

Fighting for the U.S. Cattle Producer!



R-CALF
USA

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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

Via E-Mail: www.regulations.gov

Re: R-CALF USA Comments in Docket No. FSIS-2008-0039: Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products

Dear Sir or Madam:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates the opportunity to submit comments to the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) regarding the proposed rule on Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products published at 74 Fed. Reg. 47648-47669 (Sept. 16, 2009).

R-CALF USA is a non-profit association that represents thousands of U.S. cattle farmers and ranchers in 46 states across the nation. R-CALF USA works to sustain the profitability and viability of the U.S. cattle industry, a vital component of U.S. agriculture. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders and feedlot owners. Various main street businesses are associate members of R-CALF USA.

R-CALF USA strongly supports Section 11015 of the 2008 Farm Bill that authorizes interstate shipment of State-inspected meat and believes such authorization will provide State-inspected meat packing and meat processing establishments an opportunity to expand their current operations by opening new markets in interstate commerce. In turn, the expansion of these State-inspected establishments potentially will enhance competition for cattle farmers and ranchers as they would have more marketing outlets to choose from when marketing their cattle.

In the spirit of assisting FSIS in the successful implementation of Section 11015 of the 2008 Farm Bill, R-CALF USA offers the following comments and suggestions to the proposed rule on Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products (Proposed Rule):

A. The Proposed Rule Should Not Impose Upon the States Requirements that Go Beyond What Congress Deemed Necessary to Allow Interstate Shipment of State-Inspected Meat.

As stated in Section 11015 of the 2008 Farm Bill, Congress intended that state-inspected meat packing and meat processing establishments that are in compliance with their respective State's inspection program and the Federal Meat Inspection Act would be eligible to engage in interstate commerce. However, the Proposed Rule imposes the additional requirement that the inspection services provided by a State must be "the same as" the inspection service under the Federal program.¹ Such a requirement would unnecessarily restrict a State's ability to carry out a time-proven and exemplary State inspection program that a State has customized to fit its unique characteristics, for no other reason than it is not the same as the Federal program. We believe this requirement should be eliminated and that the States should be afforded the maximum amount of discretion and flexibility possible when designing and administering their State inspection programs so as to maintain compliance with the Federal program. Further, by respecting the States' authority to exercise discretion and flexibility in achieving compliance with the Federal program, the public would be better served because a State, due to its limited jurisdictional focus, can be more proactive in responding to emerging food safety challenges that may be local in nature. We further believe that efficiency, innovation, and excellence in achieving food safety goals would be unnecessarily impaired by insisting that all participating States operate their programs the same as the Federal program.

Moreover, the requirement that State inspection programs be "the same as" the inspection services provided under the Federal program would constitute subjecting the States – for which we have the utmost confidence – to a *significantly stricter and less flexible standard* than that imposed on meat packing and meat processing establishments in foreign countries. For example, USDA presently allows meat produced in establishments in under-developed and developing countries to freely enter U.S. commerce provided their inspection programs are only "equivalent to" the inspection programs in the United States. USDA stated:

The United States can no longer require foreign countries wishing to export meat and poultry products to have meat and poultry inspections that are 'at least equal' to those of the United States; instead, foreign inspection systems must be [only] 'equivalent to' domestic inspection systems.²

R-CALF USA strenuously opposes this unsafe, "equivalent to" standard applied to foreign meat packing and meat processing establishments and firmly believes this long-standing, relaxed standard continues to facilitate the importation of substandard and higher-risk meat products into the United States from foreign establishments. While we urge FSIS to initiate rulemaking to strengthen its food inspection program standards for foreign products entering U.S. commerce, there is no justification for discriminating against domestic establishments under

¹ See 74 Fed. Reg., 47652, col. 2.

² 60 Fed. Reg., 38,688.

the jurisdiction of State inspection programs by requiring them to meet far more rigid standards than those imposed on foreign establishments already engaged in interstate commerce.

B. The Proposed Rule Must Afford Protection to Establishments Operating Under a Cooperative State Meat Inspection Program From Enforcement Actions Caused by Contaminations that Originate in Upstream Slaughtering Facilities.

The Proposed Rule is silent on providing establishments operating under a cooperative State meat inspection program with a safe harbor in the event that an adulterant is discovered on a meat product that can be traced back to the establishment, but the actual source of the adulterant is an upstream slaughtering facility and not the establishment itself. Massive meat recalls of late caused by enteric bacteria contamination that originated at the point of slaughter have been traced back only to the meat processing facilities, which were not the originating source of the enteric bacterial contaminant. Nevertheless, these downstream processing facilities have been held liable and have been improperly identified as the source of enteric bacterial contamination because FSIS does not complete a traceback to the slaughtering facility where intestinal material and hides are handled.³

Unless the Proposed Rule includes language to provide a safe harbor to downstream, further processing, non-slaughter, processing plants against enforcement actions resulting from enteric bacterial contamination that they could not possibly have caused (because they do not slaughter and, hence, do not handle intestinal material or hides that harbor enteric bacteria), the Proposed Rule likely would result in forcing fully compliant state-inspection plants to transition to official Federal establishments under the Proposed Rule's deselection provisions found at § 332.10 (b). This result would occur because, if FSIS continues to hold such downstream, further processors accountable for contaminations caused by upstream slaughtering establishments, the Proposed Rule likely would result in enforcement action, i.e., deselection, against the State-inspected establishment.⁴

Based on anecdotal evidence obtained by R-CALF USA, when an inspector collects a ground beef sample for microbial analysis at a USDA lab, the inspector is not allowed to document the identity of the establishment that slaughtered the live animal from which the sampled meat product was derived on the day the sample was taken. If this is true, then the liability for any adulterated meat product would fall solely on the downstream meat processor who acquired the contaminated meat from an upstream slaughtering facility. R-CALF USA requests that FSIS more fully explain its traceback procedure that was only briefly discussed in the Proposed Rule⁵ and specifically explain whether FSIS would require all samples subject to

³ See, e.g., Audit Report, Food Safety and Inspection Service: Oversight of Production Process and Recall at ConAgra Plant (Establishment 969), U.S. Department of Agriculture, Office of Inspector General, Great Plains Region, Report No. 24601-2-KC, Sept. 2003, at iv ("FSIS policies added to the inefficiency of the recall by impeding the inspectors' ability to trace a contaminant from the grinder's establishment back to the supplier . . . FSIS policy held grinders accountable for ensuring that the product from their suppliers was wholesome."); see also, *id.*, at 10 ("Although animal feces on product was repeatedly observed during production at ConAgra, and although FSIS notified ConAgra of these repeated violations, FSIS took no enforcement action.").

⁴ *Ibid.*

⁵ See 74 Fed. Reg., 47657, col. 2.

microbial testing under the Proposed Rule to be accompanied with documentation that identifies not only the downstream processor where the sample was collected, but also, the upstream slaughtering establishment that supplied the meat to the downstream processor.

Also, and because State-inspected establishments could be held liable for problems resulting from the current definition of an adulterant, R-CALF USA requests that FSIS explain whether, under the Proposed Rule, *E. coli* would be considered an adulterant if detected on a muscle cut of meat. Or, is *E. coli* only to be considered an adulterant if it is detected in a ground beef sample? If only the latter is considered an adulterant then, again, the Proposed Rule likely would result in forcing fully compliant State-inspected plants to transition to official Federal establishments because the potential source of a contaminant that could bring about deselection enforcement would be the State-inspected establishment's upstream supplier, over which the State-inspected establishment would have no control.

C. The Proposed Rule Should Not Facilitate the Involuntary Transition of State-Inspected Establishments to Official Federal Establishments.

The Proposed Rule should function to assist State-inspected establishments to engage in interstate commerce while they remain under the jurisdiction of their respective State-inspection programs. However, the Proposed Rule contains two criteria that would prematurely jettison State-inspected establishments from their respective State-inspection programs. The first of these criteria is the manner by which the Proposed Rule would calculate the number of maximum employees an establishment could maintain while operating under a State's jurisdiction. R-CALF USA believes that State-inspected establishments should be afforded the maximum flexibility possible under the statute. However, rather than to calculate the maximum number of employees based on a full-time equivalent standard, the Proposed Rule proposes to count each employee, whether part-time, temporary, or full-time, as if he or she was a full-time employee. At a minimum, R-CALF USA believes the number of employees should be calculated using a full-time equivalent standard, meaning there would be one employee for each 2,080 hours worked during the year. For example, an employee that worked only 1,040 hours annually should be considered only one-half of an employee, one working only 520 hours annually should be considered only one-quarter of an employee, and so on. This methodology would provide State-inspected establishments with greater flexibility in deciding when, and if, they would choose to transition to become an establishment under the official Federal program. And, establishments that are unfamiliar with interstate commerce would have more time to experiment in their new-found market before deciding to transition away from State jurisdiction.

The second criteria that could cause an involuntary transition away from State jurisdiction is the prohibition against reverting back to State jurisdiction after an establishment has transitioned to become an official establishment.⁶ It is not inconceivable that a State-inspected establishment could quickly exceed its employee-based eligibility threshold, forcing it to transition to an official establishment, only to later discover that it does not desire to maintain the larger operation. In such case, provided employee numbers are reduced below the threshold,

⁶ See 74 Fed. Reg., 47665, col. 1 (§ 332.3 (c) (6)).

the establishment should not be barred from reverting back to State jurisdiction. If FSIS is concerned that establishments might find it advantageous to periodically switch from under one jurisdiction to under another, the agency could establish a reasonable time period, such as one-year, before an establishment could revert back to a State's jurisdiction after it had transitioned to become an official establishment.

D. The FSIS Should Accord Considerable Weight to Comments Submitted by States that have Operated Highly Successful Inspection Programs and State-Inspected Establishments that Likewise have Exemplary Food Safety Records.

The mounting number of massive meat recalls is eroding consumer confidence in the safety of the U.S. beef supply and threatening the viability of the U.S. cattle industry. These recalls demonstrate that FSIS' current approach to meat safety inspection is fundamentally unsound. At the core of FSIS' current approach is the Hazard Analysis and Critical Control Points (HACCP) system. The HACCP approach has replaced direct state and federal inspection, oversight and enforcement with essentially an honor system that presumes food safety practices are consistent with a company's written intentions to practice safe-food procedures.⁷ R-CALF USA believes that FSIS' continued reliance on the HACCP system as the cornerstone of its meat inspection strategy – a system now proven to produce fatal food – would be irresponsible and self-defeating.

R-CALF USA views this FSIS rulemaking as the perfect opportunity to encourage more State involvement in addressing our nation's food safety problem. We encourage FSIS to accord considerable weight to comments submitted by States with exemplary food safety inspection histories and State-inspected establishments that likewise have exemplary histories when finalizing the Proposed Rule. In addition, we encourage FSIS to grant to the States the greatest degree of latitude, discretion, and flexibility possible under the statute as this will encourage efficiencies, innovation, and excellence not otherwise possible if FSIS attempts to implement its cooperative inspection programs under a command and control model.

Conclusion

R-CALF USA appreciates this opportunity to submit its comments, suggestions and questions to FSIS and we look forward to working with the agency to help ensure the successful implementation of the cooperative inspection programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard", written in a cursive style.

Bill Bullard
CEO

⁷ See, e.g., 61 Federal Register, at 38,806 *et seq.*