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

FSIS DIRECTIVE

8010.2
Revision 5

12/13/17

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) (the Acts), and related laws and regulations. FSIS is reissuing this directive to provide additional information related to photography during investigation activities 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*
- *States responsibilities of CID Investigators, Supervisors, and Regional Directors*
- *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 decisions process*
- *Describes procedures for preparing signed statements, memoranda of interviews, and other forms of interview documentation*

II. CANCELLATION

FSIS Directive 8010.2, Revision 4, Investigative Methodology, 4/24/14

III. BACKGROUND

A. Under the FMIA, PPIA, EPIA, and HMSA (the Acts) and related laws and regulations, FSIS has the legal authority to regulate meat, poultry, egg products, and shell eggs 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, egg products, and shell eggs are wholesome, not adulterated, and properly marked, labeled, and packaged.

B. CID Investigators conduct investigations and related activities at Federal establishments, food warehouses, distribution centers, transporters, retail stores, import facilities, brokers, ports of entry, and other 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. These activities are designed to ensure that meat, poultry, egg products, and shell eggs, including imported products, are safe, secure, and wholesome, not adulterated, and properly marked, labeled, and packaged. 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, 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 CID Supervisory Investigator (SI) regarding investigative activities, from the initiation of an investigation through the investigative decision.

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 and related activities with the Investigators under their supervision from the initiation of an investigation through the investigative decision; and

4. Update the CID Regional Director (RD) periodically with the status of the investigative caseload and investigative activities of Investigators under their supervision, particularly complex or unusual investigations.

C. CID RDs are to:

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

2. Monitor the regional investigative caseload and investigative activities;

3. Maintain communication with supervisory Investigators 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 develop 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 the meat, poultry, egg products, and shell egg laws 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 (e.g., Office of Field Operations (OFO), Office of Public Health Science (OPHS), Consumer Complaint Monitoring System (CCMS), FSIS Hotline) regarding possible violations;

3. Referral of an allegation or apparent violation from another Federal, State, or local government agency (e.g., Food and Drug Administration (FDA), State Meat and Poultry Inspection program (MPI)) regarding possible violations;

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 food safety or food defense incidents, possible violations, or other matters, they are to:

1. Determine whether FSIS has jurisdiction and authority to investigate the apparent or possible violation, food safety or food defense incident, or other matter;

2. Assess the available facts to determine whether they show an apparent or possible violation of FSIS statutes or regulations, food safety incident, food defense incident, or other matter that 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 set forth in the Memorandum of Agreement (MOA) between FSIS and the Office of Inspector General (OIG), whether to refer the allegation to OIG for investigation. Under the MOA, OIEA officials have designated liaison responsibility for all criminal investigations and all matters requiring referral to Department of Justice (DOJ). (See MOA: OIG-FSIS MOA).

1. If the allegation is referred to the OIG, the OIG will determine whether to initiate an investigation (i.e., open a case memorandum); or

2. If the OIG declines to open an investigation, or the RD or designee determines that referral to the OIG is not required under the MOU, FSIS may initiate an investigation.

C. When Investigators determine it is appropriate to initiate an investigation, they are to:

1. Open the investigation in the AssuranceNet/In-Commerce System (ANet/ICS); and

2. Select the appropriate predication (in the drop down menu in the ANet/ICS investigative record) to report the basis on which the Investigator initiated the investigation.

NOTE: Investigators are to follow the methodology in this directive for investigations involving alleged Failure to Present (FTP), Refused Entry, Illegally Imported, or Smuggled meat, poultry, egg products, and shell eggs. In these instances, Investigators are also, as appropriate, to follow relevant directives (e.g., FSIS Directive 9600.1, *Illegally Imported or Smuggled Products*) and coordinate regulatory actions with other agencies (e.g., Customs and Border Protection (CBP)). Investigators should seek guidance from the Supervisory Investigator or RD, if necessary.

a. The RD will review the ANet/ICS investigative record to determine whether redelivery should be coordinated with Customs and Border Protection (CBP). This request will be written to the CBP, Area Port Director at the port the shipment made entry and include copies of FSIS form 9540-1 and the foreign inspection certificate if available.

b. The Investigator will follow up with the appropriate CBP personnel on redelivery requests issued by the RD.

D. 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 the supervisor; or recommend that the matter be referred, through the CID RD, to another Federal, State, or local government agency (e.g., State MPI) for investigation.

III. INVESTIGATIVE REFERRAL

A. When the available facts or preliminary inquiry indicate a violation of FSIS statutes or regulations, and FSIS has jurisdiction and authority, the CID RD or designee is to determine, in accordance with the criteria in the MOA with the OIG, whether to refer the allegation or information to the OIG for investigation (based on the instructions in FSIS Directive 8030.1, *Communicating with the Office of Inspector General (OIG)*).

1. If the RD refers the allegation to the OIG, the OIG will determine whether to initiate an investigation (i.e., open a case memorandum). If the OIG declines to open an investigation, CID may initiate an investigation.

2. If the RD determines that referral to the OIG is not required under the MOA, CID may initiate an investigation.

NOTE: In some instances, CID may conduct investigations jointly with the OIG. If OIG documents a Case Opening Memorandum (COM), CID Investigators are to provide a copy of the COM to The Enforcement and Litigation Division (ELD).

B. Matters that require referral to OIG or to a Federal, State, or local agency for investigation or other action are to be referred, where practicable, in the ANet/ICS (i.e., the investigation is in ANet/ICS). In these situations, Investigators are to initiate an investigation in ANet/ICS and refer the investigative record, through supervisory channels, to the RD for referral to the appropriate authority (e.g., State MPI), in accordance with the instructions in this section and FSIS Directive 8010.5, *Case Referral and Disposition*.

NOTE: Where it is not practical to make an electronic referral in ICS, the RD or designee is to scan all relevant case documents and forward to appropriate parties via electronic mail (e-mail), an Agency approved service for express and ground delivery (e.g., UPS), or Certified Mail.

IV. INVESTIGATIVE PLAN

A. The development of an Investigative Plan helps to ensure that an investigation is thorough and well organized. Planning 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 outbreak investigations.

B. Investigators are to:

1. Prepare a written Investigative Plan for each investigation in accordance with the methods in this section of the directive;

2. Add the watermark “Confidential” on the Investigative Plan and beside the date insert “Draft” and attach the plan in the File Attachments tab in the associated investigative record in ANet/ICS;

3. The Investigator is to remove the watermark “Confidential” and “Draft” beside the date prior to sending the case to his or her supervisor for review in ANet/ICS and then attach the final plan into the File Attachment tab in the associated investigative record in ANet/ICS; and

4. If the case is referred to another region, the Investigator is not to remove the watermark

"Confidential and "Draft" beside the date.

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 is sufficient to prove the violation and support any subsequent enforcement action (e.g., Notice of Warning).

D. An investigative plan is also developed for a Foodborne Illness Outbreaks, including when CID is part of an Incident Investigation Team (FSIS Directive 5500.3, *Incident Investigation Team Reviews*). A Response Plan is developed for Rapid Response for Recovery to Food Safety or Food Defense events. Foodborne Illness Outbreak 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 number that is assigned to the investigation by ANet/ICS;

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, food safety incident, or other 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, food safety incident 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 state that 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, food safety incident, 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);

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

NOTE: Supervisors are to discuss potential safety issues at work-unit meetings.

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., OIG, State or local police), public health concerns or issues (e.g., FSIS' Office of Public Health Science, 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' Office of Data Integration and Food Protection, 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/ICS, and delete the current investigative plan.

V. PROCEDURES FOR INVESTIGATIVE ACTIVITIES

A. Investigative activities include those activities performed to investigate apparent violations, food safety incidents, food defense incidents, or other allegations.

B. When conducting an investigation, Investigators are to use appropriate investigative techniques to ensure that material facts are developed, and that relevant evidence is collected and preserved, to support findings of apparent violations, food safety incidents, food defense incidents, or other allegations.

C. 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 as 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 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, temperature records, Hazard Analysis and Critical Control Point (HACCP) records) or database 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, *Foodborne Illness Investigations*. Investigators conduct trace-forward and trace-back activities to determine the scope of the incident and to determine the extent of detention actions necessary to control adulterated or misbranded product. These activities may occur simultaneously 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;

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

c. Stock Rotation Practices - Review the standard operating procedures or good manufacturing practices at the firm for stock rotation (e.g., first-in-first-out) and determine how closely the firm follows the procedures or practices; and

d. 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; and

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

D. 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.

E. 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.

F. 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, and to copy business records. 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, through supervisory channels, ELD, OIEA, to request a subpoena and provide any supporting information necessary to obtain the subpoena, and for enforcement or related activities.

2. ELD and the applicable CID Regional Office are to coordinate delivery of the subpoena, with support from Federal, State, or local authorities, as necessary, 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, and personal information protected under the Freedom of Information Act (FOIA) or Privacy Act).

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

1. Be handwritten or electronic;

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

3. Be stored, if electronic, in a manner that ensures data integrity (e.g., on a CD-R or computer disk);

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

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

6. Be 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 ELD, the Office of General Counsel (OGC), or the DOJ, Investigators are to prepare and maintain any investigative notes made while working with ELD, 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 evidence and facts to make determinations regarding investigative activities and scope;

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

3. Determine whether the evidence and facts require that another CID Region conduct further investigation of the apparent or alleged violation;

4. Determine whether further investigation is needed that would require the use of special investigative techniques, as set out in the MOA with OIG;

5. Determine whether the facts and evidence require that the case should be referred to the CID RD for referral to or consultation with the OIG in accordance with the MOA with the OIG;

6. Determine whether the evidence and facts require that the case should be referred to the CID RD for coordination with another FSIS program area (e.g., OFO, OPHS, Office of Data Integration and Food Protection (ODIFP);

7. Determine whether the evidence and facts require that the case should be referred to the CID RD for coordination or coordination with another Federal, State, or local agency (e.g., FDA, State MPI); and

8. Determine and recommend to SI and RD whether, after using all appropriate investigative techniques, the evidence and facts do not support enforcement action and that the investigation should be closed with no action.

B. When findings and evidence reveal that the apparent violation, food safety incident, or other event of concern occurred in two or more CID regions; that an investigation needs to involve another CID region; or that investigation, resources, or other action or coordination is needed with another FSIS program area (e.g., OFO, OPHS) or Agency (e.g., OIG, FDA, State MPI), the Investigator is to contact the CID

Supervisor or RD. The CID RD (or designee) will 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 fashion;

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.

4. Submit the ROI in the ANet/ICS for enforcement (e.g., Notice of Warning, referral to ELD) or other Agency action or decision (e.g., referral to State MPI, 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 signed statements, Shipper's or Receiver's Certifications, Memorandum of Interview (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. An MOI may be appropriate in a variety of situations (e.g., background interview with Federal or State agency official).

II. STATEMENTS

A. A statement is a written description of the facts, events, or other relevant information provided by an interviewee of his or her knowledge of, or role in, the subject of the investigation or inquiry.

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 provide Privacy Act notification;

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, Compliance and Investigations Division, Office of Investigation, Enforcement and Audit, Food Safety and Inspection Service, United States Department of Agriculture. 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 his or her 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 (zip code). 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 him or her, the statement; that he or she initialed each page and each correction in the statement; and that the statement is complete and true to the best of his or her 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 his or her name;

3. Observe the interviewee while he or she makes corrections or additions and signs the statement; and

4. Sign the last page of the statement above his or her name after the interviewee (and any others present) signs 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 will ensure that other Investigators, if any, who heard the acknowledgment sign below the handwritten paragraph attesting that they witnessed the acknowledgement.

EXAMPLE: On February 12, 2013, 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 - “I have had read to me the preceding statement consisting of (number of handwritten/typed) pages and 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 his or her 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 who 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 sign 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 he or she is serving the interviewee.

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

III. MEMORANDUM OF INTERVIEW (MOI)

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

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

C. Investigators are to prepare an 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:

June 23, 2013
Chicago, Illinois

MEMORANDUM OF INTERVIEW

Leo B. Uptowne
Uptowne Meat Company
Owner—10 years
100 Main Street
Schaumburg, Illinois

Investigator George Mason

CID/OIEA/FSIS/USDA

4. Write the body of the MOI in the 1st 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 Compliance and Investigations Division, Office of Investigation, Enforcement and Audit, Food Safety and Inspection Service, United States Department of Agriculture. 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 Compliance and Investigations Division, Office of Investigation, Enforcement and Audit, Food Safety and Inspection Service, United States Department of Agriculture. 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 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 program employee 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.

IV. 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. FSIS Form 8050-2 is located on InsideFSIS.

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 as that made by the shipper or receiver. Describe the product by its common or usual name. Show approximate weight (or dozens for shell eggs) and number of items or containers shipped or received, **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;

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 his or her representative. Enter the date of signature. In the area directly under his or her 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 an 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 acknowledgment sign below the handwritten paragraph attesting that they witnessed the acknowledgement.

D. Investigators are to provide the interviewee with a copy of his or her signed certification, when signed by the interviewee. However, Investigators are not to provide a copy of a certification to an interviewee, when the interviewee has 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 a block is not applicable.

V. PRIVACY ACT NOTIFICATION

A. When 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. FSIS Form 8000-5 is located on InsideFSIS.

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.

VI. QUESTIONS

Refer questions regarding this directive through supervisory channels.

Assistant Administrator
Office of Policy and Program Development