact the originating party from which the complaint was received to obtain more information; or
2. Initiate an inquiry to help determine or assess the allegations of the complaint to determining whether an investigation should be conducted.

NOTE: The ICAD Director or IBC will provide guidance to the PMI if an inquiry is initiated.

C. If the ICAD Director or IBC determines that an investigation is warranted, he or she is to:

1. Verify that FSIS has jurisdiction and authority to investigate the alleged violation; and
2. Determine whether the allegation should be referred to OIG per the MOA.

NOTE: The MOA between FSIS and OIG specifies the types of investigations covered by each Agency and when certain types of investigations should be referred to OIG. Allegations that are to be referred to OIG include, but are not limited to, FSIS employee misconduct that could lead to removal or criminal prosecution, employee theft or fraud, or matters which OIG involvement will best serve the Department's interests. OIG determines whether it or ICAD will conduct the investigation.

3. Determine if there is an apparent conflict of interest. In these rare instances, a complaint is referred to OIG, another USDA agency, or another FSIS program area to investigate to avoid the appearance of a conflict of interest.
4. Make a referral to another FSIS program depending on the specific nature of the content of the complaint. For example, an OIG Hotline Complaint about a food safety violation by the regulated industry could be referred to either CID or OFO.

D. If the ICAD Director or IBC determines an investigation is not warranted because FSIS does not have jurisdiction if insufficient information is available, or if the available facts do not substantiate that a violation of FSIS laws has occurred, he or she will:

1. Close the matter with no action;
2. Notify the OPEER AA, if necessary; and
3. Send the matter back to the requestor (e.g., OIG, LERD, program areas) through the appropriate officials.

IV. INITIATING AN INVESTIGATION

When the ICAD Director or IBC determines that ICAD will investigate the allegations in the complaint, he or she sends the complaint to the Management Analyst to begin the investigation process.

A. The Management Analyst is to:

1. Assign an investigation number, which is the unique identifier used from initiation to closure of the investigation;
2. Log in the investigation;
3. Enter applicable information into the database, including subject of the complaint; location where alleged violations occurred; type of allegations; and opening date;
4. Prepare a memorandum from the IBC to the PMI authorizing the investigation (authorization letter);
5. Send appropriate correspondence, such as notification letters;

NOTE: A notification letter is not required when the program official requests the investigation.

6. Update the database as additional information becomes available; and
7. Provide periodic status reports to program officials.

B. The IBC is to:

1. Assign a PMI to the investigation and issue him or her an authorization letter;
2. Draft notification letters when necessary to the appropriate program AA, and forward them to the Management Analyst to finalize (including obtaining the ICAD Director's signature) and distribute; and
3. Coordinate the investigative activities with the assigned PMI according to the guidance in this directive.

D. The PMI is to:

1. Review the complaint and applicable information; and
2. Follow the guidance in this directive.

V. CONDUCTING THE INVESTIGATION

A. Although each investigation may have unique elements, the methodology for conducting the investigation is the same and is outlined in this directive. All investigations are to be conducted in a manner that is fair, impartial, thorough, and timely.

B. The PMI is to examine the total circumstances of an allegation in detail and determine the facts and obtain any other relevant information not readily accessible. The PMI is to link allegations and issues to laws and regulations; collect evidence impartially and systematically; assess the evidence by reviewing each allegation's legal and regulatory element for supporting facts/actions and non-supporting facts/actions; and draw a logical and reasonable determination or conclusion.

C. When conducting an investigation, the PMI is to:

1. Maintain a working file for the investigation per this directive, Chapter III;
2. Plan the investigation and prepare and modify, as appropriate, an Investigative Plan per this directive, Chapter III;
3. Collect evidence per this directive, Chapter IV, and FSIS Directive 8010.3;
4. Conduct and document interviews per this directive, Chapter V;
5. Analyze the evidence and findings per this directive, Chapter II;
6. Document the investigation and findings per this directive, Chapter VI; and
7. Keep the IBC apprised of the investigation and any special situations or issues that arise.

D. When the PMI is unsure how to handle situations or issues that arise during the investigation, the PMI is to contact the IBC for guidance. Some examples are if witnesses refuse to provide statements; more resources are needed; findings indicate that the investigation should be referred to another agency because of a potential conflict of interest, criminal activity is discovered, or special investigative techniques are needed; or there is another investigation being conducted at the same time that is closely related to the incident the PMI is investigating.

VI. INVESTIGATIVE ANALYSIS

A. Throughout the investigation, as data are collected, the PMI is to use a disciplined approach for reviewing allegations, critically analyzing the information, assessing how the information factors into the investigation, and deciding what should be the next steps.

B. The PMI is to analyze the investigation and apply a process of critical thinking that focuses on:

1. Identifying the problems and related issues;
2. Forming hypotheses on issues such as events, motives, root causes, viewpoints and witnesses that will be tested using evidence, including statements, research, and interviews developed during the investigation;
3. Applying logic and judgment to evaluate and test the hypotheses on an ongoing basis;
4. Collecting evidence to prove or disprove allegations;
5. Conducting a thorough and impartial analysis of the evidence to determine whether the allegations are supported by the evidence;
6. Making necessary adjustments in the investigative process;
7. Updating the Investigative Plan as appropriate; and
8. Drawing conclusions based on the facts presented.

C. At the conclusion of the investigation, the PMI is to make investigative decisions and:

1. Make a final analysis of the evidence and findings;
2. Organize the evidence in a logical and coherent fashion; and
3. Complete an ROI.

NOTE: At no time does ICAD recommend Agency action. Other program areas make the decision on any action to take based on the evidence and findings in the ROI.

VII. DOCUMENTING THE ROI

- A. The PMI is to prepare the ROI according to the guidance in Chapter VI of this directive.
- B. If the PMI has questions regarding the ROI, he or she is to contact the IBC for guidance.

VIII. ROI SUBMITTAL AND REVIEW

- A. The PMI is to submit the draft ROI to the appropriate IBC for approval.
- B. The IBC is to review the ROI to ensure it was prepared in accordance with this directive.
- C. If the IBC finds any errors or omissions, it is to return the ROI to the PMI to make the necessary changes.
- D. After the IBC completes its review, it is to forward high profile and sensitive investigations to the ICAD Director for review and approval.
- E. The IBC or ICAD Director is to decide whether to approve the ROI.

IX. ROI DISTRIBUTION

- A. The PMI is to assemble the ROI, make the appropriate number of copies per instructions from the IBC, and forward them to the IBC.
- B. The IBC is to prepare and sign the transmittal letter, which accompanies the ROI at the time of distribution. When a designee signs the ROI, the signature block is annotated with the word "for."
- C. The ICAD Director is to sign the transmittal letter for high profile and sensitive investigations.
- D. The transmittal letter serves as a cover letter to the ROI and explains to the receiver why he or she is receiving a copy of the ROI.
- E. The ICAD Director or IBC is to forward copies of the ROI with the transmittal letter to the appropriate program areas for information or consideration.
- F. The IBC is to file the original ROI and transmittal letter in the ICAD IB headquarters office.
- G. LERD is to receive a copy of the ROI and transmittal letter.

H. If the investigation originated from OIG, the IBC is send a copy of the ROI and transmittal to OIG.

I. The IBC is to send the ROI and transmittal letter to the appropriate recipients via courier or electronically.

J. If sent by courier, the courier is to track when the ROI and transmittal letter were picked up, when they were delivered, and who signed for them upon receipt.

X. CLOSING AN INVESTIGATION

A. After the ROI and transmittal letters are distributed, the ICAD Director or IBC is to direct the Management Analyst to complete closing activities of the investigation.

B. The Management Analyst is responsible for:

1. Updating and maintaining the ICAD investigations database (e.g., investigation log records) which is to include, at a minimum, dates, allegations, and findings (e.g., substantiated or unsubstantiated) to ensure accurate program tracking;
2. Closing the investigation in the ICAD investigations database with appropriates dates and related data, and preparing progress reports;
3. Placing the original ROI in the investigation file and ensuring that the file is complete; and
4. Labeling the original investigation file as “Closed” once the investigation is officially closed.

C. The requesting program official from the applicable program area may forward a request for disciplinary action to LERD. In such cases, LERD is to send a copy of the disciplinary letter to ICAD.

D. Upon receipt of a letter from LERD regarding disciplinary action taken against the subject(s), the IBC is to prepare a cover letter and send a copy of the LERD disciplinary action letter to the OIG, when applicable (e.g., OIG Hotline Complaints or referral from OIG).

E. At the direction of the IBC, the PMI is to monitor whether administrative or other appropriate actions have been taken or proposed in response to investigative findings to ensure that the reports of investigations meet the needs of the recipients (e.g., LERD, OIG, program officials).

CHAPTER III – WORKING FILES, NOTES, AND INVESTIGATIVE PLAN

I. GENERAL

Each working file for an investigation includes the authorization letter, a copy of all information obtained in the complaint, PMI notes, Investigative Plan, ROI drafts, and any other evidence, correspondence, and related investigation information.

II. PMI WORKING FILES

A. The PMI is to:

1. Create and maintain a working file for each investigation; and
2. Retain the working file in accordance with applicable Agency record retention policies (see Chapter IV, Section VI).

B. Working files, including PMI notes, are confidential because of the data they may contain (e.g., information pertaining to open investigations and personal information); however, they may be subject to legal review and disclosure (e.g., through the Freedom of Information Act (FOIA)).

III. PMI NOTES

A. PMI notes are a contemporaneous record regarding investigations or inquiries. PMI notes may include the name of the person to whom the PMI talked, what the PMI was told, and what the PMI did. They may be used to summarize interviews, explain evidence, supplement sketches or photographs, describe identification markings on evidence, and list PMI observations. PMI notes are part of the working file.

B. The PMI notes are to be:

1. Accurate, objective, factual, and free of personal feelings or conclusions;
2. Legibly handwritten or electronic;
3. Documented in a manner and in a recording medium that will provide continuity and integrity (e.g., bound notebook, on a CD-R);
4. Identified with the PMI's name, title, and telephone number; and
5. Maintained in the corresponding working file.

IV. INVESTIGATIVE PLAN

A. Proper planning helps to ensure that the investigation is thorough and well-organized and promotes efficient use of resources. The Investigative Plan details how the PMI intends to conduct the investigation. Investigative Plans outline the investigation depending on the type of situation (e.g., specific event, physical evidence, pursuit of documents, elements of the allegations). The PMI is to consider elements of intent for allegations, burden of proof, prohibited personnel practices, merit system principles, ethical standards of conduct, and employee standards of conduct when planning and conducting the investigation. The Investigative Plan is a working document that may change throughout the course of an investigation.

B. For each investigation, the PMI is to:

1. Research the information needed for the Investigative Plan. The PMI is to review the materials submitted with the request for investigation and any applicable regulations to determine the elements of the alleged misconduct; what information will be sought during the investigation; whose testimony is required; what documents are needed; what other evidence is needed; where information is located; if plant coverage is necessary; what time, distance, or other factors may affect the investigation; and any risks (e.g., health and safety of ICAD personnel), unique problems, or mitigating circumstances expected to be encountered;
2. Contact the ICAD Director, IBC, LERD, or OIG, as necessary, to determine whether there are other issues related to the investigation, or whether there are other investigations already underway related to the investigation;
3. Prepare the Investigative Plan according to the format in this directive (Section D. below). If a part of the format is not applicable, the PMI documents "N/A" for that part;
4. Send the Investigative Plan electronically to the IBC for review. If the Investigative Plan is returned to the PMI, he or she is to make any noted adjustments or corrections and resubmit it to the IBC for approval;
5. Maintain the Investigative Plan in the working file; and
6. Evaluate the Investigative Plan periodically as the investigation progresses and, if necessary, revise the plan as findings are developed or evidence is collected. Determine whether there are new leads that must be investigated to prove or disprove an allegation. The PMI keeps the IBC apprised of modifications and obtains approval, if necessary.

C. The IBC is to:

1. Review the Investigative Plan;
2. Make suggestions and recommend corrections on methodology, if needed;
3. Return the Investigative Plan to the PMI for changes, as necessary; and
4. Approve the proposed Investigative Plan.

D. Each Investigative Plan contains:

1. Investigation Number - which is the sequential number from the database assigned by the Management Analyst;
2. Complainant - the individual(s) who made the complaint or requested the investigation, when known;
3. Subject - includes the name, title, AP or GS level, or business affiliation, if relevant to the investigation;
4. Allegation - a brief statement (summary) of the allegations or facts upon which the investigation is based;
5. Objective - the PMI determines the objectives of the investigation (what the investigation should accomplish);
6. Scope - the proposed scope of the investigation based on available information. The scope is to briefly state the extent or range of the investigation and may address areas such as: laws or regulations at issue, geographic area, time period during which the alleged activities occurred, and the magnitude of the allegation or violation. If the initial scope of the investigation cannot be determined with the available information, the plan may indicate that the scope cannot be determined based on the available information or indicate that the scope will be determined at a later date, as information becomes available;
7. Investigative Steps/Methodology - identify and prioritize the steps/process necessary to develop the information and to collect evidence regarding the allegation, and include a timeline by which to accomplish this;
8. Interviews - identify specific interviewees (and whether or not they are bargaining unit employees) and lines of inquiry. Specific questions to ask each interviewee may be attached to the Investigative Plan;
9. Resources - identify the resources necessary to meet investigative needs and

safety issues (e.g., personnel/team members, liaison, equipment, and travel);
and

10. References - a list of records that impact on the specifics of the allegations, background materials, regulations, policies (formal and informal), and past practices needed, referred to, or cited.

CHAPTER IV - EVIDENCE

I. GENERAL

Proper collection and safeguarding of evidence is essential to support Agency decisions, investigative findings, and other actions. The proper treatment of evidence requires that all authorized persons handle evidentiary items with care and maintain a continuous chain of custody. PMI are to follow applicable procedures to collect, safeguard, transfer, receive, retain, and dispose of evidence, in accordance with FSIS Directive 8010.3, Procedures for Evidence Collection, Safeguarding and Disposal.

II. COLLECTING EVIDENCE

A. The evidence the PMI collects is primarily written documentation of interviews (i.e., affidavits, declarations, and memorandum of interview) and other documents or records. In some instances, the PMI may collect other types of evidence or take photographs.

B. The PMI is to follow applicable procedures to collect and identify evidence in accordance with FSIS Directive 8010.3. These procedures include:

1. Requesting, examining, and determining the specific evidence to collect;
2. Obtaining the selected evidence in the appropriate format (e.g., paper or electronic documents, photocopied documents, photographs);

NOTE: When digital files are obtained as evidence (e.g., photographs, scanned documents, e-mailed document files), the PMI transfers the digital files to a CD-R in accordance with applicable procedures provided in FSIS Directive 8010.3.

3. Identifying collected evidence (e.g., signing and dating MOI; initialing and dating the back of copied documents; initialing/dating CD-R containing digital files/photographs; and issuing an FSIS Form 8200-1, Property Receipt, to the owner or custodian when original documents/personal property is collected as evidence);
4. Completing Section I of FSIS Form 8000-17, Evidence Receipt and Chain of Custody, and maintaining it with the originally collected evidence; and
5. Making electronic (e.g., scanned) or physical copies of documents, statements, or other evidence for inclusion in the ROI.

III. SAFEGUARDING EVIDENCE

A. In order to properly safeguard evidence and ensure its integrity, proper identification and security must be maintained, and a limited number of people should be involved in

handling the evidence associated with the investigation.

B. PMI are to follow the procedures provided in FSIS Directive 8010.3 to properly safeguard evidence. The PMI is to safeguard the collected evidence while it is in his or her possession by:

1. Securing evidence (e.g., keeping evidence in a controlled access area such as a locked room or cabinet);
2. Maintaining the documented chain of custody, including use of FSIS Form 8000-17; and
3. Using FSIS Form 8000-16, Evidence Log, to monitor the control and accountability of evidence for each investigation.

IV. TRANSFERRING AND RECEIVING EVIDENCE

A. Evidence is to have a documented and continuous chain of custody from the time of collection until the time it is no longer needed and receives proper disposal.

B. To preserve the chain of custody for evidence that is transferred or received, ICAD personnel are to complete Section II of FSIS Form 8000-17 and follow the procedures provided in FSIS Directive 8010.3. These procedures apply for all transfers of originally collected evidence, whether within ICAD (e.g., from PMI to the Evidence Officer) or to outside agencies (e.g., from ICAD to OIG).

C. Once the investigation is complete, and the ROI has been submitted and approved by the IBC, the PMI is to transfer, following the procedures in FSIS Directive 8010.2, the originally collected evidence as part of the final ROI to the IBC, or as otherwise instructed by the IBC.

V. EVIDENCE OFFICER

A. The Evidence Officer is the ICAD employee, designated for each investigation, responsible for maintaining control and accountability of all originally collected evidentiary items for each assigned investigation.

B. The Evidence Officer is to:

1. Document receipt and transfer of evidence by completing Section II of FSIS Form 8000-17;
2. Secure evidence (e.g., keep evidence in a controlled access area such as a locked room or cabinet); and

3. Use FSIS Form 8000-16, Evidence Log, to monitor the control and accountability of evidence for each investigation.

VI. EVIDENCE RETENTION AND DISPOSAL

A. The Evidence Officer is to maintain and dispose of evidence and investigative records in accordance with established Agency schedules (e.g., Department Personnel Manual (DPM) Chapter 751 – Discipline, Subchapter 3 - Agency Investigations of Employee Misconduct) and this directive.

B. Closed investigative files are to be retained for 10 years.

CHAPTER V – INTERVIEWS AND INTERVIEW DOCUMENTATION

I. GENERAL

An interview is a planned conversation between the PMI and the interviewee, conducted in an effort to obtain information about the subject matter of the investigation.

Information obtained during interviews may explain, confirm, supplement, or expand upon information in the complaint. It may pinpoint what a witness heard or observed, and can help correlate, identify, and explain other evidence. The interview permits persons involved to acknowledge, deny, explain, clarify, or offer mitigating, exculpatory, or additional information. All interviews are made on the record and documented in statements or memoranda. Audio or video recording devices are not permitted during interviews.

II. SUBJECTS AND WITNESSES

A. Subjects of the investigation and other individuals with knowledge related to the allegations (e.g., witnesses) are interviewed during the course of the investigation.

B. There is no set order in which subjects and witnesses are interviewed. Generally, the subject or subjects of the investigation are interviewed last, if appropriate. Occasionally, information gained during interviews uncovers additional witnesses who need to be interviewed.

C. Witnesses should be interviewed separately and privately, whenever prudent, to maintain confidentiality and to avoid confusion and the potential of biased testimony.

III. PLANNING THE INTERVIEW

A. To prepare for the interview, the PMI is to:

1. Familiarize himself or herself with all information developed thus far in the investigation. Any records, documents, or other evidence to be discussed during an interview should be understood and available, if possible;
2. Identify potential interviewees; and
3. Develop questions to ask the interviewees as relates to their knowledge of the allegations. Questions should uncover facts of the investigation, issues related to the interviewee, prior documents and statements prepared by the interviewee, suspected misconduct, any known interviewee relationships to the subject, and material facts surrounding the allegations.

B. Besides preparing for the interview itself, the PMI is to consider the logistics. The PMI is to:

1. Schedule interviews through the appropriate program area manager or supervisors;
2. Determine whether the interviews will be conducted in person or over the telephone;
3. Determine what resources are needed, for example if another PMI who is closer in proximity to the interviewee could conduct the interview and save on travel costs;
4. Coordinate travel to an interview location for the PMI and the interviewee, when necessary. The interviews are conducted at an appointed time and location that ensures appropriate accommodations and privacy. Interviews should be conducted in a neutral environment, if possible; and
5. Determine the order of the interviews. The PMI may sequence interviews to consolidate travel and reduce costs.

IV. CONDUCTING THE INTERVIEW

A. At the start of each interview, the PMI is to explain the purpose of the interview and inform the interviewee that the interview is confidential, and that the interviewee is not to discuss the interview with others.

B. During the interviews, the PMI is to take notes. The PMI is to keep separate notes for each interview.

C. At the conclusion of the interview, the PMI is to prepare the statement in the appropriate format (refer to Section V., Documenting the Interview).

D. When the PMI conducts interviews over the telephone, he or she is to ask questions to confirm the identity of the individual to whom the PMI is speaking and include that information in the interview documentation.

V. DOCUMENTING THE INTERVIEW

A. PMI is to document interviews using various formats to use as evidence. There are three interview formats that a PMI or other designated employee may use:

1. Affidavits;
2. Declarations; or

3. MOI

VI. AFFIDAVITS

A. An affidavit is a sworn statement witnessed by an authority to administer oaths. The person making the statement (interviewee) takes an oath that the contents of the affidavit are, to the best of his or her knowledge, true. The PMI is to certify that the document was sworn to, or affirmed, before him or her (in person). The signature of the authorized official certifies when, where, and before whom the affidavit was sworn and affirms that the interviewee signing the affidavit was under oath when doing so.

B. Generally, before asking the interview questions, the PMI is to explain the purpose of the interview and that he or she will prepare an affidavit and then administer an oath once the affidavit is completed.

C. After conducting the interview, the PMI is to prepare the affidavit (promptly after the interview whenever possible) according to the format in this directive (per Section VI. K. of this Chapter).

D. Affidavits require the administering of an oath. After completing the affidavit and allowing the interviewee to make appropriate changes, the PMI administers the oath and personally witnesses the interviewee sign the affidavit.

E. There may be times when the PMI who conducted the interview and prepared the affidavit is not available to administer the oath and witness the interviewee sign the affidavit. In such instances, another PMI may perform that duty. The prepared affidavit will contain a statement explaining that one PMI conducted the interview and another PMI administered the oath and witnessed the interviewee sign the affidavit.

F. Department guidelines state that taking affidavits under oath is the preferred method for collecting information from witnesses. PMI are authorized to administer such oaths to witnesses and subjects of misconduct investigations, by Title 5 U.S.C. §303(a). Oaths are to be administered in person. USDA DPM Chapter 751, Subchapter 3, provides the standards and procedures for cooperation by agency employees in misconduct investigations. In most instances, employees are required to provide sworn or affirmed statements when asked to do so.

G. The PMI is to administer the oath in person prior to the interviewee signing the affidavit. It is left to the PMI's discretion to determine whether an oath also should be administered prior to taking the statement.

H. The PMI is to explain that the interviewee is to swear to what is in the statement. When an interviewee is reluctant to use the word "swear", the oath and wording of the statement should be changed to "affirm".

I. To administer the oath, the PMI is to ask the interviewee to stand and raise his or her right hand, if able. The PMI also stands and raises his or her right hand. The PMI then is to ask the question for the oath in the following manner:

1. For affidavits using the term “swear”, the PMI asks:

Do you solemnly swear that the information in this statement is true and complete, so help you God?

2. For affidavits using the term “affirm” and given under affirmation, the PMI asks:

Do you solemnly affirm, under the penalties of perjury, that the information in this statement is true and complete?

J. The interviewee should answer to the affirmative; there is no set phrase required from the interviewee.

K. The affidavit format is as follows:

1. The statement is written in the first person, from the interviewee’s point of view;
2. The location of the interview is in the upper right-hand corner of the first page;
3. The title “Affidavit” is at the top of the first page, centered, and in bold font;
4. The opening paragraph includes the name of the interviewee, name and title of the PMI conducting the interview, attests that the information is being provided freely and voluntarily, and shows that the interviewee understands the purpose of the interview;

Example:

I, Joseph A. Jones, being first duly sworn on oath, make the following statement freely and voluntarily to Edward G. Clyde, who has identified himself to me as a Personnel Misconduct Investigator, Internal Control and Audit Division, Office of Program Evaluation, Enforcement and Review, Food Safety and Inspection Service, United States Department of Agriculture, knowing this statement may be used in evidence. I understand that this statement may be shown to anyone with an official need to know.

NOTE: The phrase “freely and voluntarily” may be omitted if the interviewee is reluctant, but agrees to furnish a statement after being informed of the Department regulations’ requirement to do so. An example of how this may be worded is: *This statement is being furnished to comply with USDA regulations which require that I cooperate in this*

matter.

5. The second paragraph states the information necessary to identify the interviewee, such as duty station (city and state), official job title, name of employer, and length of service;

Example:

I work as a GS-8 off-line inspector for the Office of Field Operations, Food Safety and Inspection Service, United States Department of Agriculture, 100 Main Street, Lubbock, Texas. I have been in this position for the past 6 years.

6. The body of the affidavit should employ language that the interviewee used previously or can understand. The PMI should avoid composing an affidavit that does not reflect the interviewee's language style. The affidavit describes relevant facts, including the facts related to the allegations and any events leading up to the events described in the allegations, the interviewee's intent and motivation, how the interviewee is related to the situation, and specific facts, such as the government equipment involved or affected. The affidavit may summarize some details succinctly as long as the summarization of this information does not affect the content of the affidavit;
7. The concluding paragraph of the affidavit contains an attestation that declares: the number of pages in the affidavit; that the interviewee has read, or has had read to him or her, the affidavit; that he or she initialed each page and each correction; and that the information contained therein is true and complete to the best of his or her knowledge; and
8. When more than one page is necessary for an affidavit, each page is numbered for order clarification (e.g., Page 1 of 2, Page 2 of 2).

L. Any discrepancies about content are to be resolved by the PMI and interviewee before signing the affidavit. The interviewee is to be given a final opportunity to make corrections or additions to the affidavit. The interviewee is to initial any corrections or additions, sign or initial each page, and sign the affidavit above his or her name. The PMI is to observe the interviewee while he or she makes corrections or additions.

M. Before the interviewee signs the affidavit, the PMI is to ensure that the oath has been given to the interviewee.

N. The PMI is to sign the last page above his or her name, after the interviewee signs the affidavit, attesting to the fact that the PMI witnessed the interviewee signing the document.

O. When more than one PMI participates in an interview, their names are to be

included in the opening paragraph of the affidavit and on the signature page. They are to sign above their names, which will be under the signature of the PMI who lead the interview.

VII. DECLARATIONS

A. A declaration is a statement, not under oath, from the interviewee in which facts are affirmed under penalty of perjury. The interviewee's signature is not witnessed.

NOTE: Affidavits require an oath, which may only be administered by a PMI or similarly credentialed employee; declarations are not given under oath but are affirmed under penalty of perjury and may be taken by other designated Agency personnel who, in that case, perform the duties of the PMI for the interview and documentation.

B. Before asking the interview questions, the PMI is to explain the purpose of the interview, and that he or she will prepare a declaration for the interviewee to sign.

C. After conducting the interview, the PMI is to prepare the declaration (promptly after the interview whenever possible) according to the format in this directive (per Section VII. H. of this Chapter).

D. After documenting the declaration, the PMI and interviewee is to review it. Any discrepancies about content are to be resolved before completing the declaration.

E. Before signing the declaration, the PMI is to give the interviewee a final opportunity to make corrections or additions to the declaration. The interviewee is to initial any corrections or additions, sign or initial each page, sign the declaration above his or her name, and give it back to the PMI.

NOTE: When the declaration is not reviewed in the PMI's presence, the PMI is to send (e.g., e-mail, fax, mail, or courier) the declaration to the interviewee and may include a cover sheet explaining what the interviewee should do to verify the document (e.g., initial each page), how to address corrections (e.g., draw a single line through the inaccurate information and initial it), and how to send the original declaration back to the PMI.

F. The PMI is to retain the declaration containing the interviewee's original signature.

G. The PMI does not need to sign a declaration.

H. The declaration format is as follows:

1. The declaration is to be written in the first person, from the interviewee's point of view;

2. The location of the interview is to be placed in the upper right-hand corner of the first page;
3. The title "Declaration" is to be placed at the top of the first page, centered, and in bold font;
4. The opening paragraph is to include the interviewee's name and that the information is being provided freely and voluntarily;

Example:

I, James Jones, declare that I am over the age of eighteen and I am fully competent to make this declaration. I know each of the facts set forth below based on personal, firsthand knowledge, or as described herein. I am providing this declaration freely and without promise of reward to USDA, FSIS, OPEER Internal Control and Audit Division (ICAD).

5. In the second paragraph, the declaration is to state the name and title of the PMI conducting the interview and show that the interviewee understands the purpose of the interview. If more than one PMI is present during the interview, this information should be included in this paragraph. This is the same as the second paragraph in an affidavit;
6. The body of the declaration is to contain the information obtained during the interview. This is the same as for an affidavit;
7. The final paragraph of the declaration is to include a signed endorsement stating that the declaration is made under penalty of perjury;

Example:

I declare (or affirm, certify, verify, or state) under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed on this _____ day of _____, 20__ (date).

8. When more than one page is necessary for the declaration, each page is to be numbered for order clarification (e.g., Page 1 of 2, Page 2 of 2); and
9. The final line of the declaration is to provide a space for the interviewee's printed name and a space for the interviewee's signature.

VIII. MEMORANDUM OF INTERVIEW (MOI)

A. The MOI is a record of the interview or attempts made by the PMI to obtain an interview. The interviewee does not sign the MOI. The MOI may be used as an addendum to an affidavit or declaration, if necessary. The PMI uses the MOI:

1. When he or she determines a signed statement by the interviewee (affidavit or declaration) is not needed;
2. When the interviewee declines to provide a signed statement of interview; or
3. As an addendum to a previously signed statement.

B. When the PMI uses the MOI because a witness or subject declines to provide or sign any type of sworn or affirmed statement, the PMI is to describe the circumstances of the situation and details of the refusal as part of the MOI.

NOTE: FSIS employees must cooperate with investigations and provide interviews, as mentioned in this directive (Chapter I, Section IX).

C. When the witness is a non-FSIS employee and refuses to furnish an interview or uses stalling tactics, the PMI is to document in the MOI all attempts made to conduct an interview.

D. The PMI is not to add details in the MOI that did not arise from the interview, if one is conducted.

E. The PMI is to prepare the MOI using the MOI format in Section VIII. H. of this Chapter.

F. The PMI is to sign and date the MOI promptly.

G. If additional PMI participated in the interview, they are to sign the MOI as witnesses to the interview.

H. The MOI format is as follows:

1. The MOI is to be written in the first person, from the PMI's point of view;
2. The location of the interview is to be placed in the upper right-hand corner of the first page;
3. The title "Memorandum of Interview" is to be placed the top of the first page, centered, and in bold font;
4. In a heading format prior to the first paragraph, the PMI is to state the date of the interview and the name of the interviewee;
5. In the first paragraph, the PMI is to indicate how he or she identified himself or herself to the interviewee. This description of the introduction/identification

process is to be detailed and thorough and include documentation of the interviewee's acknowledgement of understanding regarding the PMI's official capacity;

Example:

Investigator Clyde and I introduced ourselves to Ms. Jones and presented our credentials to her. I explained that we were Investigators with the Internal Control and Audit Division, Office of Program Evaluation, Enforcement and Review, Food Safety and Inspection Service, United States Department of Agriculture. Ms. Jones acknowledged that she understood our official capacity.

6. The PMI is to state the facts elicited from the interviewee in the remainder of the MOI and present them in a logical and concise manner. The facts are to be presented in a narrative fashion using paragraphs to separate different segments;
7. The PMI is to include a closing statement that includes the date the MOI was prepared and certifies that it contains the information discussed during the interview;

Example:

I certify that this memorandum has recorded in it a summary of all pertinent matters discussed with the interviewee.

8. When more than one page is necessary for the MOI, the PMI is to number each page for order clarification (e.g., Page 1 of 2, Page 2 of 2); and
9. The PMI is to sign the last page above his or her name in a signature line.

IX. ADDENDUMS

Pertinent information may be obtained from an interviewee after the original sworn statement (i.e., affidavit or declaration) is signed. This additional information may be documented as an affidavit, a declaration, or an addendum statement in the form of an MOI.

Example:

Mr. James Jones is providing this addendum to a declaration given to Investigator Smith on July 27, 2010.

X. THIRD PARTIES AND INTERVIEWEE REPRESENTATION

A. When an interviewee cannot read, write, or speak a language understood by the PMI, a third-party (e.g., relative, friend, neighbor, or employee) may act as an interpreter

during the interview. In these situations, the PMI is to ask the third-party to sign the affidavit or declaration as a witness to the interview.

B. When the interviewee's attorney is present during the interview, the PMI is to provide the attorney with an opportunity (it is optional) to sign the affidavit or declaration as a witness to the interview and to include the name and address of the law firm and the capacity in which he or she is serving the interviewee.

C. When the interviewee is a bargaining unit employee, he or she is entitled to have a union representative present during an interview if the employee reasonably believes that the examination may result in disciplinary action against him or her, and the employee requests union representation. These rights may not be used to frustrate the investigative process by causing undue or unwarranted delays. The PMI provides the union representative, if present, the optional opportunity to sign the affidavit or declaration as a witness to the interview and include the capacity in which he or she is serving the interviewee.

XI. SUBJECT AND NON-FSIS EMPLOYEE RIGHTS

A. An FSIS program employee who is personally involved in a criminal act is not obligated to provide an affidavit, since his or her testimony could be used as evidence in a criminal proceeding. The FSIS employees in this category are protected by the Constitution of the United States under the Fifth Amendment-Right against self-incrimination. In these instances, the PMI is to document an MOI and note in it when the employee invokes the Fifth Amendment. An employee cannot invoke the Fifth Amendment privilege if there is no criminal act, or if the behavior is not criminal in nature.

B. Non-FSIS employees are not obligated to be interviewed or give statements. If the PMI encounters this issue, he or she documents the attempt to conduct an interview in an MOI and may contact the IBC for additional guidance.

CHAPTER VI - REPORT OF INVESTIGATION (ROI)

I. GENERAL

The PMI prepares an ROI to lay out the facts and circumstances involving allegations of misconduct or other matters requiring an investigation. An ROI is to be factually correct, impartial, concise, clear, logically organized, and completed in a timely manner. The ROI consists of statements, documents, and other evidence, properly identified, taken by the PMI during the course of the investigation. The ROI provides FSIS a means to determine whether the evidence supports the allegations and may serve as a basis for Agency decisions and action.

II. ROI GUIDELINES

A. A well-written ROI tells a story to the reader, outlines the nature of the allegations, and organizes the findings and supporting evidence to allow the reader to evaluate evidence presented in the ROI and assess whether it supports the allegations. The ROI is used for official purposes only.

B. The PMI is to ensure that the ROI:

1. Is restricted to items that are important and relevant to the scope and objectives of the investigation;
2. Sets forth facts to facilitate reader comprehension and includes a statement of the applicable law, rule, or regulation that was allegedly violated or which formed the basis for the investigation;
3. Communicates the purpose, scope, sources of information, facts, and findings of the investigation appropriately;
4. Does not contain personal opinions or views. The information must be factual and objective;
5. Avoids unanswered questions and does not leave matters open to interpretation;
6. Records or references all pertinent interviews, contacts, exhibits, or other investigative activities;
7. Contains enough relevant and reliable evidence necessary and sufficient to lead a reasonable person to determine the merit of allegations, events, and issues; and
8. Is completed in a timely manner. This is critical given the impact of investigations on individuals and FSIS activities.

C. The ROI format is as follows:

1. It is a Word document;
2. It is in Times New Roman font;
3. Headings are bold, underlined, uppercase, and centered over each section;
4. The text of an ROI is written in active voice; and
5. The first time a subject, witness, or firm is stated in the ROI, and will be referenced again in the ROI, the full name is written and immediately after that the last name or abbreviated firm name is given in capital letters in parentheses. Any subsequent mention of the subject, witness, or firm need only be by those capital letters.

D. The ROI is to be organized with a cover page, the text, and the list of exhibits followed by the actual exhibits.

E. The cover page is the ROI title page with the United States Department of Agriculture seal and includes:

1. A title block with the following information centered under the seal, centered in the middle of the cover page:
 - a. Name of the subject of the investigation and his or her title;
 - b. Investigation number; and
 - c. Investigation type (e.g., Special Investigation Request).
2. The office of the PMI who conducted the investigation and wrote the ROI;
3. The words "For Official Use Only"; and
4. A footer in the lower right-hand corner with the name of the PMI and his or her duty station (city and state).

F. The text is to include a synopsis, background, allegations, and miscellaneous (as appropriate). Information documented in one part of the text should not be repeated in subsequent parts.

1. The synopsis:
 - a. The synopsis is an overview of why the investigation was initiated and by whom, is to state the subjects of the investigation, and is to identify when and how ICAD became aware of and involved in the issue.
 - i. If the investigation was initiated based upon a referral from the OIG Hotline, the date of the referral is the appropriate date; or
 - ii. If ICAD initiated the investigation only after or as a result of another program area (e.g., OFO, CID) being involved in an issue, it is appropriate for the PMI to show the date as the date when ICAD was advised of or asked to investigate the alleged violation.
 - b. The synopsis is to identify the purpose of the investigation and the affected program area or division.
 - c. The synopsis is to provide a summary of the allegations, applicable policies, standards or regulations, and findings.
2. The background:
 - a. The background is to include relevant history regarding the subject, including the subject's title, AP/GS-level, number of years in service with FSIS, number of years in current position, his or her official duty station (including establishment number, city, state), and whether he or she has any past disciplinary actions in his or her personnel file (determined by calling or e-mailing HRFO or LERD). Depending on the nature of the investigation, it may be necessary to include the specific duties for which the subject is responsible.
 - b. This part is to include any relevant issues to make the reader of the report better understand the situation or circumstances involved.
 - c. Additional information (e.g., conflicts of interest the subject may have that are pertinent to the investigation, or unusual, confusing, or complex issues about the investigation) may be included in this section, when needed.
3. The allegations:
 - a. The allegations section is the body of the report. It is to include a narrative and chronology of the investigation as well as a narrative of the findings and refer the reader to particular exhibits for detail.

- b. It is to list and describe each individual allegation in sufficient detail. The sources of the allegations (e.g., whistleblower complaint, audit of records, management initiated) are to be described. Also, specifics of the various allegations which were accepted by the Agency for investigation and any new allegations that surfaced during the investigation are to be described.
- c. For each allegation, the PMI is to describe the relevant portion of the applicable policy, directive, or regulation that the subject allegedly violated, as well as the basis for such allegation.
- d. Findings are presented for each allegation. The organization and content of the findings are critical to the ROI. The findings and evidence developed in response to each factual situation are to be presented. Each finding is to include a specific reference to the supporting evidence in an exhibit or exhibits. The findings are to present the relevant evidence, identify sources of the evidence, and report the information in context. The findings also are to identify any exculpatory, aggravating, or mitigating issues related to the allegations (e.g., allegations raised that are not proven or are contradicted by findings).
- e. If there is more than one allegation, they are to be set out in a logical flow, such as chronologically, most severe to less severe, substantiated to unsubstantiated, or other order that is appropriate to the specific investigation.

4. The miscellaneous section:

- a. This section is to present other issues that were uncovered or determined during the investigation but were outside the scope of the original investigation.
- b. These issues may require their own investigations at a later date.

G. The list of exhibits is to set out a sequential list of evidence that support the findings. The ROI is exhibit oriented. Each exhibit is to be relevant and necessary to facilitate an understanding of the investigation and support findings.

- 1. The "List of Exhibits" page is to immediately follow the text and contain three columns: Exhibit Number, Description of the Exhibit, and Page Introduced;
- 2. Each interview and document is to be easily identifiable in the report by exhibit number;
- 3. Under a heading, "Evidence Obtained but not Submitted," the PMI is to set out a list of evidence obtained in the investigation, but not included in the ROI. When

applicable, the list is to be attached. If all evidence was used, then there should be a statement to that effect;

4. The PMI is to separate the "List of Exhibits" is separated from the exhibits in the ROI with a tabbed divider identified as "Exhibits;"
5. Each exhibit is to be tabbed with a number to facilitate locating the documents. Tabs are to be uniformly distributed along the bottom of the ROI from left to right;
6. The exhibits are to be placed numerically in the same order as referenced in the text (usually in the "Allegations" section);
7. Each piece of evidence in the ROI is to be under its own Exhibit Cover Sheet (FSIS Form 8000-7, Exhibit Cover Sheet). Each Exhibit Cover Sheet is to include:
 - a. A description of the evidence;
 - b. Name of the person from whom the evidence was obtained;
 - c. Name, title, and badge number of the person who obtained the evidence;
 - d. Date the evidence was obtained;
 - e. Location of the original evidence (e.g., generally, PMI collect copies of documents or records; therefore, the original would be held by the person from whom the copy was collected); and
 - f. The appropriate sequential exhibit number.
8. Exhibits are to be legible. When a document is not legible, the PMI is to copy the document, make the copy legible by writing in the information, and include the legible copy with the exhibit. If the original document is not in English, a translation is to be included. Both the original and the legible copy or translation are considered the same exhibit under one Exhibit Cover Sheet.

Examples of exhibits are:

- a. A sworn statement from the subject of the investigation;

NOTE: When a sworn/affirmed statement is handwritten, the PMI is to type a verbatim copy and include it with the exhibit.

- b. A MOI; or

- c. Relevant Agency records (e.g., time and attendance records, travel vouchers, telephone bills, accident reports).

H. Additional information may be added at the end of the ROI as attachments. This information is not evidence, but is likely to be helpful in understanding or interpreting the report. Attachments are to be identified as 'attachment', numbered, and indexed. They fall into two broad groups – background materials and demonstrative information:

1. Background information includes copies of regulations, statutes, and policy issuances; and
2. Demonstrative information is created by the PMI to assist the reader in understanding the evidence or findings, such as tables or charts summarizing evidence, diagrams, sketches, flow charts, or similar items.

CHAPTER VII – NON-MISCONDUCT INVESTIGATIONS PERFORMED BY PMI

I. TYPES OF NON-MISCONDUCT INVESTIGATIONS

A. PMI or other OPEER personnel also conduct non-misconduct investigations at the request of the OPEER AA, ICAD Director, or other Agency officials to ensure program integrity, Agency effectiveness, and for other reasons. Non-misconduct investigations include issues involving:

1. Accident safety;
2. Animal cruelty;
3. Personal security/background;
4. International/export;
5. Federal state cooperative;
6. IT security violations;
7. Finances;
8. Contractor/grants;
9. Ethics;
10. Pollution and the environment;
11. Other program and management issues; or
12. Other criminal and non-criminal investigations.

B. The methods in this directive are to be used for these investigations, as appropriate.

II. INVESTIGATIVE PROCEDURES

A. The ICAD Director is to:

1. Determine whether an inquiry or investigation is warranted;
2. Determine who will handle/coordinate the inquiry or investigation; and
3. Communicate with the IBC that an inquiry or investigation is warranted, when applicable.

B. The IBC is to:

1. Assign a PMI to the inquiry or investigation;
2. Provide guidance on how to proceed with the inquiry or investigation; and
3. Provide guidance if additional investigative steps are needed other than what are listed in this directive.

C. The PMI or other OPEER personnel are to conduct non-misconduct types of investigations using the methods in this directive.

Refer questions regarding this directive to ICAD through supervisory channels.

A handwritten signature in black ink, appearing to read "David Joseph". The signature is fluid and cursive, with a large initial "D" and "J".

Assistant Administrator
Office of Policy and Program Development