

**TEXAS DEPARTMENT OF STATE HEALTH SERVICES  
MEAT SAFETY ASSURANCE  
AUSTIN, TEXAS**

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| <b>MSA DIRECTIVE</b> | 8010.1,<br>Revision 6 | 06/03/22 |
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**METHODOLOGY FOR CONDUCTING IN-COMMERCE  
SURVEILLANCE ACTIVITIES**

**CHAPTER I – GENERAL INFORMATION**

**I. PURPOSE**

- A. This directive provides instructions to Compliance Investigators on the methods for surveillance of persons, firms, and corporations operating in-commerce who are subject to the provisions of the Texas Meat and Poultry Inspection Act (TMPPIA) and related laws and regulations.
- B. MSA is reissuing this directive to update the information the Firm/Business Definitions (Attachment 1); and clarify other information.

*KEY POINTS:*

- *Identifies authority for in-commerce surveillance activities, including access to and examination of product, facilities, and records*
- *Describes in-commerce surveillance activities, including prioritizing, preparing for, and conducting surveillance activities*
- *Describes procedures for documenting in-commerce surveillance activities*

**II. CANCELLATION**

MSA Directive 8010.1, Revision 5, Methodology for Conducting In-Commerce Surveillance Activities, dated 1/14/22.

**III. BACKGROUND**

- A. MSA protects the health and welfare of consumers by ensuring that meat and poultry products, distributed in commerce are safe, wholesome, not adulterated, and correctly marked, labeled, and packaged; secure from intentional acts of contamination.
- B. The Acts provide authority for the effective regulation of meat and poultry products and contain provisions pertaining to adulteration, misbranding, prohibited acts,

exemptions, access and examination, recordkeeping, product detention and seizure, and criminal, civil, and administrative sanctions and remedies for addressing violations.

#### **IV. ACCESS AND EXAMINATION**

The Acts contain provisions that require specified persons, firms, and corporations to keep records and provide access for examination of facilities, inventory, and records.. These provisions also provide authorized program employees authority to access and examine the facilities, inventory, and records of these businesses; 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 penalties for failure to comply with these requirements.

#### **V. GENERAL**

- A. Investigators conduct in-commerce activities to ensure that meat and poultry products are safe, wholesome, and correctly labeled and packaged. Investigators also conduct in-commerce activities to verify that the persons, firms, and corporations whose business activities involve meat and poultry products prepare, store, transport, sell, offer for sale and transportation such products in compliance with other MSA statutory and regulatory requirements.
- B. In-commerce surveillance activities include:
  - 1. Food Safety;
  - 2. Food Defense;
  - 3. Non-Food Safety Consumer Protection;
  - 4. Order Verification;
  - 5. Public Health Response; and
  - 6. Emergency Response
- C. In-commerce surveillance activities are generally conducted together, as a whole, and not independent or exclusive of one another. When conducting in-commerce surveillance activities, Investigators are to perform all applicable procedures associated with the surveillance activities they conduct.
- D. In-commerce surveillance activities also include, as appropriate, education and outreach to provide in-commerce businesses, owners and operators, employees, and others with regulatory, food safety, food defense, and other compliance information.
- E. In-commerce surveillance activities also include liaison activities:

1. Investigators are to maintain working relationships and personal contacts within the Agency; with other Federal, State, and local government agencies and officials; and with appropriate outside entities. These contacts may assist Investigators in conducting surveillance or other regulatory activities.
2. These contacts include, but are not limited to, Food and Drug Administration (FDA), Animal and Plant Health Inspection Service (APHIS), Customs and Border Protection (CBP), Office of Inspector General (OIG), Environmental Protection Agency (EPA), Department of Defense (DOD), Department of Homeland Security (DHS), Department of Transportation (DOT), Importers and Brokers, and State Meat and Poultry Inspection (MPI) programs.

## **CHAPTER II – PRIORITIZATION AND PREPARATION**

### **I. PRIORITIZING IN-COMMERCE SURVEILLANCE ACTIVITIES**

- A. MSA has established management controls and performance measures to ensure that Agency resources are allocated appropriately, and that in-commerce surveillance activities are based on MSA public health priorities. Supervisors and managers are to use reporting tools in the AssuranceNet/In-Commerce System (ANet/ICS), review performance measure data in ANet/ICS, and take other appropriate steps to ensure the organization is actively working toward achieving MSA surveillance and public health priorities.
- B. In carrying out MSA's public health mission, Investigators are to conduct in-commerce surveillance activities based on public health priorities. Investigators are to:
  1. Prioritize surveillance activities based on public health risk and public health impact to achieve Agency public health priorities;
  2. Plan activities in a manner that allows for efficient and effective use of Agency personnel and resources, which may include running a firm report in ANet/ICS and creating an interactive Google map;
  3. Review and consider firm information, surveillance reports, and other compliance information in ANet/ICS, such as how long it has been since the last surveillance activity, the findings of the most recent surveillance activity, and whether the firm is operating under a criminal, civil, or administrative order;
  4. Review and consider information, such as violation history, in other Agency databases (e.g., Public Health Information System (PHIS)) and available through external sources.
  5. Take into account logistical factors, such as travel time and distances relevant to the activities to be conducted, the proximity of the activities to be conducted,

and the time it takes to conduct surveillance in one type of business versus another; and

6. Be aware of the current threat condition level in the National Terrorism Advisory System (NTAS) and plan surveillance activities accordingly.

## **II. INVESTIGATOR SURVEILLANCE PRIORITIES**

- A. To focus surveillance resources on in-commerce businesses with the highest risk, MSA established a tier structure based on business type and public health risk. This tier structure ranks in-commerce business types based on five risk considerations: food safety hazard, food defense hazard, product volume, consumer susceptibility, and surveillance by other regulatory authorities. The tier structure, which is incorporated into the ANet/ICS, ranks in-commerce businesses as follows:
  1. Business types that present higher risk are in tiers 1 and 2. These businesses generally have significant inherent hazards; handle large volumes of meat and poultry products; and receive minimal surveillance by other regulatory authorities. Accordingly, tier 1 and 2 businesses are a high priority.
    - a. Tier 1 business types are Distributors and Warehouses;
    - a. Tier 2 business types are 3D/4D Operators, Custom Exempt, Exempt Poultry, Food Banks, Retailers, Salvage, and Transporters.
  1. Business types with lower risk are in tier 3. These businesses generally handle smaller volumes of product or receive more significant surveillance from other regulatory authorities. Tier 3 business types include Abattoir, Animal Food, Bonded Warehouse, Broker, Institutions, Point of Entry, Processor, Renderers, Restaurants, and Miscellaneous.
  2. Businesses that are inactive are in tier 4. The inactive business types are those that are either no longer operating but that have a compliance history or are operating but do not currently handle MSA-regulated product. These businesses are to remain in ANet/ICS for historical reference.
- B. Investigators are to consider the following factors in determining at which in-commerce businesses to conduct surveillance activities. Investigators are to:
  1. Take into account the business type and business tier, whether a business has been surveilled previously, how long it has been since the last surveillance activity, the findings of previous surveillance activities, and relevant compliance history;
  2. Conduct follow-up surveillance activities (Chapter V Section I) at tier 1 and tier 2 businesses, generally, before conducting other surveillance activities;

3. Conduct surveillance activities at tier 1 and 2 businesses that have not been surveilled previously before conducting surveillance at tier 1 and tier 2 businesses that have been surveilled previously;
4. Conduct surveillance activities at tier 1 businesses with greater frequency than at tier 2 businesses;
5. Conduct surveillance activities at tier 3 businesses only when there is a need, based on credible information, to conduct surveillance activities at a particular tier 3 business (e.g., surveillance as part of a foodborne illness investigation, referral from other regulatory agencies, consumer complaint, or product sampling required to achieve the public health goals);
6. Conduct surveillance activities at tier 1, 2, and 3 businesses, as necessary, to verify compliance with the terms and conditions of any applicable criminal, civil, or administrative orders or other binding case disposition terms (e.g., pre-trial diversion, civil consent decree, or administrative consent decision); and
7. Conduct surveillance at a particular business, regardless of the business tier, when there is a need to conduct the surveillance (e.g., alleged violations, investigations of foodborne illness, emergency response activities, investigations of consumer complaints, food recall activities, or product sampling).

### **III. PREPARING FOR IN-COMMERCE SURVEILLANCE ACTIVITIES**

A. Before conducting in-commerce surveillance activities, Investigators are to ensure that they have the proper tools, equipment, and information and are prepared to conduct surveillance.

1. Investigators are to have the following tools and equipment with them or available to them:
  - a. Laptop computer, printer, and scanner;
  - b. Digital camera;
  - c. Flashlight;
  - d. Detained tags;
  - e. Freezer coat;
  - f. Hard hat;
  - g. Related supplies, such as printer paper, batteries, and hard copies of associated forms; and



- a. Contact Agency personnel or program areas that have knowledge of the person or firm to be surveilled;
- b. Contact Federal, State, or local agencies that have knowledge of the person or firm to be surveilled; and
- c. Be aware of any personal safety concerns and formulate, as necessary, methods and strategies, including coordination with the supervisor, to ensure that Investigators are safe during the surveillance activity.

## **CHAPTER III – SURVEILLANCE METHODS**

### **I. PROCEDURES FOR IN-COMMERCE SURVEILLANCE ACTIVITIES**

#### **A. Introduction and credentials:**

1. Investigators are to present their official credentials upon initial introduction with firm management or a responsible person. Investigators may provide a business card in conjunction with presentation of credentials; however, a business card is not a substitute for official identification.
2. If initial contact is with reception personnel or with an employee in a non-managerial position, Investigators are to present their credentials again upon introduction to a firm representative who holds a management or higher position. It may be necessary for Investigators to present their credentials to several individuals during the course of the surveillance activity.
3. Investigators are not to allow their credentials to leave their possession or to allow the credentials to be photocopied. (Title 18, U.S.C. 701 prohibits photocopying of official credentials.) Investigators may allow the person to examine their credentials for identification or to document the Investigator's name and badge number.
4. Investigators, if conducting surveillance at a firm whose business is open to the public (e.g., retail store, livestock auction), are not required to make immediate contact with a firm representative upon entering the firm. In these situations, Investigators do not immediately have to present their credentials.
5. Investigators, although not required, may request that a management official, designee, or translator accompany them during the surveillance activity. The presence of a management official or designee may help facilitate the surveillance activities. In the event that a management official or designee grants access to non-public areas but is unavailable to accompany the Investigator, the Investigator may proceed with the surveillance activity.
6. If at any time Investigators feel threatened while conducting surveillance activities, they are to leave the situation immediately, go to a secure area, and contact their immediate supervisor.

## B. Determining the business type:

1. Investigators are to determine and verify the business type that is the subject of the surveillance activity. This determination is to be made by direct observation of the type of activities being conducted at the firm and discussion with the owner, management official, or employees. Reviewing business licenses and permits may assist Investigators in determining the business type; however, Investigators are not to rely solely on these documents.
2. Once the business type has been determined, Investigators can assess whether the operations being conducted comply with applicable laws and regulations from the Acts.
3. Because the business activities may have changed since the time of the last contact or may be different from the business type listed in ANet/ICS, Investigators may need to update the current firm information in ANet/ICS. If additional information related to the firm, other than the fields available in ANet/ICS, needs to be part of the firm record, Investigators are to attach documents in the File Attachments tab of the Firm Information or Surveillance record.

## **II. FOOD SAFETY**

### A. When Investigators conduct in-commerce surveillance activities related to food safety, they are to verify that:

1. Meat and poultry products are wholesome and not adulterated;
2. Sanitary conditions are such that meat and poultry products will not become contaminated with filth or rendered injurious to health;
3. Hazard controls are adequate to prevent meat and poultry products from becoming adulterated;
4. Meat and poultry products not intended for use as human food are properly denatured or otherwise made inedible as prescribed by the regulations;
5. All records are kept and maintained in a manner that fully and correctly discloses all transactions involved in the business activity that is subject to the provisions of the Acts.

### B. To accomplish food safety verification activities, Investigators are, at a minimum, to:

1. Walk through the interior of the firm and examine the facilities and equipment used to prepare, store, or otherwise handle meat and poultry products;



2. Examine meat and poultry products for the types of products observed (e.g., raw, ready-to-eat, shelf-stable) and determine whether the sanitary conditions and hazard controls are adequate to prevent those products from becoming adulterated;
  3. Examine records related to the meat and poultry products observed to determine whether those records fully and correctly disclose the transactions involving the products;
  4. Examine, when applicable, inedible meat and poultry products to determine whether those products are properly identified and denatured as prescribed by the regulations;
  5. Collect meat and poultry product samples for laboratory analysis, as necessary;
  6. Walk the outer perimeter of the firm, when feasible, and observe the exterior structure conditions and the grounds about the firm to determine whether the conditions are adequate to prevent meat and poultry products from becoming adulterated.
- C. To determine whether meat and poultry products are adulterated or are being held under insanitary conditions, Investigators are to seek answers to questions such as, but not limited to, the following.
1. Meat and poultry products:
    - a. Do the products consist in whole or in part of any filthy, putrid, or decomposed substance, or are they for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food?
    - b. Do the products bear or contain any poisonous or deleterious substance that may render them injurious to health?
    - c. Are the product containers, (e.g., shipping container, immediate container, or packaging container) composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health?
    - d. Have the products been prepared, packed, or held under insanitary conditions whereby they may have become contaminated with filth, or whereby they may have been rendered injurious to health?
  2. Sanitary conditions:
    - a. Do the grounds around the firm provide a harborage or breeding area for rodents or pests?
    - b. Does the firm maintain the building structure, both interior and exterior, in a manner to preclude adulteration or environmental contamination?

- c. Are the cleaning practices sufficient to maintain the facility in a sanitary manner?
  - d. Are the utensils and equipment used in the processing and handling of edible products and ingredients maintained in a clean and sanitary condition as to not adulterate products?
  - e. For firm employees who handle product, are hygienic practices sufficient to preclude products from becoming unwholesome or adulterated?
  - f. Does the firm maintain records documenting pest control, sanitation procedures, repairs, and maintenance activities?
3. Hazard controls:
- a. Does the firm receive meat and poultry products and if so, does the firm verify products against the accompanying shipping documents?
  - b. Does the firm visually examine meat and poultry products before receiving them into inventory?
  - c. Do the firm's receiving procedures limit, to the extent possible, the transfer time from the shipping conveyance to the cooler/freezer or other storage areas?
  - d. Do the firm's shipping procedures limit, to the extent possible, the transfer time from the cooler or freezer, or other storage area to the shipping conveyance?
  - e. Does the firm perform temperature monitoring (product or ambient), and if so, by what means (e.g., recording devices and monitoring records)?
  - f. Are general production practices, as applicable, sufficient to preclude the adulteration of meat and poultry products?
  - g. Does the firm thaw or temper frozen meat and poultry products, and if so, how does the firm monitor and document this process?
  - h. Does the firm receive returned meat and poultry products? If so, does the firm have appropriate controls to handle such product (e.g., identifying why the product was returned)?
  - i. Does the firm receive non-amenable products and non-food items?
  - j. Does the firm verify, upon receipt, non-amenable products, and non-food items with the accompanying shipping documents, and if so, does the firm visually examine these products before receiving them into inventory?

k. Does the firm maintain process control programs (e.g., Hazard Analysis and Critical Control Point (HACCP), ISO 9000, or similar type programs)?

l. If the firm does maintain process control programs, is the firm following these programs?

D. If Investigators observe apparent violations of the Acts while conducting food safety surveillance activities, they are to follow the instructions in Chapter VI of this directive.

### **III. FOOD DEFENSE**

A. When Investigators conduct in-commerce surveillance activities related to food defense, they are to verify that meat and poultry products are secure from threats and intentional acts of contamination.

B. If Investigators observe apparent violations of the Acts while conducting food defense activities, they are to follow the instructions in Chapter VI of this directive.

### **IV. NON-FOOD SAFETY CONSUMER PROTECTION**

A. When Investigators conduct in-commerce surveillance activities related to non-food safety consumer protection, they are to verify that meat and poultry products are not misbranded, economically adulterated, or otherwise unacceptable for reasons other than food safety.

B. To accomplish non-food safety consumer protection verification activities, Investigators are, at a minimum, to:

1. Examine meat and poultry products to determine whether they are misbranded according to the TMPIA; and
2. Review records associated with the products to determine whether those products are properly identified in accordance with the applicable statute.

**NOTE:** It is important to remember that, in some situations, misbranding may be a food safety concern or have a significant economic impact on consumers and industry.

C. To determine whether meat and poultry products are correctly marked, labeled, and packaged, and not misbranded, Investigators are to seek answers to questions including, but not limited to, the following:

1. Do the products observed bear the mark of inspection, as required?
2. Is the labeling false or misleading in any particular way?

3. Are the products observed being offered for sale under the name of another food?
  4. Does the firm maintain records that identify the sources of the products observed?
- D. To determine whether meat and poultry products are economically adulterated, Investigators are, at a minimum, to:
1. Review business records, including invoices, labeling, and other information;
  2. Discuss with management or procurement officials any concerns or complaints they may have received relating to meat and poultry products and specific ingredients or components (e.g., fat, soy, or water) that if substituted, abstracted, or omitted, may cause products to be economically adulterated; and
  3. Collect samples for laboratory analysis as necessary.
- E. If Investigators observe apparent violations of the Acts while conducting non-food safety consumer protection surveillance activities, they are to follow the instructions in Chapter VI of this directive.

## **V. IMPORTED PRODUCTS**

- A. When Investigators conduct in-commerce surveillance activities related to imported products, they are to verify that imported products are wholesome, are correctly marked and labeled, are from eligible countries and certified foreign establishments, and are not adulterated or misbranded.
- B. To accomplish imported product verification activities, Investigators are, at a minimum, to:
1. Check the shipping container (if available) for the marks of Federal import reinspection (i.e., "U.S. Inspected and Passed");
  2. Check the shipping container for a shipping mark (this is a sequence of alphanumeric characters also found on the inspection certificate and import application);

**NOTE:** Shipping containers of product imported into the U.S. from Canada are not stamped "U.S. Inspected and Passed."

3. Request from the importer of record, product owner, custodian, or broker documents relating to the importation of the product in question. Such documents include, but are not limited to, FSIS Form 9540-1, Import Inspection Application and Report, an inspection certificate issued by the foreign government certifying that the product is eligible for importation into the U.S.,

and any other shipping documents available.

4. Use PHIS to verify that products:

- a. Originated from eligible foreign countries;
- b. Originated from certified foreign establishments;
- c. Were produced while the foreign establishment was listed as eligible; and
- d. Were reinspected and passed by FSIS.

5. Be aware of Failure to Present (FTP) shipments. An FTP occurs when amenable products produced by a foreign establishment and properly certified by the foreign government are delivered into commerce, further processed, placed into storage, or otherwise distributed to the consumer without the benefit of FSIS import reinspection, as required. Investigate all observed FTPs in accordance with MSA Directive 8010.2.

6. Be aware of meat and poultry products in commerce that are identified as "Refused Entry." The RD may notify an Investigator when there is potential that refused entry product was removed from the official import inspection establishment and distributed in commerce. Investigators are to follow MSA Directive 8010.2 for investigations.

C. Investigators are to coordinate surveillance activities related to imported products with applicable FSIS program areas, APHIS, and other Federal, State, or local agencies, as appropriate.

D. If Investigators observe apparent violations of the Acts while conducting surveillance activities related to imported products, they are to follow the instructions in Chapter VI of this directive.

E. If Investigators identify meat and poultry products from a foreign country that have been illegally imported or smuggled into the U.S., they are to contact their immediate supervisor.

## **VI. PUBLIC HEALTH RESPONSE**

A. Investigators may be called upon, at any time, to conduct or to assist other Federal or State agencies in conducting public health response activities, including recall, consumer complaint, or foodborne illness outbreak investigations.

B. When conducting activities related to recalls, Investigators are to follow the instructions in MSA Directive 8010.1, *Methodology for Conducting In-Commerce Surveillance Activities*.

- C. When conducting activities related to reports of foodborne illness potentially associated with meat and poultry products, Investigators are to follow the instructions in MSA Directive 8080.3, *Foodborne Illness Investigations*.
- D. If Investigators observe apparent violations of the Acts while conducting public health response activities, they are to follow the instructions in Chapter VI of this directive.

## **IX. EMERGENCY RESPONSE**

- A. Investigators may be called upon, at any time, to conduct or to assist other FSIS program areas or other Federal or State agencies in conducting activities to prevent, prepare for, respond to, or recover from non-routine emergencies resulting from intentional or non-intentional contamination affecting meat and poultry products (e.g., tampering, natural disaster, terrorist attack).
- B. If Investigators observe apparent violations of the Acts while conducting emergency response activities, they are to follow the instructions in Chapter VI of this directive.

## **CHAPTER IV – SURVEILLANCE FOLLOW-UP**

### **I. FOLLOW-UP SURVEILLANCE**

- A. Investigators conduct follow-up surveillance activities at in-commerce businesses, as necessary, to verify:
  - 1. Compliance with statutory and regulatory requirements;
  - 2. That meat and poultry products prepared, stored, transported, sold, offered for sale or transportation, imported, or exported in commerce, are safe, wholesome, and correctly labeled and packaged; and
  - 3. Compliance with applicable criminal, civil, or administrative orders or other binding case disposition.
- B. When Investigators conduct surveillance activities in accordance with this directive, they are to:
  - 1. Determine that follow-up surveillance activities are not required to verify compliance; or
  - 2. Determine that identified violations, food safety findings, or other information require follow-up surveillance activities and identify, in ANet/ICS, the time frame in which to conduct the follow-up surveillance.
- C. Investigators are to use the following guidance to determine whether to identify a business for follow-up surveillance and the time frame (e.g., 3-6 month, 6-9 months, 12-15 months) within which to conduct the follow-up.

1. The business type and tier;
  2. The type of order, if any, the person or firm is operating under; the terms of the order; and whether the person or firm is operating in compliance with the order;
  3. The surveillance findings, including, but not limited to, the following:
    - a. Whether products are found to be wholesome and not adulterated;
    - b. Whether sanitary conditions are such that products would not become contaminated with filth or rendered injurious to health;
    - c. Whether hazard controls are adequate to prevent products from becoming adulterated;
    - d. Whether products not intended for use as human food are being properly denatured or otherwise identified as inedible;
    - e. Whether records are being maintained in compliance with agency requirements.
  4. Whether the Investigator observed an apparent violation of the Acts, a product control action was taken or an investigation was initiated;
  5. Whether MSA referred the apparent violation to another agency; and
  6. The additional compliance history of the person or firm that is the subject of the surveillance activity.
- D. To accomplish follow-up surveillance activities, Investigators are to use, as applicable, all surveillance methodologies (e.g., preparing for surveillance activities, food safety, order verification) in this directive.
- E. When an Investigator does not identify a firm for follow-up surveillance, the Investigator may decide, or may be directed by his or her supervisor, to conduct subsequent surveillance at the firm based on:
1. A referral of an allegation;
  2. Public health exigencies (e.g., emergency response activities, food borne illness investigation); or
  3. Other information subsequently provided.

## **II.FOLLOW-UP REMINDERS**

A. The ANet/ICS provides a mechanism in surveillance for Investigators to identify firms for follow-up surveillance activities.

B. Investigators are to use the ANet/ICS to set reminders with respect to firms that are identified for follow-up surveillance activities and to identify the time frame for the follow-up surveillance (e.g., 3-6 months, 6-9 months, or 12-15 months).

C. The ANet/ICS will generate reminders to Investigators to conduct follow-up surveillance activities.

D. Investigators generally are to complete the follow-up surveillance within a period of 3 months from the date of the reminder.

## **CHAPTER V – DOCUMENTATION**

### **I. SURVEILLANCE FINDINGS**

A. Upon completion of the surveillance activity, including any follow-up, Investigators are to:

1. Update, where needed, the firm information record for firms in ANet/ICS. For a firm that is not in the ANet/ICS, Investigators are to add the firm to ANet/ICS by creating a new Firm Information record and entering all required and known information. Investigators are, where needed, to attach additional information (e.g., floor plan, corporate documents) in the File Attachments tab of the Firm Information record in ANet/ICS;
2. Document their findings in the ANet/ICS by completing all applicable fields in the surveillance record; and
3. Identify, where appropriate, firms for follow-up surveillance activities.

B. When Investigators identify product that has been illegally imported or smuggled, or is considered an FTP, they are to detain and control the product as set out in MSA Directive 8410.1, *Detention and Seizure*, and document an investigation in the ANet/ICS.

### **II. SURVEILLANCE NOTES**

A. When conducting surveillance activities in accordance with this directive, Investigators may document, at their discretion, their surveillance activities and findings in notes. Surveillance notes are to be maintained in accordance with MSA Directive 8010.3, *Procedures for Evidence Collection, Safeguarding and Disposal*.

B. If documented, Investigators are to be aware that notes may contain information related to open investigations, confidential commercial information, personal information, or other confidential information and are subject to the Freedom of Information Act, the Privacy Act, or other applicable legal requirements.



C. If surveillance activities result in the initiation of an investigation and notes of surveillance activities have been documented, Investigators are to maintain the notes with the investigative case file and follow the sections of MSA Directive 8010.2 and MSA Directive 8010.3 relevant to investigative notes.

## **CHAPTER VI – APPARENT VIOLATIONS AND OTHER IRREGULARITIES**

### **I. APPARENT VIOLATIONS**

- A. When conducting surveillance activities, Investigators may observe apparent food safety or other violations of the Acts, Agency regulations, or applicable criminal, civil, or administrative orders or other case dispositions.
- B. When Investigators observe apparent violations, they are to take one or more of the following actions as appropriate based on the relevant facts:
1. Inform the management official, designee, owner, or product custodian of the apparent violation;
  2. Initiate an investigation, in accordance with MSA Directive 8010.2;
  3. Initiate a product control action, in accordance with MSA Directive 8410.1; and
  4. Notify the supervisor if, in the Investigators' judgment, additional personnel or resources are required to protect the health and welfare of consumers or the safety of Agency personnel.

### **II. OTHER IRREGULARITIES**

- A. When conducting surveillance activities, Investigators may observe apparent violations or other irregularities involving non-amenable products or facility conditions that, although not subject to MSA jurisdiction, are subject to the laws and regulations of other Federal, State, or local agencies.
- B. When Investigators observe apparent violations or other irregularities involving non-amenable products or facilities subject to other authorities, they are, as appropriate, to:
1. Inform the management official, designee, owner, or the product custodian of the apparent violation irregularity;
  2. Contact, immediately if necessary, the appropriate Federal, State, or local agency to inform that office of the apparent violation or other irregularity observed;

3. Provide support, as necessary, to the agency or office contacted to protect the health and welfare of consumers; and
4. Document, in the ANet/ICS surveillance record, the apparent violation or other irregularity observed and the contact and referral made to the appropriate Federal, State, or local agency.

### **III. QUESTIONS**

Refer questions through supervisory channels.



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## **ATTACHMENT 1: Definitions of Firm/Business Types**

**NOTE:** The business types marked with an (\*) asterisk; (3D/4D, Animal Food, Broker, Distributor/Wholesaler, Renderer, Warehouse (*public warehouse*)) are required to register with FSIS (21 U.S.C. 643 and 21 U.S.C. 460).

**\*3D/4D:** A facility that handles dead, dying, disabled, or diseased animals (amenable meat/poultry species). This type of facility cannot legally put the products into commerce for human consumption.

**Abattoir:** A facility operating under a federal, state, or Talmadge-Aiken grant of inspection where animals are slaughtered for consumption as food products.

**\*Animal Food:** Any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts of products of the carcasses, of cattle, sheep, swine, goats, or poultry; 9 CFR 301.2, 381.1(b).

**Bonded Warehouse:** A facility that handles meat, poultry, shell eggs, and/or egg products from multiple overseas suppliers and temporarily stores said product in cold storage or freezers without processing or breaking down the product in any way. A bonded warehouse is a facility authorized by Customs and Border Patrol for the storage of dutiable goods. Payment of duties is deferred until the goods are removed from the warehouse; however, the warehouse is responsible for the safekeeping of the products at the facility.

**\*Broker:** Any person, firm, or corporation engaged in the business of buying or selling meat, poultry, shell eggs, and egg products, or parts of amenable species on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation; 9 CFR 301.2, 381.1(b).

**Custom Exempt:** A facility that provides slaughter and/or processing services for the owner of the livestock, poultry, or meat/poultry product, for a fee. Product prepared under the custom exemption is for the exclusive use of the owner, and is not eligible for sale or donation; 9 CFR 303.1(a)(2), 381.10(a)(4).

**\*Distributor:** A facility that handles meat, poultry, shell eggs, and/or egg products from multiple domestic and/or overseas suppliers, stores said products in cold storage or freezers, and supplies said products to multiple customers without processing or breaking down the product in any way.

**Exempt Poultry:** A facility that slaughters and/or processes poultry exempt from federal or state inspection. This type of facility, (other than custom exempt poultry operators that do not engage in the buying/selling of any poultry product capable of use as human food), can sell to household or non-household consumers.

**Food Bank:** An organization that collects or purchases meat, poultry, shell eggs,

and/or egg products from manufacturers, wholesalers, retailers, and/or government agencies to store and donate collected product to non-profit emergency and community food programs.

**Inactive:** A business that is not currently operating (or permanently closed) and is not periodically surveilled.

**Institution:** An organization founded and united for a specific purpose that prepares meals containing meat, poultry, and/or egg products for resident populations (*e.g.*, hospital, prison).

**Point of Entry:** A location where eligible meat, poultry, shell eggs, and/or egg products are re-inspected prior to entering into U.S. Commerce.

**Processor:** A facility operating under a federal, state, or Talmadge-Aiken grant of inspection that receives bulk meat, poultry, and/or egg products and breaks down and further processes the bulk product into a further processed product (*e.g.*, ready-to-eat, ready-to-cook packaged product).

**\*Renderer:** Any person, firm, or corporation engaged in the business of rendering carcasses or parts or products of meat or poultry except rendering conducted under inspection or exemption; 9 CFR 301.2, 381.1(b).

**Restaurant:** A business that prepares and serves food and drink to customers. Meals are generally served and eaten on premises, but many restaurants also offer take-out and food delivery services. Restaurants vary greatly in appearance and offerings, including a wide variety of cuisines and service models; 9 CFR 303.1(d)(2)(iv), 381.10(d)(2)(iv).

**Retailer:** A facility that sells meat, poultry, shell eggs, and/or egg products directly to consumers for consumption off-premises; 9 CFR 303.1(d)(1), 381.10(d)(1).

**Salvage:** A facility that purchases, sorts and sells "distressed" meat, poultry, shell eggs, and/or egg products that other businesses have been unable to sell.

**Transporter:** A business that provides transportation services of meat, poultry, shell eggs, and/or egg products for fees. They do not buy, sell, process, label, or store products in any way.

**Warehouse:** A facility that handles meat, poultry, shell eggs, and/or egg products from multiple domestic and/or overseas suppliers and may be public (leases space to product owners) or private (stores its own products for its own retail stores).

A warehouse may operate under voluntary identification and/or certification service where it could repackage/label, certify for export, or other programs; 9 CFR 350.3, 362.2.

If a warehouse is owned by a retail store and stores only meat, poultry, or shell eggs products that are the property of that retail store, the warehouse is a private warehouse and is not required to register with FSIS.

However, if the warehouse stores any meat or poultry products that are not owned by the retail store that owns the warehouse, that warehouse would be considered a **\*public warehouse** and would be required to register with FSIS. (*i.e.*, If a retail store has consigned meat products to a hotel, restaurant, institution, or other retailer, and the product is stored in the warehouse owned by the retail store, the warehouse is functioning as a public warehouse, because the retail store no longer owns the products, and would be required to register).