



Consumer Federation of America

December 16, 2009

Docket Clerk
U.S. Department of Agriculture
Food Safety and Inspection Service
Room 2-2127 George Washington Carver Center
5601 Sunnyside Avenue
Beltsville, MD 20705

RE: Docket No. FSIS-2008-0039

The Consumer Federation of America (CFA) is pleased to provide comments on the Food Safety and Inspection Service's (FSIS) proposed rule on Interstate Shipping of Meat and Poultry Products (Docket No. FSIS-2008-0039). CFA is a nonprofit association of 280 consumer groups, representing more than 50 million Americans nationwide, that was established in 1968 to advance the consumer interest through research, education and advocacy.

CFA strongly supports FSIS' proposed rule on Interstate Shipping of Meat and Poultry Products. The proposed rule adheres closely to compromise language developed during the debate over the 2008 Farm Bill. This language was carefully crafted to meet the desire of some state-inspected meat plants to enlarge their area of sales while assuring that all meat and poultry sold across state lines meet federal inspection standards. Consumer groups and victims of foodborne illness opposed the House-passed language that ended the 45-year-old requirement that all meat and poultry shipped in interstate commerce had to comply with federal standards. Consumer and victims groups opposed having different standards for products moving across state lines.

At the request of House Agriculture Chairman Collin Peterson, Roger Johnson, representing the National Association of State Departments of Agriculture, Tom Buis, representing the National Farmers Union, Tony Corbo of Food & Water Watch, Alan Kadrofske of the American Federation of Government Employees, Michael J Wilson of the United Food and Commercial Workers Union, and Christopher Waldrop and Carol Tucker-Foreman of Consumer Federation of America met and negotiated language to which all the groups could agree. These groups plus the Center for Science in the Public Interest signed a letter to then-Chairman of the Senate Agriculture Committee Tom Harkin and Ranking Minority member Saxby Chambliss stating that they would support this language if it were included in the Farm Bill. Other consumer and trade organizations also expressed their support. The final language was fair and met the needs of all

stakeholders. As such, we commend FSIS for writing proposed regulations that closely adhere to both the intent and specific language of the legislation.

THE IMPORTANCE OF FEDERAL STANDARDS FOR MEAT AND POULTRY INSPECTION

The primary purpose of meat and poultry inspection is to protect public health. Consumers rely on the federal government to assure the safety of meat and poultry products sold in interstate commerce. Forty years ago increasing concerns about filthy meat products led Congress to enact the Federal Meat Inspection Act. Its goal was to protect public health and the markets for meat products by establishing a uniform federal meat inspection system. The Act required that no meat or poultry can be sold in interstate commerce until a federal inspector, sworn to protect public health, verifies that the product is safe, wholesome and accurately labeled. American consumers recognize and count on the safety of meat and poultry products that bear the label, “Inspected and Approved, U.S. Department of Agriculture.”

The FMIA, as passed, included compromise language to avoid putting state inspection programs and some small plants that would have trouble meeting federal standards out of business overnight. However, Congress acknowledged both the value of a uniform federal system and the historical fact that 50 state inspection programs had not met either industry or public health needs and limited the sale of products produced in state inspected plants to intrastate commerce.

The 2008 Farm Bill created a new voluntary cooperative program under which certain state-inspected establishments with 25 or fewer employees could be eligible to ship meat and poultry products in interstate commerce. In crafting this program, Congress was careful to maintain the integrity of the federal meat and poultry inspection program and assure that any meat and poultry products shipped in interstate commerce meet federal safety standards. While the new program provided that the inspection personnel of a state agency would inspect the plants, it also provided that the plants would meet federal standards and state inspection personnel would enforce federal meat and poultry inspection laws, not state laws. (State inspected plants could continue to operate intra-state).

Additionally, the new law required USDA to designate a Department employee as state coordinator for each state program to provide oversight and enforcement of the new program; oversee training and inspection activities of the state inspection personnel; and ensure that the plants are fully complying with federal meat and poultry inspection laws. The law also provided USDA with the authority to suspend any plant’s eligibility to sell in interstate commerce if the state coordinator determines that a plant is violating any requirement of the federal meat and poultry inspection laws, and then transition that plant to the federal meat and poultry inspection program.

CFA strongly supports the maintenance and improvement of federal public health standards for meat and poultry. Maintaining federal oversight and supervision of this new voluntary cooperative program is particularly important for consumer confidence and

public health. A September 2006 USDA Office of Inspector General audit of State Meat and Poultry Inspection Programs showed that state inspection programs were in fact, not “equivalent” to the federal program.¹ The OIG reported high levels of noncompliance with FSIS procedures and documented the failure of state-inspected plants to meet basic sanitation requirements. Despite known sanitation problems and public health concerns, state regulators routinely allowed these plants to continue operating.

The OIG reported that FSIS visited 11 meat plants in Mississippi in October 2003. None of the plants met all HACCP requirements. FSIS reported that cutting boards in one plant were heavily contaminated with meat residues from the previous day’s work and noted that some plants failed to monitor cooking temperatures, potentially exposing consumers to bacteria that cause foodborne illness. The Mississippi meat inspection program allowed the plants to continue operating. FSIS allowed the Mississippi program to keep operating though it was not meeting the “equal to” federal inspection legal requirements. CFA examined FSIS reviews of other state programs and found similar problems in other states. In order to assure the safety of meat and poultry products sold in interstate commerce, it is important that FSIS maintain adequate oversight of this new cooperative program with the states.

KEY ELEMENTS OF PROPOSED RULE

CFA strongly supports the framework and specific procedures outlined in the proposed rule for identifying and selecting eligible establishments; monitoring state programs and enforcing federal laws and regulations; affixing a new federal mark of inspection; and deselecting ineligible establishments and transitioning them to the federal inspection system. In particular, CFA wishes to highlight several key areas.

Assuring State Programs Meet Federal Standards

The statutory language in the Farm Bill requires that plants participating in this new program operate programs that are “the same as” the federal inspection program. State inspectors under this new program should be conducting the same inspection activities as those performed in federal plants regulated under the FMIA and Poultry Products Inspection Act. This is especially important because meat and poultry products entering interstate commerce through this program will carry the Federal mark of inspection. Consumers expect that products carrying this mark meet federal standards for meat and poultry inspection. Consequently, any state inspection program shipping products in interstate commerce should meet the same standards as the federal inspection program.

In order to determine if a State inspection program can participate, FSIS will have to verify that States have sufficient authority, resources, personnel, training, sampling capability and laboratory capacity to oversee plants that meet federal requirements. CFA notes that State inspection programs are often under financial duress as a result of State budget problems or economic downturns. FSIS must conduct comprehensive analyses of State inspection programs and available resources to verify that States can adequately participate in this new program and assure that products inspected under this program meet federal standards. FSIS must also carefully monitor budget issues in participating

¹ USDA OIG, report No. 24005-1-AT. September 2006

States on an ongoing basis to assure that resources continue to be sufficient to justify the State's continued participation in the program.

Plant Employee Limit

The proposed rule makes clear that establishments eligible to participate in the new program must employ on average no more than 25 employees, including full-time, part-time and temporary employees. CFA strongly supports the decision to include all categories of employees in determining a plant's eligibility.

CFA preferred a limit of 10 employees, which is similar to the current USDA definition for very small plants. During our negotiations with NASDA and NFU, we only reluctantly agreed to NASDA's desire for a 25 employee limit. None of the groups involved ever agreed to anything larger than 25 employees. Most very small plants have few full-time employees. Many do not operate every day. Including part-time and temporary as well as fulltime employees in the employee limit is an effective means to assure the program serves the entities it was intended to serve. Not including part-time and temporary employees in the average number of employees would permit substantially larger entities to participate in a program that was designed to serve very small local plants. The 50 employee limit in the House bill was a primary reason CFA opposed the House-passed bill. It would expand the number of plants in the new cooperative program far beyond what was intended. In 2007 over 80 percent of the 5,600 federally inspected plants had 50 or fewer employees.

In considering this point, it is important to note that plants with over 25 employees can produce a substantial amount of product. A plant with 10 employees can produce approximately 14,000 pounds of beef per day, while a plant with 25 employees can produce over 35,000 pounds of beef per day. A plant with 35 employees can produce over 50,000 pounds of beef daily. The increase of just 10 employees (from 25 to 35 employees) can result in an increase of beef production of 35 percent. If a plant maintains on average more than 25 employees and wishes to ship in interstate commerce, the appropriate solution for the plant is to become a federal establishment.

Selected Establishment Coordinator

The statutory language of the Farm Bill establishes a State coordinator for each State agency to provide oversight and enforcement of the new program and to oversee training and inspection activities of the State personnel. In the proposed rule, FSIS anticipates a total of 16 states participating in the new program, but only estimates 13 Selected Establishment Coordinators. FSIS believes that contiguous States could make it appropriate to have less than one SEC per state. CFA disagrees with this decision and urges FSIS to assign one SEC for each state participating in the new program. Consumer groups have raised concerns with FSIS in the past about federal inspectors being responsible for plants in too large a geographic area. The result of inspectors being spread too thin means that inspectors spend an inordinate amount of time driving from plant to plant and do not have sufficient time to effectively carry out their inspection duties. Considering the importance of adequate oversight of this new program, CFA believes that each State should have its own SEC.

As detailed in the proposed rule, the SEC is a federal employee; as such it is appropriate that the SEC be stationed at the District Office and report to the District Manager and ultimately, FSIS headquarters. The SEC should not be stationed at the State meat and poultry inspection agency, but should maintain frequent communication with State agency officials.

Transitioning a Deselected Establishment to a Federal Establishment

As provided for in the law, the proposed rule establishes a process by which FSIS shall deselect a selected establishment that becomes ineligible to participate in the program for a specific reason; i.e., the establishment is in violation of the federal meat and poultry inspection acts, the establishment employs on average more than 25 people, or the interstate shipment program for the state in which the establishment is located was terminated. In the proposed rule FSIS outlines some general transition procedures (changing the establishment number, replacing state personnel with FSIS inspection personnel, etc.), but has decided against outlining further procedures in lieu of collaborating with the state on a case-by-case basis. While this approach may be appropriate in dealing with individual establishments in a state, FSIS should develop specific procedures for instances when the entire state inspection program is terminated.

Establishments should also anticipate that as they grow and add additional employees beyond the 25 employee limit, they will be transitioned to the federal inspection system. It is essential that establishments not be permitted to “forum shop” for regulatory oversight. If plants are meeting the requirements of the new program and are succeeding, there should be no reason why the plants that outgrow this special program would not be transitioned to the federal system. Again, it was not the intention of Congress to encourage two competing interstate inspection programs. Federal meat and poultry inspection has provided a reasonably high level of food safety. Multiple standards and programs create the risk of increased foodborne illness. Studies show that when foodborne illnesses arise consumers may reduce, if only for a short time, their purchases of the implicated product class.

Reimbursement, Technical Assistance and Transition Grants

The statutory language in the Farm Bill provided several means through which FSIS and the States could work together to successfully develop this new program. First, Congress provided that FSIS would reimburse the States for at least 60% of the eligible costs for the program. Second, Congress authorized FSIS to provide transition grants to assist States in helping state establishments transition to the new program. FSIS’ tentative conclusion to reimburse States for the costs of HACCP training for establishment employees is an appropriate use of these grants.

Finally, FSIS was instructed to establish a “technical assistance division” to provide training, education and outreach to help state establishments meet the necessary federal standards to participate in the new program. FSIS has already created a division to provide technical assistance for small and very small plants (the Office of Outreach Employee Education and Training), so the agency is adequately prepared for this type of

assistance. Consequently, transition grants should not be provided to the states for duplicative outreach services and instead should be used to reimburse the cost of HACCP training as noted above.

Combined, these efforts should help both the States and FSIS assure that the program operates according to the new law and that meat and poultry shipped in interstate commerce meets federal standards. However, it is important to note that the Administration must budget, and Congress must appropriate, adequate funding for each of these activities. In particular, the Office of Outreach will need sufficient resources to conduct workshops, training sessions, and other activities to ensure that small and very small plants in the new program understand the requirements they are expected to meet.

SMALL AND VERY SMALL PLANTS CAN MEET FEDERAL REQUIREMENTS

CFA's members want to support local businesses that meet federal public health requirements. We supported the creation of the cooperative interstate program because it gives these small plants the opportunity to be inspected by state inspectors (who plants describe as friendlier, more helpful and more cooperative than federal inspectors) but has provisions that assure the plants satisfy all federal safety standards. CFA does not believe there is a benefit to public health to have two standards for meat sold in interstate commerce.

CFA is aware of charges that small plants cannot satisfy federal meat inspection requirements and that the federal rules establish unfair barriers to smaller plants. Available data don't support the argument. In July 2007 CFA requested from FSIS a breakdown of the total number of large, small and very small plants under federal inspection. FSIS PBIS data showed that there were 5,603 plants in the system. Fifty-one percent of all federally inspected plants (2,878 of 5,603) have 10 or fewer employees and 80% have 50 or fewer employees. These small and very small plants now under federal inspection have invested time and money to comply with all federal regulations and operate under federal inspection. They operate successfully under federal inspection and can sell their products anywhere. CFA does not support providing an unfair advantage to small companies who don't or can't make the commitments necessary to comply with federal food safety requirements.

A look at the current landscape of meat and poultry plants across the country shows that small and very small plants can make the adjustments necessary to meet federal standards and sell their plants in interstate commerce. In every state that has a state inspection program, many small and very small plants are meeting the requirements of federal inspection and have chosen federal inspection rather than state inspection. In fact, even in those states with state inspection programs, most small and very small plants choose federal inspection.

STATE	State Inspected Plants	Federally Inspected Small/Very Small
ILLINOIS	116	338

TEXAS	233	291
MISSOURI	30	193
GEORGIA	59	104
SOUTH CAROLINA	43	88

Arguments that small and very small plants cannot meet federal standards ring hollow. Any plant that is shipping meat in interstate commerce can and should meet federal safety standards. The new program outlined in the proposed rule will assist in creating opportunities for certain state-inspected plants to ship in interstate commerce while assuring that all meat and poultry sold across state lines meet federal inspection standards.

Thank you for the opportunity to provide comments on the proposed rule.

Sincerely,



Chris Waldrop
Director, Food Policy Institute
Consumer Federation of America