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Room 102 Cotton Annex
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Bernard F. Shire

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RE: Interim Final Interpretive Rule with an Opportunity for Comment on Exemption of Retail Operations From Inspection Requirements

The **American Association of Meat Processors (AAMP)** is pleased to submit the following comments concerning the Interim Final Interpretive Rule on Exemption of Retail Operations From Inspection Requirements that USDA published in the *Federal Register* on January 04, 2000.

AAMP is an international trade association whose members are meat and poultry slaughterers and processors, home food service companies, wholesalers, retailers, caterers and suppliers/consultants to the meat and poultry industry. Most of the Association's members are small, very small and medium-sized businesses.

Our comments are centered on two major areas: (1) The exclusion of the value of "pass through" items that are not processed or handled (other than being stored) from counting toward retail exemption, and (2) The Rule as it applies to state inspection programs.

The Agency is starting a process to look at the whole question of retail exemption, whether and how it should exist. This is long overdue, and should be done as soon as possible. The Agency's present policies concerning retail exemption are a hodge-podge that have piled up over the years. Several developments have forced FSIS to dust them off and take a look at them, and AAMP thinks that's a good idea. One is the decision against USDA in *The Original Honey Baked Ham Co. of Georgia, Inc. v. Glickman et. al.*, 172 F3d 885 (DC Cir 1999). After that decision, the Agency published a Notice in the *Federal Register* (64 FR 55694) exempting like retail stores from inspection.

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The National Advisory Committee on Meat and Poultry Inspection (NACMPI) has recommended that the Agency "do away" with retail exemption. At the same time, there are a large number of plants under inspection with retail fronts that sell not only to the general public, but service HRI accounts under the retail exemption provisions of the law. The Agency, in reporting the large number of very small plants implementing HACCP successfully on January 25, 2000, noted that a small number of plants have decided to drop inspection and "go retail," thanks in part to this interim rule on "pass through" items.

HRI Demand Still Exists In Rural Areas

One AAMP member in a rural area told us that he has a store where previously inspected retail product accounts for most of his business. He also has eight accounts with some small restaurants. They are small businesses that do not generate enough business to satisfy the ordering requirements of larger distributors, meaning they can't get any product delivered because their orders are too small. My member can supply fresh product that might be available only frozen from other suppliers. He can supply unique cuts. This HRI business is small, compared to his retail business, but if he loses the processed product sales, he would lose all the accounts.

The reason the retail exemption for HRI was set up to begin with was to enable small businesses in rural parts of the country to be served. While the U.S. continues to become more urban, there are still many rural areas where restaurants and other institutions would have a tough time getting the kind of service they need from large distributors.

USDA Needs To Base Inspection Activities On Risk

AAMP has said many times that the Agency needs to redraw and manage its inspection activities, based on the actual risk that products pose for the consuming public, rather than on how inspection has been carried out in the past. Likewise, exemptions should be permitted based on risk assessments. To the average citizen who knows nothing about meat inspection, that seems obvious, but inspection is not carried out that way today.

FSIS Administrator Tom Billy says the Agency is working on a "white paper" to reexamine the whole area of law dealing with retail exemption, consistent with its goal of "farm to table" inspection and food safety. We commend the Agency, but FSIS must also be consistent if it's going to "fix" retail exemption. While the "pass through" issue is being addressed, FSIS needs to comprehensively examine the retail exemption issue, the large number of questions that have been raised about it, and develop a meaningful policy instead of one that's haphazard.

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There are other questions that FSIS must address as it examines retail exemption, and putting inspection on a more equal footing for everyone, based on risk. Is there a difference between packaging and labeling? What about re-labeling, putting your own name and label on the package? Would leased warehouse space have to be under inspection? FSIS has never defined "combination of species products," yet it restricts retail products to "single ingredient." There needs to be better definitions of "hotel, restaurant and institutional" markets. What about selling meat products on the Internet? Where does inspection fit into that?

Rule Contains Inaccuracies About State Inspection Programs

We also think the Interim Rule, as written, poses a number of problems for the 25 state inspection programs in the U.S. Many references in the rule create the impression that "at least equal to" state inspection programs are local branches of the federal inspection system, i.e. state employees enforcing federal rules. While state programs do enforce federal regulations, the individual state programs also have their own regulations, some of which are tougher than Federal regulations. Some states do not permit exemptions from inspection that USDA allows. In the rule, USDA assumes powers over the state inspection programs that do not exist.

For example, USDA says that "Intrastate operations and transactions are effectively subject to the same requirements and prohibitions, pursuant to a State inspection or designation for Federal inspection." Both the Federal Meat Inspection Act and the Poultry Products Inspection Act do not require state meat or poultry inspection programs to follow Federal regulations in general, and those concerning exemptions from inspection in particular. Instead, the FMIA and the PPIA authorizes the Secretary of Agriculture to cooperate with the appropriate State agency in developing and administering a State meat inspection program in any state which has a law requiring mandatory ante mortem and post mortem inspection, reinspection and sanitation at least equal to Title I of the Act.

The Interim Rule also cites Federal regulations concerning exemption in claiming that states must apply the same exemption criteria. Not true. There is no reference to State inspection in these regulations. The Rule says "...sales of these products should not be considered in determining whether an establishment's operations are exempt from requirements for Federal or State inspection." The regulations don't mention State inspection in this instance.

Rather than requiring state programs to follow random federal regulations concerning exemption that make no sense, USDA should help strengthen state programs. But the federal government must start by cleaning up its own act. Its piecemeal approach warns us that USDA is planning to do "more of the same" concerning retail exemption.

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To summarize, when looking at the question of retail exemption, USDA really needs to look at the larger issue: how to operate its inspection system based on risk assessment. It must manage the risks that products can pose, based on good science.

Thank you for the opportunity to comment.

Sincerely,

Bernard F. Shire, Director
Legislative & Regulatory Affairs

cc: Randy A. Alewel, AAMP President
Thomas Billy, FSIS Administrator