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

FSIS DIRECTIVE

8010.2
Rev. 6

11/30/21

INVESTIGATIVE METHODOLOGY

CHAPTER I – GENERAL

I. PURPOSE

This directive provides instructions to Office of Investigation, Enforcement and Audit (OIEA), Compliance and Investigations Division (CID) Investigators on the methods for conducting investigations of apparent violations, food safety incidents, food defense incidents, or other allegations or incidents under the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), the Egg Products Inspection Act (EPIA), the Humane Methods of Slaughter Act (HMSA), and related laws and regulations. FSIS is reissuing this directive to provide additional information related to the assessment of matters that may require referral to other regulatory authorities for investigation and to make other clarifications.

KEY POINTS:

- *States authority for investigative activities, including access to and examination of regulated products, facilities, records, and to collect photographic evidence*
- *Describes the investigative methodology procedures, including for initiating investigations, assessing allegations, and preparing an investigative plan*
- *Describes the methodology for investigative notes*
- *Describes the investigative analysis and decision-making process*
- *Describes procedures for preparing signed statements, memoranda of interview, and other forms of interview documentation*

II. CANCELLATION

FSIS Directive 8010.2, Revision 5, *Investigative Methodology*, 12/13/17

III. BACKGROUND

A. Under the FMIA, PPIA, EPIA (the Acts), and related laws and regulations, FSIS has the legal authority to regulate meat, poultry, and egg products in U.S. commerce. These Acts state that it is essential to the public interest to protect the health and welfare of consumers by assuring that meat, poultry, and egg products are wholesome, not adulterated, and properly marked, labeled, and packaged. The EPIA also provides FSIS authority to ensure shell eggs packed into containers destined for the ultimate consumer meet applicable statutory and regulatory requirements.

B. CID Investigators conduct investigations and related activities at businesses where meat, poultry, egg products, and shell eggs are produced, sold, distributed, offered for sale or distribution, imported, exported, stored, or otherwise prepared or handled. When violations of the Acts or regulations are alleged or detected, FSIS program employees control or detain adulterated, misbranded, or other violative products in commerce; investigate allegations, violations, or food safety incidents; collect, maintain, and secure evidence; and document investigative reports to support Agency decisions, investigative findings, and enforcement or legal actions.

C. The FMIA (21 U.S.C. 642 and 609), the PPIA (21 U.S.C. 460), and the EPIA (21 U.S.C. 1034 and 1040) require persons, firms, and corporations that prepare, package, label, buy, sell, store, transport, import, or export FSIS-regulated products, or engage in other specified activities, to keep records that fully and correctly disclose all transactions involved in their business. These provisions provide FSIS personnel broad authority to access and examine the facilities, premises, inventory, equipment, operations, and records of these businesses; to take photographs during investigations and to perform an examination to ensure products are safe, wholesome, not adulterated, and properly labeled, and that firms are operating under sanitary conditions; to copy records required to be kept under the Acts; and to take reasonable samples of inventory upon payment of the fair market value. The Acts also provide for enforcement as well as penalties when persons, firms, or corporations fail to comply with these requirements.

IV. INVESTIGATIVE RESPONSIBILITIES

A. Investigators are to:

1. Conduct investigations and related activities in accordance with this directive;

2. Collect, maintain, and secure evidence in accordance with FSIS Directive 8010.3, *Procedures for Evidence Collection, Safeguarding and Disposal*;

3. Prepare a Report of Investigation (ROI) in accordance with FSIS Directive 8010.4, *Report of Investigations*; and

4. Maintain communication with the Supervisory Investigator (SI) regarding investigative activities.

B. Supervisory Investigators are to:

1. Conduct supervisory activities related to investigations in accordance with this directive;

2. Monitor and coordinate the investigative caseload of Investigators under their supervision;

3. Maintain communication and be available to discuss investigations with Investigators under their supervision; and

4. Periodically update the Regional Director (RD) or designee with the status of the investigative caseload and activities.

C. RDs and Deputy Regional Directors (DRD) are to:

1. Conduct management activities related to investigations in accordance with this directive;

2. Monitor the regional investigative caseload, investigative activities, case reviews, referrals, and transfers;

3. Maintain communication with SI to provide guidance on investigations and related activities from the initiation of an investigation through the investigative decision; and

4. Inform, when necessary, program management (e.g., the Assistant Administrator) of significant investigative activities or decisions.

CHAPTER II – INVESTIGATIVE METHODOLOGY

I. INITIATION OF AN INVESTIGATION

A. An investigation is a fact-gathering and analytical activity conducted to ascertain and document facts relevant to apparent violations, food safety incidents, food defense incidents, or other allegations or inquiries under the Acts to support Agency decisions, investigative findings, and enforcement or legal actions.

B. This directive provides the steps and methods necessary to conduct the investigative process effectively. Although the directive presents the methods as steps, all steps are not sequential, and some steps of an investigation may occur simultaneously.

C. Investigators may initiate investigations in response to different occurrences of apparent violations, possible violations, food safety incidents, imported product violations, or other allegations or incidents under FSIS statutes and regulations. The occurrences that lead to the initiation of an investigation include:

1. Observation by an Investigator of an apparent violation while conducting surveillance or other regulatory activities;

2. Referral of an allegation or apparent violation from another FSIS program area;

3. Referral of an allegation or apparent violation from another Federal, State, or local government agency;

4. Referral of an allegation from a consumer, firm, trade association, or other individual or entity, known or unknown, regarding possible violations; and

5. Other information, observations, or findings that support initiation of an investigation.

II. ASSESSMENT OF AN ALLEGATION OR VIOLATION

A. When Investigators observe an apparent violation, receive an allegation, or identify other information, observations, or findings regarding possible violations, food safety or food defense incidents, or other matters, they are to:

1. Determine whether FSIS has jurisdiction and authority to investigate the matter;

2. Assess the available facts to determine whether they show an apparent or possible violation of FSIS statutes or regulations, or whether the matter requires investigation; and

3. Conduct a preliminary inquiry, when necessary, to assess whether the basis exists to support the allegation or information, the reliability of the source, or that FSIS has jurisdiction.

B. When the available facts or preliminary inquiry indicate that a violation of FSIS statutes or regulations

has occurred, and FSIS has jurisdiction and authority, the RD or designee is to determine, in accordance with the criteria in the Memorandum of Agreement (MOA) between FSIS and the USDA Office of Inspector General (OIG), whether to refer the allegation to OIG for investigation.

1. If the RD or designee determines that referral to OIG is required under the MOA, they are to follow the procedures in the MOA to refer the allegation to OIG. The OIG will determine whether to initiate an independent OIG investigation, initiate a joint OIG-CID investigation, decline to initiate an investigation, or refer the matter to another investigative agency. The OIG will inform the RD or designee of its determination (i.e., by issuing a Case Opening Memorandum (COM) or written declination).

NOTE: If OIG documents a COM on a case referred to OIG by CID, the RD or designee is to provide a copy of the COM to the Enforcement Operations Staff (EOS), OIEA, and upload a copy of the COM into the case file in AssuranceNet (ANet) under the "File Attachment" tab.

2. If the RD or designee determines that referral to the OIG is not required under the MOA, CID may initiate an investigation in accordance with this directive.

C. When the available facts or a preliminary inquiry substantiate that a violation of FSIS statutes or regulations has occurred, FSIS has jurisdiction and authority, and referral to OIG is not required or OIG has declined the case or otherwise advised CID that it may pursue the matter, Investigators are to:

1. Open the investigation in ANet; and

2. Select the appropriate predication in ANet to document the basis for initiating the investigation.

D. When the alleged violation involves Failure to Present (FTP), Refused Entry, Illegally Imported, or Smuggled meat, poultry, egg products, or shell eggs, Investigators are to follow the methodology in this directive to conduct an investigation. Investigators are also, as appropriate, to follow relevant directives and coordinate regulatory actions (e.g., redelivery), through supervisory channels, with other program areas (e.g., Recall Management and Technical Analysis Division, Office of International Coordination) and agencies (e.g., Customs and Border Protection (CBP)).

E. When the available facts or a preliminary inquiry do not substantiate that a violation of FSIS statutes or regulations has occurred, or if FSIS does not have jurisdiction and authority, Investigators are to:

1. Verify with their supervisor that the facts, the allegation, or the findings do not support initiation of an investigation; and

2. As appropriate, close the matter with no further action; initiate an investigation, if directed by their supervisor; or recommend that the matter be referred, through the RD or designee, to another Federal, State, or local government agency for investigation.

III. INVESTIGATIVE REFERRAL

A. Matters that are referred to OIG, a State Meat and Poultry Inspection (MPI) program, or another Federal, State, or local agency are to be referred, where practicable, in ANet. In these situations, Investigators are to initiate an investigation in ANet and refer the investigative record, through supervisory channels, to the RD or designee for referral to the appropriate authority, in accordance with the instructions in this section and FSIS Directive 8010.5, *Case Referral and Disposition*.

B. When it is not practical to make an electronic referral in ANet, the RD or designee is to scan all relevant case documents and forward to appropriate parties via secure e-mail, an Agency approved service for

express and ground delivery, Certified Mail, or hand delivery.

IV. INVESTIGATIVE PLAN

A. Developing an Investigative Plan helps to ensure that an investigation is thorough and well organized. Planning for an investigation also promotes efficient use of limited investigative resources. Investigators are to develop an Investigative Plan for all CID investigatory activities, including, but not limited to, criminal, civil, administrative, and foodborne illness investigations.

B. Investigators are to prepare a written Investigative Plan for each investigation in accordance with the methods in this section and attach it under the "File Attachments" tab in the associated investigative record in ANet. Investigative Plans are confidential because of the data they may contain (e.g., information pertaining to open investigations, confidential business information, personal information).

C. Investigators or their supervisors may determine that an Investigative Plan is not necessary for certain situations. For example, an Investigator may determine that a plan is not necessary when an apparent violation is identified while conducting surveillance activities, and relevant findings and evidence are concurrently collected. In this situation, the supervisor and the Investigator may determine that the findings and evidence are sufficient to prove the violation and support any subsequent enforcement action (e.g., Notice of Warning).

D. An Investigative Plan is also developed, when necessary, when CID is part of a Foodborne Illness Investigation (FSIS Directive 8080.3, *Foodborne Illness Investigations*), or part of an Incident Investigation Team (FSIS Directive 5500.3, *Incident Investigation Team Reviews*). A Response Plan is developed, when necessary, for Rapid Response for Recovery to Food Safety or Food Defense events (FSIS Directive 5500.2, *Significant Incident Response*). When prepared, Foodborne Illness Investigation Investigative Plans and Rapid Response Plans must be completed within 12 hours after the Incident Report (IR) is approved in the FSIS Incident Management System (FIMS).

E. An Investigative Plan includes:

1. File Number - A unique identifier that is assigned to the investigation by ANet;

2. Subject of the Investigation - The name of persons or firms that are subjects of the investigation. For firms, include the type of business (e.g., corporation, partnership, sole proprietor) and any known names the firm operates under (e.g., d/b/a);

3. Apparent Violations/Allegations - A brief statement (summary) of the apparent or possible violation or matter under investigation. The plan should cite the relevant statutes or regulations and state or paraphrase the language of the statutes or regulations (e.g., 21 U.S.C. 453(g)(4) and 458(a)(3), improperly stored poultry products, after transportation in commerce, under insanitary conditions, causing the products to become adulterated);

4. Scope of Investigation - The scope should briefly state the extent or range of the investigation and may address areas such as: subjects or parties of interest, laws or regulations at issue, geographic area, time period, magnitude of the apparent or possible violation or other matter, and any public health issues or concerns. If the initial scope of the investigation cannot be determined with the available information, Investigators may state that the scope cannot be determined based on the available information or the scope will be determined later, as information becomes available or changes during the investigation; and

5. Investigative Steps - The steps necessary to develop facts and findings and to collect evidence relevant to the apparent or possible violation, allegation, or other matter under investigation. The

steps may include one or more of the following:

a. Investigative Techniques - Techniques that are to be used to ensure that material facts are developed and that relevant evidence is collected (e.g., interviewing, evidence collection, analysis);

b. Investigative Resources - The resources necessary to meet investigative needs (e.g., personnel, equipment, timeframes, translation services);

c. Investigator Safety - Resources and tools that are to be used should the investigation involve situations that could become hostile, unsafe, or potentially dangerous (e.g., Federal Protective Services (FPS), OIG, State or local police); and

d. Investigative Liaison - Contacts with the other agencies or other Government officials that are to be used if issues or situations are observed or encountered that involve Investigator safety (e.g., FPS, State or local police), public health concerns or issues (e.g., FSIS' Office of Public Health Science (OPHS), Department of Health and Human Services' Centers for Disease Control and Prevention, or State or local agencies), or food defense issues (e.g., OIG, FSIS' Significant Incident Preparedness and Response Staff (SIPRS), or the Federal Bureau of Investigation).

F. Investigators are to periodically evaluate and update the Investigative Plan during the investigation, revise the plan as findings are developed or evidence is collected that necessitate a revision, attach the revised plan in the investigative record in ANet or FIMS, and delete the prior Investigative Plan.

V. PROCEDURES FOR INVESTIGATIVE ACTIVITIES

A. When conducting an investigation, Investigators are to use appropriate investigative techniques to ensure that material facts are ascertained, and that relevant evidence is collected and preserved to support their findings.

B. Investigative techniques include:

1. Examining meat, poultry, egg products, or shell eggs and the facilities and conditions under which they are held using the methodology set forth in FSIS Directive 8010.1, *Methodology for Conducting In-Commerce Surveillance Activities*, to determine whether products are wholesome, not adulterated, and properly marked, labeled, and packaged, or exempt from the requirements of the Acts;

2. Collecting evidence and submitting investigative samples of meat, poultry, or egg products, alleged to be in violation of the Acts, in accordance with FSIS Directive 8010.3. Evidence obtained and laboratory analysis findings may prove the allegation or violation or be used to focus activities in the investigation;

3. Photographing meat, poultry, egg products, or shell eggs alleged to be in violation of the Acts and any supporting conditions that may have contributed to the violation in accordance with FSIS Directive 8010.3;

4. Photographing facilities, premises, inventory, equipment, or operations as a method or technique of conducting examinations and investigations to verify that products are safe, wholesome, not adulterated, and properly labeled and that establishments are operating under sanitary conditions;

5. Detaining meat, poultry, egg products, or shell eggs, in accordance with FSIS Directive 8410.1,

Detention and Seizure, when there is reason to believe products are adulterated, misbranded, or otherwise in violation of the Acts. Investigators may work jointly, if necessary/appropriate, with other Federal, State, or local agencies to control product under that jurisdiction (e.g., State health department embargos);

6. Examining, copying, collecting, or photographing records (e.g., invoices, contracts, bills of lading, temperature records, Hazard Analysis and Critical Control Point (HACCP) records) or system reports (e.g., Automated Commercial Environment, Public Health Information System) relevant to apparent violations. Investigators are to examine and to analyze these evidentiary documents carefully to assess whether the content will prove the violation, incident, or allegation under investigation. Investigators are to examine the evidence for inconsistencies and either resolve the issues or be prepared to explain the contradictions (make investigative notes of explanations to refresh memory in situations of extended time lapse). Investigators are to collect documentary evidence in accordance with FSIS Directive 8010.3;

7. Identifying subjects of the investigation (e.g., persons, firms, responsible management officials, product owners, custodians), possible witnesses with information relevant to the investigation (e.g., employees, consignees, brokers, importer of record), or others with background or other information relevant to the investigation (e.g., Agency officials, Federal or State officials with relevant background information);

8. Interviewing subjects, witnesses, or others to obtain information about the allegation or apparent violation under investigation. Interviews explain, confirm, supplement, and expand upon the facts; identify and document what subject or witnesses heard or observed or know about the situation, allegation, or apparent violation; help correlate, identify, and explain evidence; and permit persons involved to admit, deny, or explain actions;

9. Documenting interviews in accordance with Chapter IV of this directive (e.g., in a signed statement, Memorandum of Interview (MOI), or Shipper's or Receiver's Certification (FSIS Form 8050-2));

10. Determining whether product may have been shipped to other entities ("trace-forward" activities), or whether product came from other entities, where it may still be present ("trace-back" activities), in accordance with FSIS Directive 8080.3. Investigators conduct trace-forward and trace-back activities to determine the scope, cause, and source of the incident and to determine the extent of detention actions necessary to control adulterated or misbranded product. These activities may occur simultaneously (i.e., trace-forward and trace-back activities at the same firm) at multiple locations in multiple areas. Investigators are to coordinate related activities to maintain the integrity of the investigation. Investigators are to collect associated records and any other relevant evidence and conduct interviews with employees at multiple levels of the organization (e.g., president, manager, or employee) to determine the following information:

    a. Product Identifying Information - Include pertinent information on container type, size, lot codes, production or pull dates (if available), establishment number, shipping marks (imported products), and product origin;

    b. Shipping and Receiving Practices -

        i. Determine the receiving dates and times for each shipment of the identified products in the identified time period;

        ii. Indicate how the dates on the shipping records reflect the receipt date of the product;

iii. Determine how the supplier documents or records deliveries of the identified product; and

iv. Determine the firm's suppliers or consignees during the identified time period;

c. Handling and Storage Practices - Interview employees regarding handling and storage of the implicated product;

d. Stock Rotation Practices - Review the standard operating procedures or good manufacturing practices at the firm for stock rotation (e.g., first-in-first-out, delivery date, lot code, best by date, convenience) and determine how closely the firm follows the procedures or practices; and

e. Sanitation and Pest Control Records - Determine whether the firm has, or has had, issues or concerns directly related to, or having impact on, the implicated product.

11. Performing searches of relevant public records, including internet searches (e.g., relevant Secretary of State website, company websites, or search engines).

C. Investigators are to collect and safeguard evidence, in accordance with FSIS Directive 8010.3, to ensure positive identification of evidence, and that chain of custody is documented, so that the integrity of the evidence is maintained, and the evidence is admissible in any litigation.

D. Investigators may conduct covert surveillance, as necessary and with supervisory approval, of people, places, or things to obtain information. These activities may be conducted on foot, in vehicles, or from a fixed location, and by using techniques such as photographic equipment and detailed investigative notes to document the subject's activity.

E. The Acts give FSIS personnel broad statutory authority (21 U.S.C. 460, 609, 642, 1034, and 1040) to conduct inspections, examine facilities, premises, inventory, equipment, operations, and to copy certain business records. Authorized FSIS employees also use photography, under these authorities, as a technique to examine facilities, inventory, and records, to copy business records, and to document observations and findings. When necessary, Investigators are to request an Administrative *Subpoena Duces Tecum* in accordance with FSIS Directive 8010.5, (e.g., when refused entry or access) to obtain access to examine or photograph facilities, inventory, and records, to copy or collect copies of records, or for other lawful purposes.

1. Investigators are to contact EOS, through supervisory channels, to request a subpoena and provide any supporting information necessary to obtain the subpoena, and for enforcement or related activities.

2. EOS and the applicable CID Regional Office are to coordinate delivery of the subpoena, with support, if necessary, from Federal, State, or local authorities (e.g., FPS) to ensure lawful service of the subpoena and safety of Investigators and other personnel.

VI. INVESTIGATIVE NOTES

A. Investigative notes are contemporaneous records regarding surveillance, investigations, or other regulatory activities. Investigative notes are to be accurate, objective, factual, and free of personal feelings or conclusions. Investigative notes are confidential because of the data they may contain (e.g., information pertaining to open investigations, confidential business information, personal information).

B. When Investigators make notes of their investigative activities, the notes are to be:

1. Handwritten or electronic;

2. Made, if handwritten, in a manner and in a recording medium that will provide continuity and integrity (e.g., notebook);

3. Stored, if electronic, in a manner that ensures data integrity (e.g., on a CD-R, on an encrypted flash drive);

4. Identified with the Investigator's name, title, telephone number, address, and date;

5. Maintained with the case evidence, in accordance with FSIS Directive 8010.3; and

6. Retained in accordance with the retention schedule for the associated investigation, enforcement action, or other activity, as set out in FSIS Directive 8010.3.

C. If investigative notes are associated with an investigation that is referred to the EOS, the Office of General Counsel (OGC), or the Department of Justice (DOJ), Investigators are to prepare and maintain any investigative notes made while working with EOS, OGC, or DOJ, in accordance with this directive.

D. If investigative notes are associated with a joint investigation with the OIG, Investigators are to prepare and maintain any investigative notes made during those activities, in accordance with this directive or as otherwise directed by OIG.

CHAPTER III – INVESTIGATIVE ANALYSIS AND DECISION

I. INVESTIGATIVE ANALYSIS

A. During the course of an investigation, Investigators are to:

1. Organize and analyze the facts and evidence to make determinations regarding investigative activities and scope;

2. Determine whether the facts and evidence are sufficient to support an Agency decision or referral for enforcement or legal action, or whether further investigation is required;

3. Determine whether the facts and evidence require that another CID Region conduct further investigation of the matter;

4. Determine whether the facts and evidence require the case to be referred to the RD or designee for coordination with another FSIS program area or staff (e.g., OFO, OPHS, SIPRS);

5. Determine whether the facts and evidence require that the case should be referred to the RD or designee for referral to or consultation with OIG in accordance with the MOA with OIG (e.g., alleged violations of the Federal Anti-Tampering Act, special investigative techniques are required);

6. Determine whether the facts and evidence require that the case should be referred to the RD or designee for coordination with another Federal, State, or local agency; and

7. Determine, after using all appropriate investigative techniques, whether the evidence and facts support enforcement action, and if they do not, recommend to the RD or designee that the investigation be closed with no action.

B. When findings and evidence reveal that the matter being investigated occurred in two or more CID regions; that an investigation needs to involve another CID region; or that coordination is needed with another FSIS program area (e.g., OFO, OPHS) or Agency (e.g., OIG, FDA, State MPI program), the Investigator is to contact the SI, RD, or designee. The RD or designee is to contact the appropriate CID region, FSIS program area, OIG, or other authority to coordinate investigative or other activities.

II. INVESTIGATIVE DECISION

A. At the conclusion of an investigation, Investigators are to:

1. Organize the findings and evidence in a logical and comprehensible manner;

2. Conduct a thorough and impartial analysis of the evidence to determine whether the findings are supported by the evidence;

3. Complete an ROI in accordance with FSIS Directive 8010.4; and

NOTE: There may be situations in which an ROI will be prepared at the conclusion of an investigation, even when the evidence and findings do not support Agency enforcement action under the Acts (i.e., case closure with no enforcement action).

4. Submit the ROI in ANet for enforcement (e.g., Notice of Warning, referral to EOS) or other Agency action or decision (e.g., referral to State MPI program, referral to OIG, closed with no action), in accordance with FSIS Directive 8010.5.

CHAPTER IV – PROCEDURES FOR A STATEMENT, MEMORANDUM OF INTERVIEW, AND SHIPPER'S OR RECEIVER'S CERTIFICATION

I. INTERVIEW DOCUMENTATION

A. Investigators are to prepare and document a signed statement, Shipper's or Receiver's Certification, MOI, or other documentation, as appropriate, for each interview they conduct during investigative activities.

B. A well-prepared and properly documented signed statement is the preferred method to document information provided by subjects of an investigation, witnesses to a violation, or others interviewed during an investigation.

C. A Shipper's or Receiver's Certification is to be used to document contact with the shipper or receiver of meat, poultry, egg products, or shell eggs that appear to be in violation of the FMIA, PPIA, or EPIA.

D. A MOI may be appropriate in a variety of situations (e.g., background interview with Federal or State agency official).

II. PRIVACY ACT NOTIFICATION

A. Before personal information is obtained from an interviewee, regardless of the documentation format of the interview (e.g., statement, MOI), Investigators are to provide a copy of the Privacy Act Notice, FSIS

Form 8000-5, to the interviewee, and explain the notice.

B. Personal information includes, but is not limited to, date of birth, place of birth, home address, or home telephone number.

C. When the interviewee is an FSIS employee, it is not necessary to obtain personal information or to provide a copy of the Privacy Act Notice.

III. STATEMENTS

A. A statement is a written description of the facts, events, or other relevant information provided by an interviewee of their knowledge of, or role in, the matter being investigated.

B. Investigators are to prepare statements in the following format:

1. Show the date and the location of the interview in the upper right-hand corner of the first page;

2. Write the statement in first person, from the interviewee's point of view;

3. In the opening paragraph, include the name of the interviewee and name and title of the program employee conducting the interview, attest that the information is being provided freely and voluntarily, reflect an understanding of what the interview is in regard to, and affirm that Privacy Act notification has been provided;

EXAMPLE: I, Edward A. Jones, make the following statement in regard to inquiries made by Clyde Frebish, who has identified himself to me as an Investigator, United States Department of Agriculture, Food Safety and Inspection Service. I am providing this information freely and voluntarily. I understand that a possible violation of the Federal meat, poultry, or egg inspection laws may be involved. I have been provided a copy of the Privacy Act Notice.

4. When more than one program employee or another person on behalf of the interviewee (e.g., attorney or translator) participates in an interview, include their name in the opening paragraph of the statement;

5. In the second paragraph, state the interviewee's date and place of birth, address, official job title, name of employer, and length of service;

EXAMPLE: I was born November 29, 1941, in Boise, Idaho. I live at R.D. #1, Turlock, California 55555. I own and operate the Edward Jones Cattle Company, 100 Main Street, Turlock, California. I have been buying and selling cattle for the past 10 years.

6. In the body of the statement, use language that the interviewee used or can understand. The statement should not contain language that does not reflect the interviewee's language or manner of speaking. The statement needs to describe relevant facts, specific facts of the violation, events leading to the violation, the interviewee's knowledge of the intent and motivation behind the activities of the violation, and the interviewee's involvement, if any, in the violation. When relevant, the statement should include information about the amount of FSIS-regulated product involved or affected. The statement may summarize some details succinctly as long as the summary does not affect the substance of the statement;

7. In the concluding paragraph, include an attestation that declares: the number of pages in the statement; that the interviewee has read, or has had read to them, the statement; that they initialed each page and each correction in the statement; and that the statement is complete and

true to the best of their knowledge;

EXAMPLE: I have read the preceding statement consisting of two (2) typewritten pages, and I had the opportunity to make additions and corrections. It is true and correct to the best of my knowledge.

8. When more than one page is necessary for a statement, number each page for order clarification (e.g., Page 1 of 2, Page 2 of 2); and

9. Type or print each signatory name and title under the concluding paragraph, leaving enough space for signatures.

C. Investigators are to execute and sign statements as follows:

1. Allow the interviewee the opportunity to make corrections or additions to the statement;

2. Have the interviewee initial any corrections or additions in the statement, sign or initial each page, and sign the statement above their name;

3. Observe the interviewee while they make corrections or additions and sign the statement; and

4. Sign the last page of the statement above their name after the interviewee and any others present sign the statement.

D. In a situation where the interviewee refuses to sign a statement but admits that the content is true, Investigators are to add a handwritten paragraph below the signature line of the statement that declares that the statement was read by or to the interviewee, who acknowledged the content to be true, but refused to sign the statement. The Investigator preparing the statement should sign below the handwritten paragraph and not sign on the signature line. In addition, the Investigator is to ensure that other Investigators, if any, who heard the acknowledgement sign below the handwritten paragraph attesting that they witnessed the acknowledgement.

EXAMPLE: On February 12, 2020, Jane Doe read the above statement and agreed that the content was true and correct; however, she refused to sign the statement. I am adding this paragraph in the presence of Ms. Doe to document her acknowledgement that the content of the statement was true and correct.

E. Special Circumstances - When a signed statement is obtained from an individual who cannot read, cannot write, or cannot speak a language understood by the Investigator, a third-party witness is required (e.g., relative, friend, neighbor, employee) who is able to understand the Investigator. In these situations, the Investigator is to prepare the statement as follows:

1. Interviewee cannot read - Allow the witness to read the statement to the individual so the witness can attest that what was written was in fact read. The last paragraph is modified as follows - “The preceding statement has been read to me and consists of (number of handwritten/typed) pages. I have been given an opportunity to make additions or corrections. It is true and correct to the best of my knowledge.”

2. Interviewee cannot write (sign name) - Have the individual make their identifying mark so that the witness can attest that the interviewee signed the statement.

3. Interviewee cannot speak the language understood by the Investigator - Use a third-party witness or service that can interpret the conversation. Modify the last paragraph as follows: “(Name of interpreter), acting as my interpreter, has read to me the preceding statement consisting of (number of handwritten/typed) pages. I have been given an opportunity to make additions or

corrections, and it is true and correct to the best of my knowledge" and have the third-party witness or service sign or provide verification for the statement and include, in the statement, the name, address, and relationship of the witness to the interviewee.

F. When the interviewee's attorney or another representative is present, provide the attorney or representative the opportunity to sign as a witness and include the name and address of the law firm or representative and the capacity in which they are serving the interviewee.

G. Investigators are to provide the interviewee with a copy of their signed statement, when signed by the interviewee. Investigators are also to provide copies of a signed statement to other signees (e.g., witness, attorney) when requested by the interviewee. However, Investigators are not to provide a copy of a statement to an interviewee when they declined to sign the statement.

IV. MEMORANDUM OF INTERVIEW

A. A MOI is the written summary of the information obtained from an interviewee to record the specifics of an interview.

B. When a MOI is used to document an interview, Investigators are to prepare a separate MOI for each interview they conduct.

C. Investigators are to prepare a MOI in the following format:

1. Show the date and the location of the interview in the upper right-hand corner of the first page;

2. Enter the title "Memorandum of Interview" on the first page, centered and in bold font;

3. Enter the name and title of the Investigator that conducts the interview aligned on the right; name and official job title, business address, employer, and length of service for the interviewee aligned on the left; in a heading format prior to the first paragraph;

EXAMPLE:

March 23, 2021
Chicago, Illinois

MEMORANDUM OF INTERVIEW

Leo B. Uptowne
Uptowne Meat Company
Owner—10 years

Investigator George Mason
USDA FSIS OIEA CID
100 Main Street
Schaumburg, Illinois

4. Write the body of the MOI in first person, from the interviewer's point of view;

5. In the first paragraph state how the program employee identified himself or herself to the interviewee and the names and titles of others present during the interview. This description of the introduction and identification process needs to be sufficiently detailed and to include documentation of the interviewee's acknowledgement of understanding regarding the program employee's official capacity;

EXAMPLES: I introduced myself to Mr. Jones and presented my credentials to him. I explained that I am

an Investigator with the United States Department of Agriculture, Food Safety and Inspection Service. Mr. Jones acknowledged that he understood my official capacity; or

Investigator Clyde Frebish and I introduced ourselves to Ms. Jones and presented our credentials to her. I explained that we were Investigators with the United States Department of Agriculture, Food Safety and Inspection Service. Ms. Jones acknowledged that she understood our official capacity. Ms. Jones attorney, James Knapp, was also present during the interview.

6. Use either the first or the second paragraph to state the purpose of the interview and to provide a summary that informs the reader early in the MOI of the kind of information that this MOI will reveal;

7. Set out in the remainder of the MOI the facts elicited from the interviewee, presented in a logical and concise manner. Present the facts in a narrative fashion using paragraphs to separate different segments;

8. Include a closing statement to account for the date the interview was conducted and the date the MOI was prepared and to certify that it contains all the information discussed during the interview; and

EXAMPLES: I prepared this report on_____, 20__, immediately after the interview with the witness. I certify that this report has recorded in it a summary of all pertinent matters discussed with the interviewee; or

I prepared this report on_____, 20__, two days after the interview with the witness for inclusion in the Report of Investigation with the witness's signed statement. I certify that this report has recorded in it a summary of all pertinent matters discussed with the interviewee on___, 20__.

9. When more than one page is necessary for an MOI, number each page for order clarification (e.g., Page 1 of 2, Page 2 of 2).

D. Upon completion of the MOI, the Investigator documenting the MOI is to promptly physically sign and date the MOI.

E. If additional Investigators participated in the interview, they may, but are not required to, sign the MOI as a witness.

V. SHIPPER'S OR RECEIVER'S CERTIFICATION

A. The Shipper's or Receiver's Certification, FSIS Form 8050-2, is used to document contact with the shipper or receiver of meat, poultry, egg products, or shell eggs that appear to be in violation of the FMIA, PPIA, or EPIA.

B. When used, Investigators are to complete each block of the Shipper's or Receiver's Certification as follows:

1. Description of Product - Mark the appropriate block to identify the statement specific to the investigated products as made by the shipper, receiver, or both. Describe the product by its common or usual name. Show approximate weight (or dozens for shell eggs) and total number of items or containers shipped or received in the involved transactions, not just the product that is observed;

2. Date Product was Shipped or Received - Enter the phrase "on or about" and the date or dates

product was shipped or received (listing the most recent date first);

3. Observed By - Enter the names of FSIS personnel involved;

4. Place Where Observed - Enter physical location where product was observed;

5. Date Observed - Enter date product was observed;

6. Name and Address of Shipper - Enter the shipper's organizational name and address as identified by the consignee, invoice, receiving ticket, or other available material;

7. Type of Shipping Records - Enter type of shipping records examined, if any;

8. Shipping Record Numbers - Enter the identifying number from the bill of lading or other available shipping record;

9. Date of Shipping Records - Enter date of shipping record, if any;

10. Name of Processor and Address - Enter the processor's organizational name and address. If the shipper and processor are the same, the entry "Same as item 6" will suffice. If the case involves several processors, enter the name and address of the main processor, plus the word "various;"

11. Method of Transportation - Enter the mode of transportation, such as Shipper's truck, Consignee's truck, or Tom Jones Company. Do not use the word "truck" without clarification of its owner or operator;

12. Markings on Containers or Product - Enter identifying marks observed on containers or product;

13. Invoice Issued By - Enter the name and address of the person or firm that issued the invoice, or if the name is the same as Block 6 on the form, the entry "Same as item 6;"

14. Invoice Number - Enter the invoice number or, if the invoice is not numbered, enter other identifying features of the invoice. If multiple invoices, enter the invoice numbers in a Word document and enter "See attached document" in the block;

15. Date of Invoice - Enter the invoice date. If there are multiple dates, enter the dates associated with the invoice numbers in a Word document and enter "See attached document" in the block;

16. Remarks - Entries in this block are to be brief and clarify the findings (e.g., capture key parts of violation – who, what, when, where, why, how, and history); and

17. Certification - Enter the organizational name and address of the shipper or receiver, or their representative. Enter the date of signature. In the area directly under their signature, print or type the true name (not nickname) of the person who signed the statement. Do this in the presence of the signatory.

C. In a situation where the interviewee refuses to sign FSIS Form 8050-2 but admits that the content is true, Investigators are to add a handwritten paragraph below the signature line of the statement that declares that the certification was read by or to the interviewee, who acknowledged the content to be true, but refused to sign the document. The Investigator preparing the certification is to sign below the handwritten paragraph and not sign on the signature line. In addition, the Investigator is to ensure that other Investigators, if any, who heard the acknowledgement sign below the handwritten paragraph

attesting that they witnessed the acknowledgement.

D. Investigators are to provide the interviewee with a copy of their signed certification, when signed by the interviewee. However, Investigators are not to provide a copy of a certification to an interviewee when they declined to sign the document.

NOTE: Investigators are to complete all blocks on FSIS Form 8050-2. Investigators are to enter NA in the block if it is not applicable.

VI. QUESTIONS

Refer questions regarding this directive through supervisory channels.

Assistant Administrator
Office of Policy and Program Development