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Docket Clerk,
U.S. Department of Agriculture, FSIS
Room 2-2127 George Washington Carver Center
5601 Sunnyside Ave.
Beltsville, MD 20705

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

The American Association of Meat Processors (AAMP) appreciates the opportunity to comment on Docket No. FSIS-2008-0039, "Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products"

AAMP is an international organization whose members include meat and poultry processors, slaughterers, caterers, food service companies, wholesalers, retailers, suppliers, and consultants to the meat and poultry industry. There are 32 state, regional, and provincial associations of meat processors that are also affiliated with AAMP. The majority of our members are small and very small businesses, with most of them being family-owned and operated. While small and very small meat processors represent about 5% of the meat production volume in the U.S., our members represent about 95% of the total number of meat processing businesses.

Because our Association represents mainly small and very small meat processors, many of which are state-inspected establishments, this proposed rule has the potential to impact a number of our members. The issue of interstate shipment of state-inspected meat and poultry products is one that has been of interest to AAMP for nearly 30 years. While we are glad that FSIS is now responsible for implementing an interstate shipment program for state-inspected establishments, AAMP has considerable concern over several elements of the proposed rule.

"Identical to" Instead of "Equal to" Federal Regulations

The first concern is related to the determination that establishments must be "identical to" instead of "equal to" federal regulations. The farm bill states that an eligible establishment must be "in compliance with" the state inspection program and the Federal Meat Inspection Act (FMIA). FSIS has chosen to interpret this as "identical to," despite the original intention of the legislation. The Agency must consider fully the implications this determination has on state meat and poultry inspection programs, specifically as it relates to the administrative aspects of their programs. Not only will this definition effect the establishments seeking to participate in the program, but it also has an impact on the states that are helping to administer the program. For example, this could affect overtime rates or staffing determinations that differ from the state and federal levels.

The state must also be able to demonstrate that they can provide necessary inspection services to selected establishments within the new interstate shipment program that are "the same as" instead of "equal to" like the traditional cooperative state agreements. Thus, to qualify for a cooperative interstate shipment program under this

proposal, states will need to demonstrate, among other things, that they have the authority under state law to provide the same inspection services to selected establishments in the state as the inspection services that FSIS provides to official federal establishments. States will also need to demonstrate that they have staffing sufficient to conduct the same inspection activities in selected establishments that FSIS conducts in federal establishments, and that designated personnel have been properly trained in the federal inspection methodology. The Agency also expects states to demonstrate that they can provide the necessary equipment for state personnel to provide the same inspection services to selected establishments that FSIS provides to official federal establishments, including computers and supplies for collecting product samples. States will also need to demonstrate available laboratory services to analyze the samples. Establishments in the interstate shipment program will be subject to the same number and type of regulatory product samples that are collected under FSIS' sampling program. Again, there may potentially be a learning curve here for these requirements, and it will be necessary for the Agency to provide guidance to state inspection program personnel, or the state inspected facilities themselves to ensure that all parties involved in the program not only understand the requirements, but also get assistance in meeting those requirements if needed.

Employee Limitations

Under the proposed rule, eligible establishments must employ on average, less than 25 employees. The farm bill states "the term average should be interpreted to provide some flexibility to these selected establishments that require seasonal employees for certain parts of the year." AAMP encourages the Agency to allow for as much flexibility here as possible because small and very small establishments often have fluctuation in their employees during certain parts of the year. Whether extra help is hired during deer season or for busy times in their retail shops around holidays, small meat processors employee numbers often fluctuate throughout the year. We do not think that part-time or temporary employees should be counted the same as full-time employees, and this is especially true for part-time labor that can be attributed a certain seasonal need. This would also benefit establishments by not jeopardizing their status when they are close to reaching the maximum number of 35 individuals due to part-time help.

When determining how employees should be counted for the purposes of implementing this regulation, FSIS should also consider that in many small facilities, there are a variety of personnel that work within those establishments. For example, if the facility has a retail area, there may be several employees that handle retail sales of grocery items in addition to meat items. The establishment may also have a bakery or specialty wine section of their store, where the employees in those areas have nothing to do with the meat processing component of the business. It seems reasonable to request that employees who are not performing duties related to the meat processing end of the business should not be counted equal to other employees who are responsible for meat processing.

The Agency may also want to consider basing the "value" associated with the employee on the workers compensation code that the employer designates. This association could give FSIS a simple way of determining which workers are truly associated with the meat processing part of the business and which employees offer other roles for the company like administrative workers or retail clerks.

Program Adoption

Once the final rule is published, those establishments eligible for the cooperative interstate shipment program will be required to apply for selection through the state inspection program in their state. However, state programs must first request the cooperative interstate shipment program within their state and go through the necessary steps to set the program up and make it available. Thus, the participation in the program will hinge on whether the state is willing and able to provide the necessary inspection services to establishments interested in the new program. AAMP

anticipates that it will take considerable conversations with the nearest FSIS District Office when understanding the application process and requirements. We encourage FSIS to work with the state inspection program personnel in a manner that easily facilitates that transitional period in order to ensure the new program begins with a welcoming relationship. There will likely be questions and challenges that are brought to light during the first years of the program, and we hope that the Agency vows to work agreeably through these challenges in order to foster relationships that will benefit state-inspected establishments interested in the new program.

Outreach

AAMP would like to know who is ultimately responsible for providing training and resources to small and very small establishments when making modifications within their establishments to fully comply with the requirements of this program. Will it be FSIS' responsibility through the FSIS District Office and Selected Establishment Coordinator (SEC), FSIS's Office of Outreach Employee Education and Training (OOEET), or the state inspection programs themselves? AAMP encourages OOEET to work with other federal agencies to pursue grants and funding for establishments who want to participate in the interstate shipment program, but need additional finances to make modifications to their facilities. Based on estimates from FSIS within the proposed rule, the transition alone for facilities to utilize this program could be significant and could deter establishments from participating. It is important for FSIS to assist plants in finding grants or low-interest loans that may benefit those interested in the program.

While we understand the availability of "transition grants" to help transitioning establishments get additional training on HACCP and SSOPs, it is likely that additional support will be needed. Some establishments may already have gone through HACCP training. If this is the case, are establishments eligible to attend advanced HACCP training courses, or send another employee for training in basic HACCP and SSOPs? Does the grant include all costs associated with the training from travel costs to the cost of registration or materials? We would like to see more specific details outlined here.

FSIS Oversight

The proposed rule indicates that the SEC will provide oversight to the state inspection personnel designated to work with the interstate shipment program. Who will provide oversight to the SEC? How will FSIS ensure that state meat inspection program officials are indeed able to work with the SECs to fulfill the obligations of the cooperative agreement? Federal oversight of state personnel may cause a whole new set of problems for both entities related to balancing power and responsibilities. AAMP believes that FSIS must work directly with the state inspection program officials to determine courses of action for communication in order to foster a relationship that supports the new program. The plan of action for communication and oversight should be consistent across all districts and from one SEC to another.

The Agency asked for comments on how to determine the frequency of visits by the SEC to establishments involved in the program. We understand that the frequency of visits and oversight activities will reflect upon the type of operations conducted within the establishments, as well as the production processes occurring in those facilities. Perhaps every six months is appropriate and would serve as an amount of time that would allow the SEC to cover their assigned plants, and also conduct the day-to-day operations of managing the program for their region. Should a problem arise, the visitation could become more frequent. The SECs could also rely on state inspection personnel to alert them if additional visitation is necessary. Utilizing other designated FSIS personnel to visit establishments on behalf of the SEC, makes sense from a practical and financial standpoint. It is simply a better way to manage the funds spent, while getting the same benefit and upholding the requirements of the regulation. Additionally, FSIS inspection personnel who are already out in the field could conduct visitations to check compliance on a more

frequent basis then sending the SEC into the field. We also respectfully request that FSIS does not impose any stricter requirements on the establishments under these programs than those under federal inspection in order to provide a fair working environment for participants. The idea is to maintain consistency for all involved.

Will establishments participating in this program get expedited labels approved in order to begin working under the program's provisions more quickly? Will these labels go through the approval process by the FSIS Labeling Development Department? It would be disappointing to see the approval process bog down the progression of plants who wish to ship across state lines. Also, how will the appeals process for non-compliances work within the new program? What will the chain-of-command be for establishments wishing to appeal non-compliances or other inspection decisions? FSIS must ensure that they outline this explicitly for all participants to understand the process and their rights.

Multiple Inspection Services within a Single Establishment

It is our understanding that establishments selected for the interstate shipment program will be able to produce some of their products under the new program, and produce other products within their facility under state inspection, retail-exemption, or custom-exemption, if they so choose. Please clarify this option within the proposed rule and be sure to specify during training of inspection personnel that this procedure is acceptable. AAMP members have indicated that they would prefer to have the ability operate in this manner. Additionally, AAMP would like clarification on another similar issue. Certain states through their state laws offer bison inspections at no charge by state inspection personnel. Are establishments in the states that offer this able to designate their bison processing under state inspection in order to receive this benefit? The way we understand it currently, establishments would be able to continue to have this option under state inspection while also conducting operations under the new program within their facility. Does this have any conflict with the "identical to" determination described within the rule?

Deselection of Establishments

Based on the proposed rule, if it is determined that a selected establishment is not operating in a manner that is consistent with the regulations, appropriate enforcement actions from FSIS will result. There needs to be more specific information made available about what will constitute a plant to be deselected. Would a non-compliance report (NR) or a Notice of Intended Enforcement (NOIE) be enough to get deselected? Both NRs and NOIEs can have a subjective nature to them depending on the inspection program personnel writing them. We encourage FSIS and state inspection program directors to work with establishments that have non-compliances or enforcement actions against them to help those establishments come back into compliance in order to successfully continue within the program. AAMP also urges FSIS to provide proper oversight and training to their SECs to ensure that the standards which are set for non-compliances and enforcement actions are applied equally across the country.

We also are concerned about the option that forces establishments who are deselected to become federally inspected, instead of allowing them to take corrective actions and go back to state inspection or stay in the same program. This could force establishments who choose not to be regulated by the federal government to go out of business unnecessarily. That same concern can be extended to those establishments who opt to remove themselves from the program voluntarily instead of being deselected due to a noncompliance. It does not seem sensible for establishments to remove themselves from the program for internal business reasons to be forced to become federally inspected establishments. They may have opted to change status because the customer that they were producing that product for under the program has ceased their business relationship. Additionally, it could potentially affect state inspection program employees who may need to be fired if there are fewer plants under state inspection as a result of the deselections.

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While we are not in favor of establishments jumping in and out of the program frequently, but certainly limiting options for admittance into the program may limit overall the participation within the program because plants fear they would end up stuck at some point transitioning to federal inspection. AAMP would like to see FSIS associate a time frame with this, instead of closing that door forever for an establishment that may be a better candidate at another time. The Agency could consider implementing an open enrollment period, similar to how health insurance benefits programs operate. During a certain time frame, establishments could get in or out of the interstate shipment program without penalties so long as they qualified for the program. FSIS could limit the number of times that establishments were able to make such changes, but at least there would be that option for state inspected establishments to take advantage of the program when it worked best for their business. Thus, the regulation would truly serve as a benefit to small and very small state inspected establishments.

State Inspection Program Involvement

AAMP was made aware that state inspection program directors have expressed interested in creating an advisory committee for this program, and that request was deemed not practical due to the regulatory constraints that do not fit the time-line for implementing this program. FSIS must keep open lines of communication with the state inspection program directors in order to solicit feedback and provide recommendations for implementation. Their input will be instrumental to aiding FSIS with finalizing the proposed rule since they know the state inspection process so well. Creating an environment where state regulators and federal regulators work together consistently will provide the stability this program needs to be successful for all involved.

Conclusion

AAMP appreciates this opportunity to comment on the proposed rule, Docket No. FSIS-2008-0039, "Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products." The Association also encourages FSIS to continue the rulemaking process by soliciting comments from the public through public meetings. This issue has been one of interest to our Association for a number of years and we hope FSIS takes considerable time in finalizing and implementing the rule, which has the potential to benefit many state-inspected meat and poultry facilities across the country.

Thank you for your time and consideration.

Sincerely,



Andrea H. Brown.
AAMP Director of Legislative and Regulatory Affairs

cc: Jay B. Wenthers, Ph.D., AAMP Executive Director
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