

Memorandum of Understanding
Between
The Food Safety and Inspection Service
United States Department of Agriculture
and
The Economic Research Service
United States Department of Agriculture

ARTICLE 1 - PURPOSE

The purpose of this agreement is to set forth the working relationships between the Food Safety and Inspection Service (FSIS) and the Economic Research Service (ERS) to ensure the secure use of FSIS confidential data by ERS researchers and provide FSIS with benefits of that research.

Specifically, this memorandum of understanding (MOU) outlines the measures ERS will take to (1) ensure the security of FSIS' confidential data for research purposes and (2) share results of research using FSIS non-public data with FSIS in a timely manner.

This MOU does not modify any other existing agreements between FSIS and ERS.

ARTICLE 2 - BACKGROUND

FSIS is responsible for implementing and enforcing the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*), which require Federal inspection and regulation of meat, poultry, and processed egg products prepared for distribution in commerce for use as human food.

In carrying out its responsibilities under the FMIA, PPIA, and EPIA, FSIS assigns inspectors in meat and poultry, slaughter and processing plants, and egg products processing plants. FSIS also conducts reviews of warehouses, transporters, retail stores, restaurants, and other places where meat, poultry, and processed egg products are handled and stored. In addition, FSIS conducts voluntary inspections under the Agricultural Marketing Act (7 U.S.C. 1621, *et seq.*). The FSIS mission is accomplished, in part, by sampling and analyzing meat, poultry, and processed egg products to ensure such products do not contain foodborne pathogens that cause them to be adulterated under the Acts.

ERS is responsible for anticipating trends and emerging issues in agriculture, food, the environment, and rural America and conducting high-quality, objective economic research to inform and enhance public and private decision making.

Because FSIS and ERS have common and related objectives in carrying out their respective responsibilities, it is desirable and in the public interest to set forth in an MOU, the working arrangements adopted to discharge these responsibilities as effectively as possible.

Nothing in this agreement shall lessen the responsibilities or authorities of FSIS or ERS under their statutory authorities.

ARTICLE 3 - FSIS RESPONSIBILITIES

FSIS agrees to:

- (1) Acknowledge receipt of ERS research proposal and inform ERS in a timely manner when the requested data to conduct research will be available.

- (2) Provide ERS with validated datasets that could be used to address questions of legitimate interest to ERS or FSIS.
- (3) Conduct pre-publication disclosure risk review of ERS manuscripts using non-public FSIS data and provide comments and other feedback within a timely manner. Pre-publication manuscripts contain the research results and findings that have not been released publicly and have not been submitted to any outlet to be considered for publication; and
- (4) Allow ERS researchers to use datasets derived from non-public FSIS data and employed for prior ERS research on future ERS research projects.

ARTICLE 4 - ERS RESPONSIBILITIES

ERS agrees to:

- (1) Submit requests for non-public FSIS data to the designated FSIS contact for FSIS review and agreement.
- (2) Use non-public FSIS data in the ERS IT environment, including data and applications. The ERS IT environment is hosted in the ERS/USDA MS Azure Cloud, which is categorized at the FISMA Moderate level, is accessible only by approved and credentialed users (via eAuthentication) in secure network drives governed by approved, limited Active Directory groups. Access to confidential data is restricted and granted only to approved researchers (who sign non-disclosure and rules of behavior agreements and undergo training) for approved research projects. The restricted access is further governed and secured by approved limited-scope elevated privilege accounts.
- (3) Require all ERS collaborators under ERS cooperative agreements to sign data sharing agreements which prescribe the terms and conditions under which the data may be used (see attached data sharing agreement).
- (4) Submit documents using non-public FSIS data to FSIS for disclosure risk review prior to any peer review process or other public release.
- (5) Communicate ERS research findings to FSIS and its stakeholders through presentations, reports, and memos that have been reviewed in advance for disclosure risks.
- (6) Provide FSIS with any value-added data created by ERS while using FSIS data. Data could be linked to existing FSIS data.

ARTICLE 5 - JOINT RESPONSIBILITIES

Both agencies agree to:

- (1) Maintain a close working relationship at all organizational levels.
- (2) When exchanging information, each agency will comply with any relevant restrictions or Federal law concerning trade secrets, confidential, commercial, or financial information, and personnel, medical, or other similar information constituting a clearly unwarranted invasion of personal privacy. Implementing regulations and procedures shall apply to any agency provided with such materials under this agreement.
- (3) Ensure the effective implementation of this agreement by:
 - a. Designating a liaison officer responsible for implementing and being the primary contact for matters concerning this agreement;

- b. Responding to data requests in a timely manner;
- c. Collaborating on projects between FSIS and ERS in accordance with standard scientific and ethical principles of collaboration governing the pursuit of public health and scientific advances. Both ERS and FSIS will seek clearances and cross-clearances for abstracts, presentations, and manuscripts that include data from both agencies. Clearance is in accordance with each agency's standing policies. Abstracts, presentations, and manuscripts will be submitted and processed in a timely manner;
- d. Following Freedom of Information Act regulations where the release of Agency records is at issue, to include, but not be limited to, ensuring that trade secrets, confidential, commercial, or financial information are protected from public disclosure to the extent authorized under FOIA and in conformity with USDA's FOIA regulations. If either agency receives a FOIA request seeking data that contains the equities or information of interest to the other, they shall consult with or refer those records prior to making a release determination; and
- e. Keeping both agencies informed of related data analyses and interpretations to prevent conflicting statements from occurring.

ARTICLE 6 - Other Agreements

Nothing in this MOU precludes the agencies from entering into additional, separate agreements with each other or with other agencies as they deem appropriate to achieve the purpose of this MOU.

ARTICLE 7 - NAME AND ADDRESS OF AGENCIES

- A. FSIS Liaison to ERS
U.S. Department of Agriculture Food Safety and Inspection Service
1400 Independence Avenue, SW.
Washington, DC 20250
- B. ERS Liaison to FSIS
U.S. Department of Agriculture Economic Research Service
1400 Independence Avenue, SW
Washington, DC 20250.

ARTICLE 8 - PERIOD OF AGREEMENT

This agreement will become effective upon acceptance by all parties indicated below and will continue indefinitely. It may be modified by unanimous consent or terminated by any party upon a 30-day advance written notice to the other parties.

Approved and Accepted for the Food Safety and Inspection Service

Signed by: 

Date: September 6, 2023

Name: Paul Kiecker

Title: _____ Administrator _____

Email: _____ Paul.Kiecker@usda.gov _____

Approved and Accepted for the Economic Research Service

Signed by: _____

Date: _____

Name: _____

Title: Administrator _____

Email: spiro.stefanou@usda.gov _____



**CERTIFICATION AND RESTRICTIONS ON USE
OF UNPUBLISHED DATA**

I, _____, understand and agree to the following conditions concerning the use of unpublished data collected by the Food Safety Inspection Service (FSIS) and provided to the Economic Research Service (ERS).

The specific conditions for the security of this data :

- a. Pertains to all Public Health Information System (PHIS) data that has not been published by FSIS.
- b. Will be used for report generation, statistical, and economic research and analysis purposes only.
- c. Are confidential and must be in control of the ERS employee or cooperator at all times. No copies, reports, backups or disks containing this data can be made or published or provided outside the control of the ERS employee or cooperator.
- d. Summaries that could possibly reveal individual data must not be published and are subject to disclosure review by ERS staff in coordination with FSIS.
- e. Will not be disseminated or shared, whether in original form or aggregated (if confidentiality guideline is not met) with persons other than those who are directly associated with ERS.
- f. Must be stored locally on encrypted hard drives.

In additions to the conditions, I have been provided (shown on reserve side), 18 United States Code 1905, Disclosure of confidential information generally, 7 United States Code 2276, *Confidentiality of Information*, and 7 United States Code 1635-1636 "*Agricultural Marketing Act of 1946*".

I certify that I have read the above cited regulations and will abide by them.

_____ (Signature)
_____ (Title)
_____ (Office)

Witnessed by: _ Representative of the USDA ERS _____

DISCIPLINARY PENALTIES

A. A disciplinary action may be proposed for violations of the regulations contained in this Directive or other such cause as will promote the efficiency of the Service. Penalties may include an official letter of reprimand, suspension, demotion, or removal. Attachment 4 contains the USDA Table of Disciplinary Penalties (reprint from DPM Chapter 751, Appendix A.)

UNITED STATES CODE

Title 18, Section 1905

Disclosure of confidential information generally.

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Federal Housing Finance Agency, or a gent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

UNITED STATES CODE

Title 7, Section 1636

(a) CONFIDENTIALITY. The Secretary shall make available to the public information, statistics, and documents obtained from, or submitted by, packers, retail entities, and other persons under this subtitle in a manner that ensures that confidentiality is preserved regarding-

- (1) the identity of persons, including parties to a contract and
- (2) proprietary business information

(b) DISCLOSURE BY FEDERAL GOVERNMENT EMPLOYEES.

(1) IN GENERAL. Subject to paragraph (2), no officer, employee, or a gent of the United States shall, without the consent of the packer or other person concerned, divulge or make known in any manner, any facts or information regarding the business of the packer or other person that was acquired through reporting required under this subtitle.

(2) EXCEPTION. Information obtained by the Secretary under this subtitle may be disclosed-

- (A) to agents or employees of the Department of Agriculture in the course of their official duties under this subtitle;
- (B) as directed by the Secretary or the Attorney General, for enforcement purposes; or
- (C) by a court of competent jurisdiction.

(3) DISCLOSURE UNDER FREEDOM OF INFORMATION ACT. Notwithstanding any other provision of law, no facts or information obtained under this subtitle shall be disclosed in accordance with section 552 of title 5, United States Code.

UNITED STATES CODE

Title 5, Section 2302(b)

These provisions are consistent with, and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to the Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistle-blower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, § 715(a) (2012).

These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.