



THE DEPUTY SECRETARY OF AGRICULTURE
WASHINGTON, D. C.
20250-0100

Dear NASDA Members,

In the meetings that I have held with NASDA and representatives of several States, I promised that I would give notice when the proposed rule on interstate shipment of certain State inspected products is about to publish in the Federal Register. I am happy to report that the proposal was placed on file for public display at the Office of the Federal Register on Monday, September 14 and will publish on Wednesday, September 16. The Department of Agriculture is giving the public 60 days to submit comments on the proposed rule.

I hope that the interstate shipment program will facilitate greater partnering and coordination between State Departments of Agriculture and USDA. Additionally, this week I am launching a new USDA initiative entitled Know Your Farmer, Know Your Food, an effort dedicated to building stronger local and regional food systems. It is my hope that this new program will be a significant means to achieving this goal.

But of course, we need your input on the proposal as we continue to fine-tune our work. Because of your interest in the new interstate shipment program, I am writing to ensure that you are aware of certain aspects of the proposed rule, particularly those that were discussed in our meetings. I would also like to provide an explanation of why the proposed rule looks the way that it does.

General requirements in the proposed rule

As you are aware, section 11015 of the Food, Conservation, and Energy Act of 2008 (also referred to as the 2008 Farm Bill) establishes a new cooperative inspection program under which certain State-inspected establishments will be eligible to ship meat and poultry products in interstate commerce. Consistent with this law, the cooperative interstate shipment program established in the proposed regulations will complement the existing State meat and poultry products inspection (MPI) program by allowing certain State-inspected plants to ship meat and poultry products in interstate commerce. To qualify for selection into the program, the proposed regulations require that State-inspected establishments employ, on average, 25 or fewer employees, be in compliance with all requirements under the State inspection program, and be in compliance with all Federal requirements under the Federal Meat Inspection Act (FMIA) or the Poultry Products Inspection Act (PPIA) (the Acts) and their implementing regulations.

The proposed regulations require that inspection services for establishments selected for the program be provided by designated State personnel that have been trained in the

enforcement of the FMIA and PPIA and their implementing regulations. The proposed regulations provide that all meat and poultry products that have been inspected and passed by designated State personnel must bear a Federal mark of inspection. Thus, the new cooperative interstate shipment program established in the proposed regulations will be a State inspection program under which designated State personnel will enforce Federal food safety standards.

Federal standards for selected establishments

The proposed rule's requirement that establishments selected for the interstate shipment program operate in compliance with all Federal standards, as opposed to State standards that are "at least equal to" those imposed under the Federal Acts, reflects the differences in the statutory standards for the State MPI program as opposed to the new interstate shipment program. As you are aware, under the Acts, State MPI programs are required to operate in a manner and with authorities that "are at least equal to" the Federal standards. "At least equal to" means the State standards must be at least as effective, but not necessarily identical, to Federal standards.

In contrast, the 2008 Farm Bill provides that to become eligible for selection into a cooperative interstate shipment, a State-inspected establishment must be in compliance with all requirements under the Federal Acts. Therefore, as required by law, under the proposed regulations, State inspected establishments that have adopted measures that are "equal to" but not the same as Federal standards will need to implement measures that are identical to those required under the Federal Acts in order to become eligible for selection into the cooperative interstate shipment program. Otherwise they will not qualify for the program.

Oversight and enforcement

As required by the law, the proposed regulations provide that the Food Safety and Inspection Service (FSIS) will appoint an FSIS employee as the "selected establishment coordinator" (SEC) to provide oversight and enforcement of establishments operating under an interstate shipment program. The SEC is the "State Coordinator" and responsible for visiting each selected establishment in the State on a regular basis to verify that the establishment is operating in a manner consistent with Federal standards, and that designated State personnel are performing inspection in a manner that complies with Federal standards. The number of States assigned to an SEC will likely depend on several factors, including, but not limited to: 1) the number of States and selected establishments that participate in the cooperative interstate shipment program; 2) the location of each selected establishment; 3) the number of State inspection personnel providing inspection services to selected establishments in a State; 4) the complexity of the operations conducted at each selected establishment; and 5) the schedule of operations for each selected establishment.

Consistent with the law, the SEC's duties will be limited to oversight and enforcement of the program. States that participate in the program will continue to be responsible for the

supervision of their designated personnel. To make this clear, the proposed regulations provide that “[i]nspection services for establishments selected for the cooperative interstate shipment program must be provided by designated State personnel, who will be under the direct supervision of a State employee.”

The law provides that if the SEC determines that a selected establishment is in violation of any requirement of the Acts, the SEC must 1) immediately notify the FSIS Administrator and 2) deselect the establishment or suspend inspection at the establishment. To ensure that selected establishments will receive reasonable due process before they can be suspended or deselected from the cooperative interstate shipment program, the proposed regulations state that if the SEC determines that a selected establishment is operating in a manner that is inconsistent with Federal standards, the SEC is authorized to initiate any appropriate enforcement actions provided for in the FSIS Rules of Practices. Such actions include, among others, regulatory control actions, withholding actions, and suspensions. Under the proposed implementing regulations, selected establishments participating in a cooperative interstate shipment program will be subject to the notification and appeal procedures provided in the Rules of Practice.

In addition, the proposed regulations provide that if inspection at a selected establishment is suspended for any of the reasons specified in 9 CFR part 500.3 or 9 CFR 500.4 (the regulations that identify violations that may result in a withholding action or suspension), FSIS will provide an opportunity for the establishment to implement corrective actions and remain in the cooperative interstate shipment program, or the Agency will move to deselect an establishment.

Under the proposed regulations, the Agency’s decision to deselect an establishment will be made on a case-by-case basis and will depend on 1) the noncompliance that led to the suspension; 2) the selected establishments’ compliance history; and 3) the corrective actions proposed by the establishment. The proposed regulations require that a deselected establishment transition to become a Federal establishment as required by law

Voluntary withdrawal from the program

As discussed above, as required by law, the proposed rule requires that establishments that have been deselected from a cooperative interstate shipment program be transitioned to become Federal establishment. The law does not, however, address the situation in which an establishment that is in compliance with the program decides to leave voluntarily because it has stopped distributing its products across State lines. The proposed implementing regulations do not address this situation either.

Nevertheless, FSIS has considered the issue and has tentatively concluded that it would not be inconsistent with the law to allow a selected establishment that is in full compliance with the interstate shipment program to voluntarily leave the program and operate under a State grant of inspection if it no longer ships products in interstate commerce. However, the Agency does have some concerns that if it adopts such a policy, it could become difficult to administer the interstate shipment program, especially

if establishments begin to switch between the State MPI program and the cooperative interstate shipment program. Therefore, FSIS has also tentatively concluded that if selected establishments are allowed to voluntarily leave the cooperative interstate shipment program, once they leave, they should become ineligible to be selected for the program in the future. FSIS is interested in receiving comments on this issue.

Official number/State-of origin

The proposed regulations require that meat and poultry products produced in a selected establishment that have been inspected and passed by designated State personnel bear a Federal mark of inspection that complies with the wording and formatting requirements in the Federal regulations. These regulations require that the Federal inspection legend bear the official number assigned to the establishment. Under the proposed regulations, the official number assigned to a selected establishment is required to contain a suffix, e.g., “SE,” that identifies the establishment as a selected establishment and that identifies the State, e.g., “SETX,” for “selected establishment Texas.” Thus, under the proposed regulations, it will be possible to identify the State-of-origin of a meat or poultry product produced in a selected establishment from the official establishment number.

Operation under both State MPI and cooperative interstate shipment program

The proposed regulations apply to State-inspected establishments that are interested in shipping meat or poultry products in interstate commerce. It is possible, however, that some establishments selected for the program may be interested in continuing to produce certain products under the State MPI program for distribution within the State. FSIS allows establishments with both a Federal grant and State grant of inspection to produce products to operate as both a Federal plant and a State plant provided that there is appropriate separation of time and space between each operation. The Agency expects to apply this policy to selected establishments that would like to produce certain products under the State MPI program. The products produced on the days that the establishment is operating under the State MPI program would continue to bear the State mark of inspection and could be distributed within the State. FSIS welcomes comments from the States on this issue.

Federal contribution for the cooperative interstate shipment program

As required by law, the Federal contribution for inspection services provided by States that enter into a cooperative interstate shipment program under this proposal will be 60 percent of eligible State costs. FSIS will reimburse States for more than 60 percent of their eligible costs if Congress directs it, and provides the money for it, to do so.

Similar to the process for receiving reimbursement under the State MPI program, to receive the Federal contribution for the cooperative interstate shipment program, States will be expected to submit their budgets for the cooperative interstate shipment program

to FSIS for approval prior to receiving Federal funds. FSIS also expects that States will submit a separate justification for any costs related to the cooperative interstate shipment program that were not included in their initial budget request. FSIS will need to approve a State's request for additional funds before the Agency will reimburse the State for not less than 60% of the cost. FSIS has tentatively decided that, for purposes of the proposed rule, eligible State costs will be those costs that a State has justified, and FSIS has approved, as necessary for the State to provide inspection services to selected establishments in the State. In the proposed rule, FSIS requests comments on issues associated with State reimbursement for eligible costs related to inspection of selected establishments.

Rural development opportunities

By allowing certain small and very small State inspected establishments to distribute and sell their products in interstate commerce, the proposed implementing regulations for the new cooperative interstate shipment program provide an opportunity for these establishments to expand the markets for their products. By promoting market expansion, the new interstate shipment program will also provide rural development opportunities for States that provide meat and poultry inspection services to small and very small establishments located in rural areas.

The law requires that FSIS establish a "technical assistance division" to coordinate the initiatives of other USDA agencies to provide "outreach, education, and training to certain small and very small establishments" and to provide "grants to States to provide outreach, technical assistance, education, and training to certain small and very small establishments." FSIS fulfilled this requirement by establishing the Office of Outreach Employee Education and Training (OOEET).

One of OOEET's functions is to work with other USDA agencies, such as the Rural Development Mission Area and the Cooperative State Research, Education, and Extension Service, to ensure that grants administered by these agencies will help provide outreach, technical assistance, education, and training to small and very small establishments. OOEET's involvement in the administration of grants for the benefit of small and very small establishments should help to provide additional opportunities for rural development and market expansion for these establishments. FSIS is interested in comments from the States on the potential rural development and marketing opportunities associated with the new interstate shipment program.

State Advisory Committee

Finally, in addition to discussing some of the substantive provisions in the proposed interstate shipment rule, I would like to respond to your offer to form an advisory committee made up of State officials to inform the development of the implementing regulations.

The Department and FSIS appreciate the States' willingness of to provide recommendations and insights on the implementation of the new interstate shipment program, and the Agency intends to explore any suggestions submitted by the States. However, as you likely know, such an advisory committee would need to be established in accordance with the Federal Advisory Committee Act, which does not accommodate quick turn-around as is needed here. Therefore, I propose that we keep in close communication in two ways. First, I strongly encourage you to provide recommendations on the new interstate shipment program through written comments submitted in response to the proposed interstate shipment rule and at the public meetings that FSIS intends to hold to take comments on the proposal. Additionally, on **Monday, September 28 from 3 to 4 pm** I will host a NASDA call to discuss the proposed rule, the contents of which will be submitted as a supplement to the formal record.

I want to assure you that FSIS will make every effort to hear State concerns and, to the extent that this very prescriptive law allows, consider your suggestions on how best to implement the new program.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen A. Merrigan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kathleen A. Merrigan
Deputy Secretary