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


The Center for Science in the Public Interest (CSPI) appreciates this opportunity to comment on the Food Safety Inspection Service’s (FSIS) proposed rule establishing the cooperative interstate shipment program [Docket No. FSIS-2008-0039, Sept. 16, 2009]. CSPI is a non-profit consumer advocacy and education organization that focuses largely on food safety and nutrition issues. It is supported principally by the more than 950,000 subscribers to its Nutrition Action Healthletter and by foundation grants.

In general, CSPI supports federal/state cooperative programs which, with proper oversight, can leverage state resources to improve the safety of food shipped in interstate commerce. The cooperative interstate shipment program builds on existing state inspection programs and includes important enhancements that can lead to stronger state inspection programs.

I. Background and Reason for Action.

Congress required the Department of Agriculture (USDA) to establish the cooperative interstate shipment program in section 11015 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). The program permits selected meat and poultry establishments to ship state inspected products in interstate commerce. Criteria for participating in the program include that meat or poultry establishments covered by the law may have no more than 25 employees, must be located in a state that has a state inspection program, and be selected by the Secretary of Agriculture for participation in the program. Once selected, an establishment is inspected to USDA standards by USDA trained state officials. An establishment participating in the program may mark approved meat or poultry as USDA inspected and sell it in interstate commerce.

Organizations such as Consumer Federation of America and CSPI fought efforts to permit interstate shipment of state inspected meat because of concern that an improperly structured program would allow unsafe product to reach consumers. Supporters of interstate shipment of state inspected meat argued the change would promote small business and was a
matter of fairness. The language eventually adopted in section 11015 represents a compromise agreed to by the stakeholders.1

While CSPI joined in supporting the compromise language, we continue to believe that without strong federal oversight of this program it will fail to protect consumers. With that concern noted, we offer the following comments:

II. Comments.

A. FSIS Should Codify Reimbursement Requirements/Set Requirement for Expenditure of Funds Within Same Fiscal Year as Disbursement.

FSIS asked for comment on whether it should codify the definition and requirements for states to receive reimbursement of eligible costs. CSPI believes such a codification would be beneficial. In addition to providing states with consistent guidance on the level of reimbursement and requirements for receiving payment, codification would provide guidance to FSIS staff. This would prevent ad hoc interpretations that may over time result in relaxed or inequitable reimbursement policies being implemented.

B. Average Employee Calculations Should Account for Seasonal or Slow Periods.

The Agency asked for comments on its proposed standards for determining an establishment’s average number of employees. CSPI believes the decision to count part-time and temporary employees the same as full-time employees is correct. Many of the establishments that are covered by this program may be seasonal and such cyclical employment may not be captured appropriately if the Agency fails to count part-time and temporary employees.

C. Visits Should be No Less Frequent Than Quarterly and Never Coordinated With State Inspector.

FSIS asked for comment on the inspection frequency with which selected establishment coordinator (SEC) should visit establishments participating in the program. Since the SEC is to file quarterly reports (§332.8) inspections should occur no less frequently than quarterly. This could be accomplished by modifying §§ 332.7 and 381.517 of the proposed regulation to read that the SEC will visit, “each selected establishment in the State on a regular basis, but no less frequently than quarterly, to verify that the establishment is operating in a manner that is consistent with the Act.” The regulation should also specify that inspections occur at different times and be unannounced. Inspections should not become predictable or establishment workers may shirk safety between inspections. The SEC also should not coordinate the inspection schedule with the state or the establishment to be visited. Instead, inspections by the SEC or a designee should be unannounced and should include observations of the establishments as well as the performance of state inspectors.

1 Letter to Senators Tom Harkin and Saxby Chambliss from National Farmers Union, Consumer Federation of America, National Association of State Departments of Agriculture, American Federation of Government Employees, Food & Water Watch, Center for Science in the Public Interest, National Consumers League, Center for Foodborne Illness Research and Prevention, Government Accountability Project, and United Food and Commercial Workers, Oct. 23, 2007.
III. Conclusion.

The regulation as drafted appears to follow the direction provided in section 11015 of Pub. L. 110-246. However, regulatory language is only as good as the enforcement that backs it up. FSIS must ensure there is adequate oversight to ensure the program operates as intended to prevent interstate movement of contaminated meat and poultry. The appropriate level of oversight is best obtained by ensuring that all parties have clear instruction on their responsibilities in the regulation and through practices that ensure oversight inspections are frequent and unannounced. We further believe the Agency has correctly chosen to count all paid employees, whether full-time, part-time or temporary, in determining the eligibility of an establishment to participate in the program.

Respectfully submitted.

David W. Plunkett, JD, JM
Senior Staff Attorney
Center for Science in the Public Interest