

AGREEMENT BETWEEN THE
UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL
AND THE
FOOD SAFETY AND INSPECTION SERVICE

1. Purpose

This document (hereinafter Agreement) sets forth an agreement between the United States Department of Agriculture (USDA) Office of Inspector General (OIG) and the Food Safety and Inspection Service (FSIS) regarding surveillance, investigation, enforcement, and other activities conducted under the Federal Meat Inspection Act (21 U.S.C. §§ 601-695 (FMIA)), the Poultry Products Inspection Act (21 U.S.C. §§ 451-471 (PPIA)), the Egg Products Inspection Act (21 U.S.C. §§ 1031-1056 (EPIA)), the Humane Methods of Slaughter Act (7 U.S.C. §§ 1901-1906 (HMSA)), the Federal Anti-Tampering Act (18 U.S.C. § 1365, 35 U.S.C. § 155A), the Whistleblower Protection Act (5 U.S.C. § 1221(e) (WPA)), the Inspector General Act of 1978 (5 U.S.C. app.3, §§ 1-12 (IG Act)), and related laws and regulations.

2. Jurisdiction/Authorities

a. FSIS

FSIS is the public health agency within USDA responsible for administration and enforcement of the FMIA, PPIA, EPIA, HMSA, and related laws and regulations. Pursuant to these and other statutory authorities, FSIS' Office of Program Evaluation, Enforcement and Review (OPEER), Compliance and Investigations Division (CID), Evaluation and Enforcement Division (EED), and Internal Control and Audit Division (ICAD) conduct surveillance, investigations, enforcement, and other activities and take and initiate appropriate sanctions to enable the Administrator, FSIS to effectively discharge program and enforcement responsibilities. FSIS enhances public health by protecting the public from foodborne illness and ensures that the Nation's meat, poultry, and egg products are safe, secure, wholesome, and correctly labeled and packaged.

b. OIG

Pursuant to section 2 of the IG Act, Congress established Offices of Inspectors General to serve as independent and objective units within Government Departments and agencies to promote economy, efficiency, and effectiveness in the administration of, and prevent and detect fraud and abuse in the programs and operations of such Departments and agencies. Toward that end, OIG conducts investigations, audits, inspections, and reviews related to USDA programs and operations; provides leadership and coordination and recommends policies for activities designed to provide economy, efficiency, and effectiveness, as well as to prevent and detect fraud, waste, and abuse; and keeps the Secretary and Congress informed of problems and deficiencies in the administration of USDA's programs and operations, including any need for and progress of corrective actions. Additionally, OIG

special agents have been granted law enforcement authority through section 1337 of the Agriculture and Food Act of 1981, 7 U.S.C. § 2270. This provision authorizes properly designated special agents to carry firearms, conduct searches and seizures, execute warrants for arrest, and in certain circumstances, make arrests without a warrant. Departmental Regulation No. 1700-2, OIG Organization and Procedures (DR 1700-2), also sets forth “a statement of OIG’s organization, authority, responsibility, policies and procedures, and the related responsibilities of USDA officials and employees.”

3. Roles

For purposes of this Agreement:

a. It is the role of OIG to:

- (1) Provide oversight to investigative activities within the Department, including such activities of FSIS.
- (2) Report to the Secretary and Congress on such investigative oversight.
- (3) Maintain independent investigative authority over certain activities.
- (4) Serve as the Department’s liaison with other Federal law enforcement agencies related to certain investigative activities.

b. It is the role of FSIS to:

- (1) Coordinate and effectively administer program and enforcement responsibilities under the FMIA, PPIA, EPIA, HMSA and related laws and regulations by conducting surveillance, investigations, enforcement, and other activities and by taking and initiating enforcement actions and sanctions to fulfill program responsibilities, including referrals for criminal and civil sanctions in which FSIS has or may have an interest.
- (2) Conduct employee misconduct investigations pursuant to the WPA. This provision in no way precludes OIG from performing its duties and responsibilities under the WPA.
- (3) Provide laboratory services as requested by OIG to the extent of each laboratory’s capabilities and make available scientific and technical personnel as consultants on an as needed basis.

4. Liaison and Coordination

- a. The Administrator, FSIS designates the following FSIS officials as FSIS Liaison Officers, who will serve as liaisons with OIG’s Assistant Inspector General for Investigations, Headquarters managers, and/or OIG regional Special Agents-in-Charge

(SAC) and their designees for FSIS surveillance, investigations, enforcement, and other activities.

(1) Assistant Administrator, OPEER. Except as provided for in paragraph 4.b., below, this official is the primary liaison with OIG.

(2) Directors of CID, EED and ICAD.

(3) CID Regional Managers.

b. Notwithstanding paragraph 4.a., above, the OPEER Division Directors serve as the primary liaisons in the following specific areas:

(1) CID Director serves as the liaison for civil and criminal investigations.

(2) EED Director serves as the liaison for all enforcement actions pertaining to FSIS cases and joint OIG-FSIS cases.

(3) ICAD Director serves as the liaison for all personnel misconduct investigations and has responsibility for coordinating the terms of this agreement.

c. OIG and FSIS, jointly and separately, will actively promote at both the Headquarters and field locations cooperation and mutual support and ensure the effective and efficient use of resources to achieve USDA's goal of protecting the health and safety of the public and its employees.

5. Reporting Requirements

Pursuant to paragraph 7f(4) of DR 1700-2, OIG and FSIS may enter into individualized agreements setting forth matters that must be reported to OIG as opposed to matters that may be handled by an agency's compliance or enforcement unit. Therefore, in addition to those matters that must be reported to OIG pursuant to DR1700-2, when inquiry or investigation by FSIS results in any of the following conditions, the appropriate FSIS Liaison Officer will promptly report the circumstances to OIG Headquarters or to the appropriate regional SAC.

a. Alleged criminal acts involving the illegal slaughter of dead, down, diseased, or disabled animals and/or the processing, sale, offer for sale, and/or transportation of any meat and poultry products derived from such animals.

b. Circumstances relating to official misconduct or job-related activity by any full-time or part-time employee of FSIS where the substantiation of the alleged misconduct by that employee could lead to a penalty of removal and/or criminal prosecution.

c. Circumstances involving allegations of criminal theft, fraud, or violations of Federal criminal statutes by FSIS employees.

- d. Extortion.
- e. Circumstances requiring investigation of FSIS issues where the mere appearance of a conflict of interest would necessitate that OIG conduct the investigation.
- f. Alleged violations of the Federal Anti-Tampering Act.
- g. Matters that are likely to require the use of special investigative techniques (i.e., execution of search warrants, consensual monitoring, extraordinary surveillance, or undercover activities).
- h. Food defense incidents involving large-scale foodborne illness outbreaks potentially caused by intentional contamination of the Nation's food supply with threat agents. FSIS shall coordinate such incidents with OIG's Emergency Response Team, where appropriate.
- i. Cyber Security incidents that require forensic examination of IT assessor data or the seizure of equipment not located on FSIS or Federal government premises.
- j. Any other matters wherein FSIS believes that OIG involvement or assistance will better serve the interests of the Department.

6. Referral Procedures

- a. The OPEER Directors and/or CID Regional Managers will facilitate referrals made to OIG Headquarters or to the appropriate OIG SAC and/or requests for investigation pursuant to section 5, above, by:
 - (1) Providing known facts and pertinent information concerning surveillance, investigation, and/or enforcement activities or allegations to facilitate the decision to initiate an investigation.
 - (2) Contacting by telephone, in advance of any written request for an investigation, when the matter warrants immediate attention by OIG.
 - (3) Curtailing any further investigation or inquiry into alleged violations referred to OIG without prior coordination with or receipt of a declination from OIG, except where food safety exigencies or the physical safety of FSIS program employees are at risk.
 - (4) Following the notification procedures (outlined in FSIS Directives) for cases involving bribery or attempted bribery of a program employee, in compliance with DR 1700-2.
- b. FSIS may continue activities pursuant to its program responsibilities for food and/or employee safety at any location of an ongoing investigation or enforcement action unless requested by OIG not to do so. In that event, to the extent possible, FSIS and OIG will

combine resources and work in partnership to achieve common goals for food and program employee safety.

- c. OIG will process FSIS' referrals to OIG (including referrals made pursuant to DR1700-2 and section 5, above), as follows:
 - (1) The SAC will promptly review the referral or request for investigation and determine whether to:
 - (a) Initiate an OIG investigation.
 - (b) Refer the matter to another investigative agency having jurisdiction.
 - (c) Join FSIS in completing the investigation of the matter.
 - (d) Recommend that FSIS complete the investigation and pursue sanctions.
 - (2) In the event that OIG is delayed in making the decision to initiate an investigation as provided in paragraph 6.c.(1), above, the SAC will promptly orally notify the OPEER Director or Regional Manager who initiated the referral or request for investigation as to whether FSIS may continue its program responsibilities (e.g., surveillance, investigation, and enforcement activities as appropriate).
 - (3) Within 10 business days of receiving a referral, the appropriate SAC will provide a Case Opening Memorandum (COM) to the EED Director providing information that an OIG or joint OIG-CID investigation is initiated. In the event that after receipt of the referral, an OIG investigation is not initiated or OIG recommends that FSIS complete the investigation, a memorandum detailing the OIG decision on the referral will be provided within 10 business days to the appropriate OPEER Directors and/or Regional Managers.
 - (4) OIG agrees to support FSIS, as appropriate, when OIG recommends that FSIS complete an investigation or OIG does not initiate an investigation. FSIS will continue investigations and pursue appropriate administrative, civil, and/or criminal sanctions to achieve the Department's goal of protecting the health and safety of the public and its employees.
 - (5) If OIG initiates an investigation, OIG agrees to utilize the professional and technical expertise of FSIS during the investigation and include FSIS in communications and meetings with other law enforcement authorities and the United States Attorney's Office, unless disclosure to FSIS is prohibited by Federal law (including but not limited to the Privacy Act, 5 U.S.C. § 552a) or OIG determines that such disclosure would otherwise interfere with an ongoing investigation.
 - (6) With regard to matters independently investigated by OIG, OIG agrees to inform the appropriate OPEER Directors and/or Regional Managers of significant developments

involving FSIS regulated products or entities, unless disclosure to FSIS is prohibited by Federal law (including but not limited to the Privacy Act, 5 U.S.C. § 552a) or OIG determines that such disclosure would otherwise interfere with an ongoing investigation.

- (7) To the extent that FSIS personnel will assist OIG in grand jury proceedings, such assistance will be provided pursuant to U.S. Department of Justice (DOJ) policy and in compliance with Rule 6(e) of the Federal Rules of Criminal Procedure.

7. FSIS Investigations

- a. FSIS will conduct surveillance, investigations, reviews, and enforcement activities to fulfill its program responsibilities under the FMIA, PPIA, EPIA, HSMA, and related laws and regulations and will periodically assess information to determine whether a referral under section 5, above, is appropriate and warranted or whether the criminal information should be referred to OIG in accordance with DR1700-2 or section 5, above.
- b. During the course of its investigations or reviews, FSIS may obtain written statements, including signed and sworn statements, and exercise other authorities and responsibilities as set forth under the FMIA, PPIA, EPIA, HSMA, and related laws and regulations.
- c. Pursuant to section 6, FSIS will notify OIG within 5 business days of all investigations that develop into a criminal matter.

8. Contacts with the United States Attorney's Office, Local Prosecutors, Federal and Non-Federal Investigative Agencies

- a. OIG is the primary USDA liaison with law enforcement and prosecutorial agencies.
- b. FSIS will fulfill its program responsibilities under the FMIA, PPIA, EPIA, HSMA and related laws and regulations and will initiate contacts with Federal, State, or local law enforcement entities wherein a determination as outlined in sections 5 and 6, above, has been made regarding FSIS continuing and/or completing investigations and taking enforcement actions. FSIS also will respond to contacts and requests from Federal, State, or local enforcement entities regarding matters under the FMIA, PPIA, EPIA, HSMA and related laws and regulations. FSIS will advise OIG of such contacts when the contacts involve criminal matters under DR1700-2 or section 5, above; when OIG has opened an investigation; or where FSIS believes that OIG involvement or assistance will better serve the interests of the Department.
- c. To the fullest extent possible, FSIS and OIG will jointly present investigation results on cases that fall under the FMIA, PPIA, EPIA, and related laws and regulations to the United States Attorney's Office or other Federal, State, and local agencies to fully utilize each agency's professional and technical expertise.

- d. Upon request by the other party to this agreement, FSIS and OIG will share information pertaining to any FSIS investigation that has been referred by Office of General Counsel (OGC) to the United States Attorney's Office. Information sharing engaged in pursuant to this paragraph may be restricted or limited when disclosure is prohibited by Federal law (including but not limited to the Privacy Act, 5 U.S.C. § 552a) or OIG determines that such disclosure would otherwise interfere with an ongoing investigation.
- e. When requested by FSIS or OGC, OIG will assist in the investigation or enforcement action and work jointly with FSIS. However, when any request for assistance entails matters outlined in subsection 5.g. of this Agreement, FSIS, OGC, and OIG will work cooperatively to assist the United States Attorney's Office and share information regarding the contact.
- f. If contacted by prosecutors or law enforcement agencies regarding investigations conducted by FSIS OPEER, OIG will promptly notify the Assistant Administrator, OPEER, or appropriate OPEER Director or Regional Manager and OGC attorneys, except when such disclosure is prohibited by Federal law (including but not limited to the Privacy Act, 5 U.S.C. § 552a) or OIG determines that such disclosure would otherwise interfere with an ongoing investigation.
- g. FSIS will not participate where the exercise of law enforcement authority is required to detain suspects. In such an event, FSIS will only provide professional and technical expertise.
- h. Neither OIG nor FSIS shall engage in activities designed to ensure employee or pedestrian safety at USDA premises, to the extent that such activities are within the jurisdiction of the Federal Protective Service or other Federal, State, or local law enforcement agencies.

9. Reports

- a. OIG SACs or Headquarters office will promptly forward to the Assistant Administrator, OPEER, all FSIS-related OIG COMs (within 10 business days for COMs) and Reports of Investigation (ROI) including:
 - (1) Information or copies of reports including any criminal or civil investigations or documentation pertaining to FSIS regulated products or industry participants wherein FSIS has an interest in fulfilling program responsibilities under the FMIA, PPIA, EPIA, HSMA and related laws and regulations.
 - (2) Information and copies of reports, including permission for use, that are obtained from other Federal and non-Federal investigative agencies that may be used to support criminal/civil and/or administrative enforcement actions for regulated products and/or industry participants.

- b. The OPEER Directors or Regional Managers will provide to the appropriate OIG SAC reports and other information including:
 - (1) ROIs or other information that warrant prosecutive consideration or review by OIG pursuant to section 5 and 6 of this Agreement.
 - (2) ROIs or other information, which did not warrant prosecutive consideration or review by OIG pursuant to section 5 and 6 of this Agreement, referred through USDA's OGC to appropriate DOJ attorneys, when requested by OIG.
 - (3) Copies of ROIs closed by FSIS with notices of warning, when requested by OIG pursuant to review under section 11.c. of this Agreement.
 - (4) Other ROIs and other information, when requested by OIG.
- c. OIG SACs and Headquarters office and OPEER Managers will coordinate and pursue the sharing of information by utilizing databases or periodic reporting as an alternative to the exchange of reports and other hard-copy information and will to the extent feasible develop, implement, and share protocols and standard operating procedures in an effort to improve coordination and communication and decrease redundancies. Any sharing of information pursuant to this paragraph will be in accordance with applicable Federal law (including but not limited to the Privacy Act, 5 U.S.C. § 552a) and departmental and OIG policies on information technology security.

10. Food Defense

- a. FSIS will coordinate and work closely with OIG Headquarters and regional SACs to effectively fulfill food defense program responsibilities under the FMIA, PPIA, EPIA, HSMA, and related laws and regulations by providing information and/or resources for the following:
 - (1) Investigations or activities concerning acts or suspected acts of intentional contamination of the Nation's food supply (including but not limited to acts that result in large-scale food borne illness outbreaks) or cyber security which will be referred to OIG or other Federal and non-Federal investigative and/or law enforcement agencies.
 - (2) Investigations or activities concerning acts or suspected acts of food smuggling, which were or will be referred to OIG or other Federal and non-Federal investigative or law enforcement agencies. FSIS will collaborate with OIG in the development and implementation of applicable food smuggling operating procedures.
 - (3) Criminal matters involving product adulteration to use trace-back or trace-forward investigative efforts, where appropriate, to ensure that all contaminated or potentially contaminated food product is removed from commerce or prevented from entering

commerce and to ensure the successful prosecution of individuals and companies involved in product adulteration cases.

- b. FSIS will provide investigative, technical, and other expertise and resources, as appropriate, to assist OIG in the prosecution of individuals and companies involved in intentional contamination, food tampering, food smuggling, cyber security, product adulteration, or other serious violations of law.
- c. OIG will work closely with FSIS by providing timely information and/or resources whenever any act or suspected act listed in subsection 10.a, above, has or is expected to occur and agrees to the extent possible to share investigative and technical resources and work in partnership to achieve common food defense goals.

11. Inspector General Oversight

- a. Pursuant to section 4(a)(1) of the IG Act, the Inspector General is responsible for providing policy direction for investigations relating to the programs and operations of the Department and FSIS.
- b. To assist the Inspector General in carrying out these responsibilities, FSIS and OIG agree to provide/exchange reports as outlined in section 9, above, and pursue sharing of database information that addresses the number, nature, scope, and final disposition of all FSIS and joint FSIS-OIG investigations. Any sharing of information pursuant to this paragraph will be in accordance with applicable Federal law (including but not limited to the Privacy Act, 5 U.S.C. § 552a) and departmental and OIG policies on information technology security.
- c. The staff of the Assistant Inspector General for Investigations will conduct compliance reviews of FSIS. These reviews will evaluate investigative and enforcement policies and procedures by which FSIS operates to determine if FSIS is adhering to USDA and FSIS internal policies and procedures and any applicable Federal laws. Such reviews will supplement any other reviews deemed necessary and appropriate by the Inspector General, pursuant to the IG Act.

12. Amendments and Review

- a. This document may be amended in writing by mutual agreement of both parties to this Agreement.
- b. There will be a periodic review of this Agreement by senior OIG and FSIS officials to evaluate the effectiveness of operations conducted in accordance with its provisions, to resolve any matter not specifically covered herein, and to assess the need for modification.

- c. This Agreement will be modified or superseded if it is determined that the parties to the Agreement are not effectively discharging program and enforcement responsibilities under the Acts and regulations listed in section 1, above, or is no longer required.

13. Termination

This document will remain in effect until determined by the agreeing parties that it is no longer in the best interests of the parties.


14. No Private Right of Action

This Agreement sets forth internal commitments and responsibilities of FSIS and OIG regarding investigative and enforcement activities under the Acts as listed in section 1, above. The commitments and responsibilities set forth herein do not create any new rights, substantive or procedural, enforceable by law, by any party to litigation with USDA or the United States.

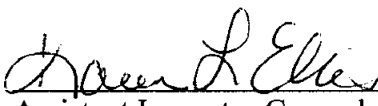
15. Effective Date

This Agreement is effective upon date of final signature. This Agreement supersedes all previous agreements entered into between FSIS and OIG regarding investigative and enforcement activities pursuant to the Acts listed in section 1, above, including but not limited to the following:

- a. Agreement Between the Office of Inspector General and Food Safety and Inspection Service, United States Department of Agriculture, dated December 19, 1986.
- b. Statement of Determination Regarding Proper Areas of Investigative Jurisdiction Between the Food Safety and Quality Service and the Office of Inspector General, dated October 16, 1978.

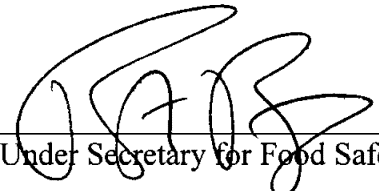
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Administrator Date
Food Safety and Inspection Service

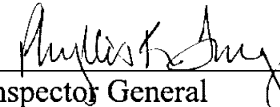
 4-29-08

Assistant Inspector General Date
for Investigation

Approved by:

 5/23/08

Under Secretary for Food Safety Date

 5/5/08

Inspector General Date