

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS DIRECTIVE

5720.2,
Revision 3

11/16/04

STATE COOPERATIVE INSPECTION PROGRAMS

I. PURPOSE

The purpose of this directive is to articulate the policy and procedures concerning the Food Safety and Inspection Service's (FSIS) State Cooperative Inspection Programs.

II. CANCELLATION

FSIS Directive 5720.2, Revision 2, dated 7/24/92

III. REASON FOR REISSUANCE

This directive is rewritten in its entirety, because the previous version on State programs was overly prescriptive and contained sections that are out of date.

IV. REFERENCES

Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, et seq.)
Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et seq.)
Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, et seq.)
Federal State Cooperative Act (Talmadge-Aiken) (7 U.S.C. 450)
Agriculture Marketing Act of 1946, as amended (7 U.S.C. 1621, et seq.)
Humane Methods of Slaughter Act 1978 (7 U.S.C. 1901-1906)
Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200(d))
Section 504 of the Rehabilitation Act of 1973, as Amended (29 U.S.C. 794)
Age Discrimination Act of 1990 (42 U.S.C. 12101, et seq.)
9 CFR 306.5
FSIS Directive 3300.1
FSIS Directive 5710.1
FSIS Directive 5720.2, Revision 2
FSIS Manual for State Meat and Poultry Inspection Program Reviews

DISTRIBUTION: Inspection Offices; T/A Inspectors; Plant Mgt.; T/A Plant Mgt.; TRA; ABB; TSC; Import Offices

OPI: OPPED

PART I – STATE-FEDERAL COOPERATIVE INSPECTION PROGRAM

I. BACKGROUND

A. The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et seq.) provide for FSIS to cooperate with State agencies in developing and administering their own meat or poultry inspection programs (21 U.S.C. 661 & 454). The FMIA and PPIA restrict each State meat and poultry inspection program to the inspection and regulation of product that is produced and sold within the State (21 U.S.C. 661 (a) (1) & 454 (a) (1)).

B. The FMIA and PPIA mandate that each State Cooperative Inspection Program operate in a manner and with authorities “at least equal to” the antemortem and postmortem inspection, re-inspection, sanitation, and recordkeeping provisions set out in the statutes (21 U.S.C. 661 (a) (1) (2) & 454 (a) (1)). In addition, State Cooperative Inspection Programs need enforcement authorities that are “at least equal to” those provided by the FMIA and PPIA.

C. FSIS defines “at least equal to” as meaning that the food safety and other consumer protection measures effected by a State program address the same issues addressed by the Federal (FSIS) program, and the results of the State’s approach are to be at least as effective as those of the Federal program. The State program need not take exactly the same action as the Federal program.

D. The statutes provide for FSIS to contribute up to 50% of the cost of the State Cooperative Inspection Programs and other support, as long as the State programs are “at least equal to” the Federal program (21 U.S.C. 661 (a) (3) & 454 (a) (3)).

II. DEVELOPING A NEW STATE COOPERATIVE INSPECTION PROGRAM

Upon request, the FSIS Federal/State Liaison Staff will assist a State agency whose State government has enacted a mandatory State meat or poultry inspection law to develop a new State Cooperative Meat or Poultry Inspection Program (21 U.S.C. 661 (a) (1) (2) & 454 (a) (1) (2)).

III. THE STATE-FEDERAL COOPERATIVE AGREEMENT

The Director of the FSIS Federal/State Liaison Staff and the State agency sign a State-Federal Cooperative Agreement that sets forth the terms and conditions by which FSIS will cooperate with, and provide assistance to, a State carrying out a meat or poultry inspection program that is “at least equal to” the requirements of the Federal (FSIS) inspection program. The Cooperative Agreement will provide for FSIS advisory, technical, laboratory, training, and funding assistance to a State Cooperative Inspection Program consistent with the provisions of the FMIA (21 U.S.C. 661 (a)) and of the PPIA (21 U.S.C. 454 (a)).

IV. THE STATE SELF-ASSESSMENT

A. FSIS provides the Directors of State Cooperative Inspection Programs with an “FSIS Manual for State Meat and Poultry Inspection Program Reviews,” which includes a Self-Assessment instrument and instructions for completing the Self-Assessment.

B. To be deemed “at least equal to” the Federal program, a State program completes a Self-Assessment addressing all the program components listed in the Self-Assessment instrument and submits the Self-Assessment to the FSIS Review Staff Director and a copy to the Federal/State Liaison Staff Director. The State’s completed Self-Assessment and accompanying documentation provide FSIS with the initial information about why the State Cooperative Inspection Program is “at least equal to” the FSIS program.

C. State programs are to be “at least equal to” the FSIS requirements for all the program components listed in the Self-Assessment instrument in order to be deemed “at least equal to” the Federal program and thus eligible to receive assistance. The Self-Assessment instrument provided by FSIS gives a detailed list of the elements that State programs are to meet for each program component. If the State program chooses to require a different, but similar, measure to the one used by FSIS, the State program will need to explain (in its Self-Assessment) why the different, but similar, measure is “at least equal to” the FSIS requirement.

D. State Cooperative Inspection Programs annually submit to FSIS an update to their initial Self-Assessment. If FSIS determines that the Self-Assessment instrument needs revision, FSIS will work cooperatively with the State directors to revise it and send the State agencies copies of the revised Self-Assessment instrument.

V. PROGRAM COMPONENTS

A. State programs are to be “at least equal to” the FSIS requirements for the first seven program component listed below. State programs must also meet the requirements of the last two program components listed below. State programs can meet the program component requirements by either employing the same measures as FSIS or by using similar, but different, measures that achieve the outcomes that are equal to those that FSIS’ measures accomplish. The Self-Assessment instrument provided by FSIS gives a detailed list of the elements that are to be met for each program component.

1. *Statutory Authority and Food Safety Regulations.* The State program has been granted the legal and regulatory authority necessary to administer an inspection program that imposes antemortem and postmortem inspection requirements, re-inspection requirements, sanitation requirements, and recordkeeping requirements, and has enforcement authorities, that are “at least equal to” those provided by the FMIA (21 U.S.C. 601, et seq.) or the PPIA (21 U.S.C. 451, et seq.).

2. *Inspection.* Inspection provided by the State program is “at least equal to” that provided by FSIS. The State program verifies that official state establishments are complying with applicable laws and regulations and are identifying and correcting any noncompliance with regulatory requirements. The State program verifies that establishments are maintaining sanitation standard operating procedures and a HACCP system or equivalent system that evaluates hazards, takes steps to address hazards, and routinely verifies that product is safe, wholesome, and unadulterated. Program management ensures uniformity in the interpretation and application of regulatory requirements.

3. *Product Sampling.* The State program verifies control of microbial pathogens, violative levels of veterinary drugs, pesticides, contaminants, and other adulterants through product sampling. The State program has access to laboratory services to conduct chemical, microbiological, physical, and pathological testing. Laboratories conducting official analyses for State inspection programs produce accurate, reliable, and reproducible results.

4. *Staffing.* The State program has enough staff to carry out its responsibilities. The State program ensures that there are a sufficient number of trained veterinarians, inspectors, and enforcement staff to properly handle the inspection and regulatory duties of the program. The State program ensures that its personnel receive the professional, technical, inspection, and managerial training necessary to maintain a competent and effective workforce.

5. *Humane Handling.* Slaughter and handling of livestock in connection with slaughter is done humanely (Humane Methods of Slaughter Act 1978 (7 U.S.C. 1901-1906) (FMIA 21 U.S.C. 603 (b) & 610 (b))). Humane slaughtering occurs when livestock are rendered insensible to pain by a means that is rapid and effective before being shackled, hoisted, thrown, cast, or cut; or by slaughtering livestock in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and the appropriate handling in connection with such slaughtering.

6. *Other Consumer Protection.* The State program protects consumers from meat or poultry products that are unwholesome, economically adulterated, or not truthfully labeled (21 U.S.C. 607 & 457).

7. *Enforcement.* The State program enforces compliance with all applicable laws and regulations and takes appropriate action in the event of noncompliance. The State program detains adulterated or misbranded product (21 U.S.C. 672 & 467 (a)). The State program takes appropriate control in intrastate commerce of adulterated or misbranded product and ensures proper disposition of such product, including seizure, condemnation, and destruction where appropriate (21 U.S.C. 673 & 467 (b)). The State also engages in surveillance to ensure that animal carcasses, carcass parts, and their products that are not intended for use as human food are not diverted to such uses. The State can refuse or withdraw inspection services if warranted (21 U.S.C. 671, 467, & 457 (b)). The State has laws to prosecute anyone who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with officials in the performance of their official duties (21 U.S.C. 675 & 461 (c)).

8. *Civil Rights.* The State program adheres to Federal Civil Rights laws: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200(d)), Section 504 of the Rehabilitation Act of 1973, as Amended (29 U.S.C. 794), Age Discrimination Act of 1990 (42 U.S.C. 12101, et seq.) and applicable USDA Civil Rights regulations.

9. *Funding and Financial Accountability.* The State appropriates funds commensurate with those provided by FSIS as specified in the Cooperative Agreement. Funding is sufficient to ensure the operation of an inspection program consistent with the criteria of the Cooperative Agreement and the satisfactory and uninterrupted operation of State inspection program activities. The State ensures that there is appropriate use of Federal funds; adequate accounting support for the State inspection program; and timely and accurate submission of expense reports.

VI. REPORT, REVIEW, AND CERTIFICATION

A. The State agency submits an initial report to FSIS on its new State Cooperative Inspection Program, including its Self-Assessment, accompanying forms and documentation, and certification that it is “at least equal to” the Federal program. FSIS provides instructions for completing each form.

B. Thereafter, State agencies annually certify to FSIS that their programs are “at least equal to” the Federal program. The Director of the State program annually submits to the Director of the Review Staff the “at least equal to” certification and an updated Self-Assessment detailing the program activities during the preceding Federal fiscal year (October 1 to September 30). The State programs submit their “at least equal to” certification and updated Self-Assessments to FSIS by November 15 of each year.

C. After a State program submits its initial report, FSIS will conduct a review of the State program to determine whether it meets the “at least equal to” standard. The initial review of the State program is a comprehensive process that consists of the FSIS verification of the State’s Self-Assessment through review of the completed Self-Assessment and accompanying documentation and an on-site review of the State program.

D. FSIS will review the State’s annual Self-Assessment update and may also conduct an on-site review of the State Cooperative Inspection Program. During an on-site review, the FSIS review team will review all of the program components listed in the Self-Assessment Instrument, except for funding and financial accountability. FSIS reviews funding and financial accountability every three years (See FSIS Directive 3300.1).

E. The FSIS review team will conduct the on-site review in the State government offices and in a sample of State meat or poultry establishments. The review team is multidisciplinary with subject matter expertise in the various program components. The FSIS review team will have a team leader who is responsible for scheduling the on-site reviews with the Director of the State program, conducting the entrance and exit conferences, coordinating the team’s activities, and producing the final report in accordance with the review manual.

F. The team leader conducts the entrance and exit conferences with the Director of the State program and other key FSIS and State personnel. The entrance conference explains the methodology to be used in the review, and the exit conference explains the findings of the review. The FSIS review team will give the Director of the State program a written summary of the findings at the exit conference. Within a month of the exit conference, the review team submits a draft written report to the Office of Program Evaluation, Enforcement, and Review (OPEER) and the FSIS Federal/State Liaison Staff. OPEER sends a copy of the final report to the Director of the State program within 60 days of completing the on-site review.

G. If the FSIS review team discovers that a State has failed to develop or is not enforcing requirements, resulting in a determination that the State Cooperative Program is not “at least equal to” the Federal program, FSIS will notify the Director of the State program of the results and determination of the on-site review after the team has analyzed the findings. The State program submits to OPEER within 30 days a corrective action plan to address the FSIS review findings. FSIS will conduct a follow-up review to verify that the State State program’s action plan is being implemented. The follow-up review may consist of document review, on-site review, or both.

H. After reviewing the results, FSIS will certify that the State’s Cooperative Inspection Program meets or does not meet the “at least equal to” requirements. OPEER sends a summary report to the FSIS Federal/State Liaison Staff along with its findings. The Federal/State Liaison Staff forwards the report to the Assistant Administrator, Office of Field Operations (OFO). The Assistant Administrator, OFO, will send the certification to the State agency.

VII. COOPERATION WITH THE STATES

A. Once FSIS has certified that a State program is “at least equal to” the Federal program, it will cooperate with the State program by providing technical and laboratory assistance, training, and funding. FSIS will provide up to 50% funding to a State Cooperative Inspection Program.

B. The Federal/State Liaison Staff is the primary FSIS contact with the State programs. The Federal/State Liaison Staff will regularly coordinate and correlate with the State programs.

C. FSIS will provide State inspection and regulatory personnel access to its training. District Managers (DMs) will cooperate with the State program personnel by communicating regularly with them, by offering them cross-training opportunities, and by inviting them to correlation meetings.

VIII. DESIGNATION OF STATES

If the State Cooperative Inspection Program is unable or unwilling to continue on an “at least equal to” basis, the Secretary of Agriculture will notify the Governor of the State that the State does not have an “at least equal to” meat or poultry inspection program. (Before the Secretary takes such action, FSIS and the State agency will have conferred and have tried to remedy the deficiencies, if any, in the State inspection program.) Further, the Secretary will designate the State as not having an “at least equal to” program by publishing this designation in the Federal Register and, after the expiration of thirty days of such publication, the official State establishments will be subject to Federal inspection (21 U.S.C. 661 (c) (1) & 454 (c) (1)). (See also FSIS Directive 5710.1.)

PART II – TALMADGE-AIKEN COOPERATIVE INSPECTION PROGRAM

I. BACKGROUND

A. FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the FMIA, the PPIA, and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, et seq.). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged. In addition, FSIS also conducts voluntary inspection services, (e.g., voluntary meat, poultry, and egg products inspection), under the Agriculture Marketing Act of 1946, as amended (7 U.S.C. 1621, et seq.).

B. The Federal State Cooperative Act (Talmadge-Aiken) (7 U.S.C. 450) authorizes the Secretary of Agriculture to enter into cooperative arrangements with State departments of agriculture and other State agencies to assist the Secretary in the administration and enforcement of relevant Federal laws and regulations to the extent and in the manner appropriate to the public interest.

C. The EPIA (21 U.S.C. 1038) also authorizes the Secretary to cooperate with the States in the mandatory inspection of egg products and to reimburse the State for the costs incurred in the cooperative program.

D. FSIS recognizes that at times there are advantages to using State personnel in the performance of both mandatory and voluntary meat, poultry, and egg products inspections at official Federal establishments and plants. The Agency also acknowledges the potential usefulness of State personnel performing Federal noninspection regulatory activities.

E. State inspectors working in establishments under Federal inspection are performing their inspection duties on behalf of FSIS. Hence, any appeals of State inspectors' decisions in Federal establishments go to the appropriate official in the FSIS chain of command (9 CFR 306.5).

NOTE: The previous directive (5700.2, Revision 2) divided FSIS' use of State personnel for Federal inspection and regulatory activities into two categories, Talmadge-Aiken and Cross-Utilization, with different amounts of reimbursement allotted for each; however, neither the distinction between Talmadge-Aiken and Cross-Utilization nor the amount of reimbursement was mandated by the Talmadge-Aiken Act. This directive recognizes no difference between Talmadge-Aiken and Cross-Utilization Cooperative Agreements. Every use of State inspection or regulatory personnel by FSIS comes under the Talmadge-Aiken Act.

II. THE TALMADGE-AIKEN COOPERATIVE AGREEMENT

A. When it benefits FSIS (i.e., it either saves the Agency money or meets a difficult-to-meet Federal inspection or regulatory need), under the authority of the Federal State Cooperative Act (Talmadge-Aiken), the Agency will enter into a separate agreement with a State agency for the State program to conduct meat, poultry, or egg products

inspection or other regulatory activities on behalf of the Agency. FSIS can provide up to 100% funding to the State programs.

B. Some slaughter and processing activities are exempt from the inspection provisions of the statutes but nonetheless are still subject to Federal regulation under the Acts. FSIS may enter into a Cooperative Agreement with State agencies to cover these noninspection regulatory activities, (e.g., custom exempt). FSIS will provide some reimbursement to the State agency for its assistance as part of the Cooperative Agreement.

C. If a DM decides that it would be beneficial for FSIS to use State personnel for Federal inspection or other regulatory activities where the Agency has not previously done so, the DM will obtain approval from the Assistant Administrator, Office of Field Operations, before entering into a Cooperative Agreement with the State agency.

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