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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"

Dear USDA FSIS,

We submit these comments as co-coordinators of the Niche Meat Processor Assistance Network (NMPAN), a national network of cooperative extension professionals and other technical assistance providers working with small and very small meat processors in the United States. NMPAN organized in 2007 and presently has affiliates in over 30 states.

Overall we are very excited about the possibility for interstate shipment of state-inspected meat products and feel that regulations allowing such would have a very positive impact on rural development and agricultural opportunities. However, we feel there are some critical deficiencies in the proposed rule that need to be rectified.

"in compliance with" Statute vs. "the same as" Regulations

Section 11050 of the 2008 Farm Bill defines an "Eligible Establishment" as one which is "in compliance with" 1) the state inspection program of the state in which the plant is located and 2) the Federal Meat Inspection Act (FMIA) and/or the Poultry Products Inspection Act (PPIA). In the proposed rule, FSIS has chosen to interpret this statutory language to mean that state inspection programs must conduct inspections under the proposed program in a manner "the same as" the USDA-FSIS inspections program.

Many state inspection programs have already adopted the federal regulations associated with the FMIA and PPIA. FSIS evaluations have repeatedly shown that such 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" FSIS, due to their smaller staff size and other contextual administrative aspects. The interpretation requiring state inspection programs to operate in a manner "the same as" FSIS is unnecessarily burdensome, will 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.

Select Establishment Coordinator (SEC) Oversight of State Inspection Program Staff

The proposed rule outlines an overly burdensome federal oversight process for the involved state programs; this excessive level of bureaucracy is unnecessary to assure regulatory compliance.

State meat and poultry inspection programs operating under cooperative agreements with USDA FSIS on an "at least equal to" basis, are currently evaluated annually through self-assessment with review by FSIS, and every 3 years through on-site evaluation by FSIS. This evaluation methodology has proven effective for assuring that state programs are in compliance with federal requirements. The recent elimination of a cooperative agreement with the state of New Mexico clearly illustrated that such evaluations have real "teeth." Whether this evaluation process is done to assure "at least equal to" or "identical to" does not matter: FSIS should consider using this evaluation method, to the extent allowable by statute, for this new program.

The Federal Register notice on the proposed interstate shipment rule, while stating that all state inspectors would report to state personnel, also states in regards to proposed §§332.7 and 381.517:

> To verify that designated personnel are providing inspection services in compliance with the Acts, the SEC for the establishment, in coordination with the State, will verify that the designated personnel are correctly applying Federal inspection methodology, making decisions based upon the correct application of this methodology, accurately documenting their findings, and, when authorized to do so, implementing enforcement actions…. (Federal Register Page 47655)

As proposed, the rule gives de facto constant regulatory oversight authority to the Select Establishment Coordinator (SEC), thus giving state inspectors working in select establishments two bosses. This chain of command will create confusion and needless redundancy. The legislation authorizing this rule in the Farm Bill requires that the SEC file quarterly reports. For the SEC to supervise the activities of state inspectors more often than once a quarter would seem overly burdensome and ineffective. (In fact, more than twice a year seems overly burdensome and unnecessary to assure food safety, but we recognize this may be beyond FSIS control.) In speaking with state inspection staff in many states, we have heard clearly that this excessive bureaucracy is an extremely troubling part of the proposed rule.

Counting of Employees

The proposed rule would count seasonal and part-time employees towards the statutory 25 employees limit for this program. Many small plants in small towns hire part-time employees who work as little as a few hours a week. To count such employees as full time would contradict and undercut the rural development intentions of the legislation.

We suggest that part-time employees be counted as a percentage of full time equivalency (FTE). For example, someone working an average of 4 hours per week, or 10% FTE, should be counted as one-tenth of an employee for the purposes of this rule. We additionally suggest seasonal employees be counted according to the FTE they work over 1 year. For example, someone working full-time for 3 months out of the whole calendar year would be 25% FTE for the year, and should be counted as one-quarter of an employee for the purposes of this rule. Finally, employees who are not at all involved with slaughter or processing should not be counted as part of the 25. For example, a butcher shop may have a small retail counter, with employees who only work that counter.

Deselection of Establishments
We suggest that plants that voluntarily choose to deselect themselves from the proposed program, for any business reason, should be able to re-enroll in the program at a later date. We understand FSIS's concern that plants might try to switch in and out of the proposed program repeatedly. Accordingly, we suggest that requiring a 1-year waiting period after voluntary deselection before re-application would discourage abuse while allowing flexibility for market changes.

In conclusion we strongly encourage you to work very closely with state inspection programs to make this proposed rule as workable as possible for them. Without state program adoption of the new cooperative shipment program, no plants can sign up, and the intent of this important piece of legislation will be lost.

Thank you very much for the opportunity to provide comments on this rule.

Sincerely,

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