



National Sustainable Agriculture Coalition

November 16, 2009

Docket Clerk

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

Submitted via: www.regulations.gov

RE: Docket No. FSIS-2008-0039, "Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products"

Dear FSIS:

On behalf of its 38 represented member organizations, the National Sustainable Agriculture Coalition (NSAC) is pleased to submit the attached comments in response to the Food Safety & Inspection Service's proposed rule for implementing the cooperative inspection program for the interstate shipment of meat and poultry products from state-inspected establishments provided for in Section 11015 of the Food, Conservation, and Energy Act of 2008. A complete list of our represented member organizations is appended to these comments.

Many of our member organizations work directly with independent farmers and ranchers who raise livestock and poultry on small and mid-sized operations. A number of these producers are also engaged in the direct marketing of their livestock and poultry products. For many of these farmers and ranchers, development of interstate local markets, especially key urban markets in neighboring states, is hindered by the inability to find a meat or poultry processing establishment which is federally inspected. NSAC supported the inclusion of this new cooperative inspection program in the 2008 Farm Bill, with a view to providing an increase in interstate marketing opportunities for small and mid-sized farms and ranches.

We encourage USDA to develop a workable cooperative program that will provide appropriate regulations for small and very small meat and poultry processors to achieve required standards of food safety with the services of state inspectors.

Thank you for considering our comments.

Sincerely,

Martha L. Noble

Martha L. Noble
Senior Policy Associate

1. Requirement that state inspection services will be “the same as” federal inspection services.

The statutory provision for the Cooperative Program for the Interstate Shipment of Meat and Poultry Products (“Program”) defines an “eligible establishment” for the Program as an establishment which is “in compliance with” the state inspection program and with the Federal Meat Inspection Act (FMIA) or the federal Poultry Products Inspection Act (PPIA). In the proposed rule, FSIS requires that in a State request for a cooperative agreement under this Program, the State must demonstrate that it is able to provide “. . . the necessary inspection services to selected establishments and conduct any related activities that would be required under a cooperative interstate shipment program established under the proposed rule.” Proposed Rule §§ 332.4(b)(2) and 381.514(b)(2).

In materials prepared for FSIS Listening Sessions on the Proposed Rule, FSIS indicated that:

“To show that inspection services at selected establishments will be the same as federal inspection services, states will need to demonstrate that they have the legal authority to administer such a program. *They will also need to demonstrate that they can provide the same staffing, training and equipment required under the federal program, and that they will conduct the same type of product sampling and analysis required under the federal program.*” *FSIS Listening Session Transcript (Nov., 5, 2009)(emphasis added).*

The Preamble to the proposed rule, FSIS indicates the intent to adopt an extremely narrow interpretation of the term “in compliance with” to mean that state inspection services under the Program must be “the same as” Federal program inspections services. States will have to demonstrate not only that they have sufficient trained staff and legal authority to comply with the Acts but also that personnel will collect the same number and type of regulatory product samples, that laboratory services will include the same testing protocols, and that state inspectors will even use *the same equipment down to the level of computers and supplies for collecting samples*. Preamble to the Proposed Rule, 74 Fed. Reg. at p. 47652.

This requirement appears to be extraordinarily prescriptive and could likely discourage States from participating in the Program, even if the State is capable of achieving compliance with the standards of the FMIA and PPIA. As noted in comments to the Proposed Rule submitted by the Niche Meat Processor Assistance Network, many State inspection programs have already adopted the federal regulations associated with the FMIA and PPIA. FSIS evaluations have shown that these state programs can follow these regulations in a manner “at least equal to” FSIS – and thus “in compliance with” the Acts – while operating in a manner that is not “the same as” or identical in every particular to the FSIS, due to their smaller staff size and other contextual administrative aspects of the state programs.

In addition, FSIS provides no rationale why measures such as requiring state inspectors to have the same computers and collecting supplies will further food safety and compliance with the Acts. Moreover, the provision does not recognize that a particular State may have a better system for deploying its state inspectors or protocols for sampling which meets the requirement of “in compliance with” the Acts under a more streamlined or more economical program. The focus and goal of the statutory language is compliance with the Acts to ultimately provide consumers with safe and wholesome meat and poultry products. This should be the key to determining whether a State can demonstrate that it is in compliance with Acts.

NSAC recommends that the FSIS requirement that state inspection programs operate in a manner “the same as” FSIS is unnecessarily burdensome, may well not further food safety, and will discourage the participation of state programs. We strongly suggest that this aspect of the proposed rule be revised to allow more flexibility for state programs as long as they are in compliance with the FMIA and PPIA.

2. Oversight of state inspection by FSIS Selected Establishment Coordinator (SEC)

The 2008 Farm Bill provides that the FSIS employees designated as Selected Establishment Coordinators for a State shall visit selected establishments participating in the Program “. . . with a frequency that is appropriate to ensure that selected establishments are operating in a manner that is consistent with [the FMIA and the PPIA] (including regulations and policies under the Act)”. This provision appears to establish a “spot-checking” process for the State Coordinators to determine if inspections under the Program are sufficient to ensure that the establishments are in compliance with the Acts. NSAC does not have a “one-size fits all” recommendation. Clearly, the total number of State Coordinator visits may need to be higher as the Program is first implemented and state inspectors gain experience with the regulatory requirements of the Program. In addition, some states will likely have more establishments participate in the program than other states, requiring that more establishments are visited in a given year, even though the frequency of visits to each establishment may be the same among the states. Clearly, the goal should be to establish a frequency of visits to each plant that will provide a statistically relevant sample to check on the level of compliance and performance of inspections by state inspectors.

In addition, a separate statutory provision requires that the State Coordinators are on a quarterly basis to submit to the USDA Secretary a report about the status of each selected establishment under the Coordinator’s jurisdiction with regard to its level of compliance. The Proposed Rule also adds that the Quarterly Report include the Coordinator’s assessment of the performance of the designated state inspection personnel in conducting inspection activities at selected establishments. This addition in the Proposed Rule appears to confuse the requirement that the State Coordinator make site visits to selected establishments with a frequency to assure that selected establishments are operating in a manner consistent with the FMIA or PPIA with the more simple requirement of a Quarterly Report on the legal status of all the selected establishments on a quarterly basis -- a status determination that will not require quarterly visits by the Coordinator to assess each establishment. This legal status may be determined by the outcome of routine reports from state inspectors in the Program inspections and other documentation.

NSAC recommends that FSIS clarify that the Quarterly Reports do not require quarterly assessments of the performance of the Program’s state inspections by the State Coordinator. Such an assessment on a quarterly basis would establish a burdensome federal oversight process for states involved in the Program. .

3. Methods for Determining the Number of Employees

The 2008 Farm Bill targets the Program to small and very small meat and poultry processing establishments that, on average, employ 25 or fewer employees. The Proposed Rule provides that meat and poultry processing establishments operating under a cooperative State meat or poultry products inspection program may apply to participate in the Program if the establishment employs on average 25 employees or fewer. Proposed Rule §§ 332.3(b) and 381.513(b). Establishments with more than 25 employees but less than 35 employees as of June 18, 2008 – the date of enactment of the 2008 Farm Bill – may also apply for the cooperative interstate shipment program provided that on the date three years from the effective date of the final rule for the Program these establishments, on average, employee 25 employees or fewer. If not, they will be deselected from the Program. Proposed Rule §§ 332.3(a)(2) and 381.513(a)(2). This restriction raises the questions of how FSIS should determine the average number of employees.

The Proposed Rule provides the following standards for determining the average number of employees. These comments will address each standard in turn based on the overarching rationale that the intent of the restriction on the number of employees is to ensure that managers in these small and very small meat

poultry processing establishments can provide sufficient training and oversight of employees to ensure their compliance with the food safety standards of the FMIA and the PPIA.

(1) All individuals, both supervisory and non-supervisory, employed by the establishment on a full-time, part-time, or temporary basis are counted when calculating the total number of employees: ***NSAC recommends that only employees engaged with meat and poultry processing be counted for purposes of this Program. Many small-scale processing establishments also have employees engaged to sell meat and poultry and other products directly to customers or to make deliveries. If these employees are not involved with the processing side of the business, they should not be counted in the employee total for purposes of the Program.***

Supervisory employees engaged in processing should be included in the employee count, as should full-time temporary employees and part-time employees, but part-time employees should be counted based on the percent of a full time equivalent of a 40-hour week. For example an employee who works 4 hours per day for five days during a week should be counted as 0.5 FTE employee.

(2) All individuals employed by the establishment from a temporary employment agency, a professional employee organization, or leasing concern are counted when calculating the total number of employees: ***As indicated above NSAC recommends that only individuals in these categories engaged in processing should be included in the calculation of employees for purposes of this Program.***

(3) The average number of employees is calculated for each of the pay periods for the preceding 12 calendar months: ***NSAC approves of this standard which will even out seasonal highs and lows in overall number of employees during a year.***

(4) Part-time and temporary employees are counted the same as full-time employees: ***NSAC agrees that full-time temporary employees be counted as full-time employees. But further recommends that part-time employees be counted based on the percent of a FTE that they work, e.g. two half-day employees would be counted the same as one fulltime employee. In some rural areas, especially with small and very small establishments, meat processing has a seasonal component and provides part-time seasonal work for rural residents. During each part of the day, the establishment may have only 25 employees on site, even if the total number of part-time and fulltime employees employed overall during the day exceeds 25.***

(5) If the establishment has not been in business for 12 months, the average number of employees is calculated for each of the pay periods in which the establishment has been in business: ***NSAC approves of this method for dealing with new establishments.***

(6) Volunteers who receive no compensation are not considered employees: ***NSAC disagrees with this standard on the grounds that as a food safety measure, uncompensated volunteers who are engaged in meat or poultry product processing should be considered employees for the purpose of the Program.***

(7) The total number of employees can never exceed 35 individuals at any given time, regardless of the average number of employees: ***NSAC agrees that this is a reasonable upper limit if our recommendations on the other standards are applied.***

4. Establishment of Technical Assistance Division in FSIS for very small or certain small establishments.

Sections 332.12 and 381.522 of the Proposed Rule limit the purpose of 2008 Farm Bill transition grants provided to state agencies to reimbursement of the costs of selected establishments to train one individual in the seven HACCP principles for meat or poultry processing.

NSAC agrees that HACCP training is an appropriate use of transition grants but disagree that it should be the only use of these transition grants. For example, transition grants could be used in some states for relevant state and local agencies to convene workshops and listening sessions on the application of local, state and federal food safety regulations on small and very small processing establishments. These workshops could generate good approaches to improving and streamlining food safety regulations, including HACCP requirements, to ensure that they are appropriate for achieving food safety standards in smaller facilities. FSIS should undertake a thorough review of its HACCP plan requirements and other measures as applied to small and very small establishments to ensure that the agency is not raising unnecessary, inappropriate barriers to an increase in the number of smaller scale processing facilities that can help small and mid-sized livestock and poultry producers increase their markets.

5. FSIS Technical Assistance Division for very small or certain small establishments.

The 2008 Farm Bill directed the USDA Secretary to establish a technical assistance division in FSIS to coordinate with USDA initiatives to provide outreach, education and training to very small or certain small establishments and to provide grants to appropriate state agencies to provide outreach, technical assistance, education and training to very small or certain small establishments. NSAC is aware that FSIS has established a website for this new Division and has conducted workshops and webinars on various issues. NSAC also recommends that FSIS outreach include periodic visits to different regions of the country to hear from farmers, ranchers and small and very small processing establishments about FSIS regulations and ideas on streamlining processes for small and very small processing establishments.

Food and Water Watch has provided a number of sound recommendations for the technical assistance in its publication *Where's the Local Beef?* NSAC endorses many of these recommendations including:

- The establishment of a USDA advisory committee on small plants. The committee should evaluate and recommend improvements in the USDA's small plant outreach program.
- The establishment of a USDA small plant ombudsman office within FSIS, with staff resources to answer questions from small plant operators.
- The production by FSIS of an annual report on the impact of agency directives, notices, and other policies on small plants (including an estimate of the amount of hours required for small plants to fulfill recordkeeping and expenses incurred to comply with new rules). This report should be open for public comment.

6. New provision in the Final Rule to require training for small and very small meat and poultry processing establishments on humane transportation, handling and slaughter of livestock and poultry.

NSAC appreciated the prompt response of USDA and the Vermont Department of Agriculture to suspend operations and open an immediate investigation of a Vermont slaughter plant in response to videos of the shocking abuse of dairy calves at the plant. This dramatic instance illustrates the need for increased

education and outreach to all meat and poultry processors, including small and very small establishment operators, about humane methods for handling and slaughtering livestock and poultry. FSIS should include this training in addition to HACCP requirements as training “as usual” for all small and very small establishments. In many cases, humane techniques can also reduce injuries to employees and ultimately costs to the establishments. In addition, many small and mid-sized livestock and poultry producers take care to apply humane methods in raising the animals in their care. Their reputations and businesses can be harmed when processors are not provided with sound information on humane methods for handling and slaughtering animals. FSIS should review its requirements for the humane transportation, handling and slaughter of livestock and poultry.

NATIONAL SUSTAINABLE AGRICULTURE COALITION MEMBERS

(November 16, 2009)

Agriculture and Land Based Training Association (ALBA) Salinas, CA

Alternative Energy Resources Organization (AERO) Helena, MT

California Certified Organic Farmers (CCOF) Santa Cruz, CA

California Farmlink Sebastapol, CA

C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture), Hereford, TX (806) 364-4445

Center for Rural Affairs Lyons, NE

Clagett Farm/Chesapeake Bay Foundation, Upper Marlboro, MD

Community Alliance with Family Farmers Davis, CA

Dakota Rural Action Brookings, SD

Delta Land and Community, Inc. Almyra, AR

Ecological Farming Association Watsonville, CA

Flats Mentor Farm Lancaster, MA

Florida Organic Growers Gainesville, FL

Food Animal Concerns Trust Chicago, IL

Georgia Organics Atlanta, GA

Grassworks Wausau, WI

Illinois Stewardship Alliance Rochester, IL

Iowa Natural Heritage Foundation Des Moines, IA

Island Grown Initiative Vineyard Haven, MA

Izaak Walton League St. Paul, MN

Kansas Rural Center Whiting, KS

Kerr Center for Sustainable Agriculture Poteau, OK

Land Stewardship Project White Bear Lake, MN

Michael Fields Agricultural Institute East Troy, WI

Michigan Integrated Food and Farming System East Lansing, MI

Michigan Organic Food and Farm Alliance Lansing, MI

Midwest Organic and Sustainable Education Service (MOSES) Spring Valley, WI

National Catholic Rural Life Conference (NCRLC) Des Moines, IA

National Center for Appropriate Technology Butte, MT; Fayetteville, AR; Davis, CA

Northeast Organic Dairy Producers Alliance (NODPA) Deerfield, MA

Northern Plains Sustainable Agriculture Society Fullerton, ND

Ohio Ecological Food and Farm Association (OEFFA) Columbus, OH

Organic Farming Research Foundation (OFRF) Santa Cruz, CA

Rural Advancement Foundation International, USA (RAFI-USA) Pittsboro, NC

Sierra Club Agriculture Committee

Union of Concerned Scientists Food and Environment Program, Washington, DC

Virginia Association for Biological Farming Lexington, VA

Wild Farm Alliance Watsonville, CA