

The Safe Food Coalition (Center for Foodborne Illness Research & Prevention, Consumer Federation of America, Food and Water Watch, Government Accountability Project, National Consumers League, Safe Tables Our Priority, United Food and Commercial Workers International Union), the AFL-CIO, the American Federation of Government Employees, and Change to Win

September 25, 2007

Dear Senator:

The undersigned members of the Safe Food Coalition urge you to reject efforts to permit state inspected meat and poultry to be sold in interstate commerce. We oppose the provisions in section 11103 of H.R. 2419 and other similar proposals pending in the Senate for the following reasons:

Portrayed as an effort to stimulate new small businesses this legislation will harm some small businesses and threaten the health of American consumers. The bills are likely to:

- Increase the risk of foodborne illness in the U.S. by substituting uneven state inspection standards and enforcement for USDA's meat and poultry inspection program
- Increase the risk that adulterated meat and poultry will be sold and consumed because no state has authority to manage a recall of adulterated food that has left its jurisdiction;
- Force states that believe federal inspection is the best way to protect their citizens against foodborne illness to allow sale of meat and poultry products inspected by state programs with questionable safety records;
- Create unfair competition for those very small meat and poultry processors who have invested the time and money necessary to comply with federal inspection requirements to qualify as "USDA inspected and approved;"
- Seriously undermine the federal meat and poultry inspection system by making 80 percent of all federally inspected meat and poultry plants eligible to flee federal inspection in favor of less rigorous state inspection and permit the plants to switch back and forth between federal and state inspection programs;
- Create a serious threat to export markets for American meat and poultry;
- Undermine public confidence in the safety of the food supply and the integrity of the government because none of these issues has been the subject of hearings in either House of Congress. Consumers and public health experts have not been allowed to discuss their concerns. Congress has not asked USDA to explain how it might address major food safety issues, such as recalls of state inspected meat and poultry.

THE FIRST PRIORITY OF MEAT AND POULTRY INSPECTION IS PROTECTING PUBLIC HEALTH

These bills seriously undermine public health protections. Congress passed the *Wholesome Meat Act of 1967* and the *Wholesome Poultry Products Act of 1968* because state inspection standards and enforcement were uneven and often did not protect consumers. Adulterated meat and poultry products threatened both public health and consumer confidence in the meat supply.

When the bills were passed, Congress bowed to pleas from some states and meat companies that the new federal standards were too rigorous and permitted states to continue their own inspection programs if the state program could be made “equal to” federal food safety standards. Congress, however, acknowledged that state inspection could not provide the same level of protection and prohibited selling state inspected products in interstate commerce. Any threat that arose from lax state enforcement would be limited by the geographical restrictions.

Both domestic and international markets for U.S. produced meat and poultry products have prospered under federal food safety standards. In the last decade USDA, in an effort to improve public health protection, has modernized the inspection system and implemented limits on microbial contamination. The new rules rely heavily on identifying and controlling hazards before a problem occurs, assuring plants are clean and sanitary, and testing both the plant environment and products to reduce pathogen contamination. The HACCP system and microbial limits require inspectors trained to do the testing and sophisticated laboratories to verify results. Admittedly, the implementation of HACCP has been difficult, but the new federal inspection process is working.

In addition, the pending bills do not permit states to exceed federal requirements. The states cannot set higher standards for sanitation, microbial limits or enforcement than those that have been established.

Finally, the Bush Administration has not endorsed any of the pending bills to permit interstate shipment of state inspected meat. USDA submitted technical comments to the House Agriculture Committee that illustrate the significance of the change the bills envision and describe some of the problems they would create. The comments focus especially on the near impossibility of managing an effective recall of state inspected meat that has left the original jurisdiction.

Supporters argue that the pending bills are just like the one submitted by the Clinton Administration. However, several of the provisions were added after 2001. In addition, the Clinton Administration never explored the impact of nor told Congress that the 50 employee limit would make 80 percent of plants eligible to leave federal inspection. Most importantly, the Clinton Administration bill was submitted in the rush of optimism after HACCP was introduced. We now have ten years of experience under HACCP and have learned the many difficulties of administering it successfully. Some very small plants have had a particularly hard time adjusting to HACCP because the new system relies heavily on microbiological testing.

Our organizations, representing those Americans who have suffered from serious foodborne illness and those who would be put at risk in the future, women and men who work in the meat and poultry slaughter and processing industry, and inspectors who work in federally inspected plants, have joined to urge you to consider the issues we have raised and to reject this legislation until Congress has taken the time to hold hearings on the consequences of the proposed changes and possible alternatives that do not create risks to public health.

The facts offered in this letter demonstrate that the pending bills to “promote new markets for state inspected meat” are not supported by any data to demonstrate they will be effective in doing so. On the other hand, our research on this topic shows that there are serious concerns about:

- Undermining federal public health standards;
- Increasing the difficulty of issuing and managing a recall order to protect public health;
- Creating major problems for increasing international sales of U.S. produced meat and poultry products; and

- Discouraging progressive companies from improving their plants and safety procedures in order to comply with federal regulations and ship in interstate commerce.

We respectfully urge that you consider these issues, which we have described in detail in the accompanying fact sheet, and maintain the requirement that meat and poultry shipped in interstate commerce must be “USDA Inspected and Approved.”

Sincerely,

Carol Tucker Foreman
Founder, Safe Food Coalition

Patricia Buck
Center for Foodborne Illness, Research & Prevention

Chris Waldrop
Consumer Federation of America

Wenonah Hauter
Food & Water Watch

Jacqueline Ostfeld
Government Accountability Project

Linda Golodner
National Consumers League

Nancy Donley
Safe Tables Our Priority

Michael J. Wilson
United Food and Commercial Workers International Union

Bill Samuel
AFL-CIO

Beth Moten
American Federation of Government Employees

Greg Tarpinian
Change to Win

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CONGRESS SHOULD PROTECT PUBLIC HEALTH BY CONTINUING TO REQUIRE ALL MEAT AND POULTRY SOLD IN INTERSTATE COMMERCE BE “INSPECTED AND APPROVED” AS SAFE AND WHOLESOME BY THE U.S. GOVERNMENT

THE FIRST OBLIGATION OF MEAT AND POULTRY INSPECTION IS TO PROTECT PUBLIC HEALTH

Section 11103 of H.R. 2419, the Farm Bill, and other bills that eliminate the requirement that all meat and poultry products sold in interstate commerce must be federally inspected increase the risk of foodborne illness and threaten consumer confidence in the food supply.

STATE INSPECTION PROGRAMS OFTEN DO NOT PROVIDE PUBLIC HEALTH PROTECTION THAT IS “EQUAL TO” THAT PROVIDED BY FEDERAL INSPECTION

Supporters of the bills insist they create no public health issue because state inspection programs must be “equal to” federal inspection. The term “equal to” is vague and is based initially on a state’s self assessment of its adequacy. USDA reviewers read state plans but do not regularly go to each state inspected slaughterhouse or processing plant to learn firsthand if the plant indeed meets public health requirements. USDA officials are not present in the plants to assure that state inspectors take action against plants that fail to meet HACCP and sanitation requirements, or that state programs follow appropriate laboratory procedures.

THE U.S. COURT OF APPEALS AND THE USDA’S INSPECTOR GENERAL REFUTE ASSERTIONS THAT STATE INSPECTION IS “EQUAL TO” FEDERAL PUBLIC HEALTH PROTECTION

Impartial authorities, including the U.S. Court of Appeals for the Sixth Circuit and the USDA Office of Inspector General (OIG) agree that the Congress is justified in limiting distribution of state inspected meat and poultry.

The U.S. Court of Appeals for the Sixth Circuit held that it is rational for the U.S. Congress to restrict the interstate transport of state inspected meat because:

“...the USDA does not scrutinize state inspected plants as frequently as it does federally inspected plants, ...and hence, there is the possibility that state inspected meat and poultry would not be as safe...”

“Though the USDA does keep an eye on state inspection programs, it keeps yet a closer eye on its own plants and on meat and poultry entering the country, and it is possible that a state program could deteriorate for a time without USDA’s knowledge.”¹

Reports from the USDA OIG have detailed the problems with state inspection and USDA’s inability to provide adequate oversight of the state programs:

... “state programs are weak in policing plant sanitation and the federal government is weak in following up to make sure deficiencies in the state inspection program are fixed.”²

Last year, the OIG reported that FSIS permitted state inspection programs that failed the “equal to” standard to continue operating. In 2003-2005 FSIS found that half of the states it reviewed ran programs that were not “equal to” federal laws and regulations. FSIS did not shut down the state programs. In addition, OIG noted that FSIS found that state inspection programs had allowed plants with serious public health violations to continue selling meat to the public. In Mississippi FSIS found the following violations:

“Soot-like material found on several swine carcasses in cooler; lack of monitoring of CCP cooking temperatures; SSOPs and daily monitoring were not performed; and cutting boards (deeply scored and stained) contained product residues from previous days’ operations. Despite these problems, FSIS assigned Mississippi an “at least equal to” and therefore Mississippi did not have to give FSIS a corrective action plan.”³

STATE INABILITY TO ASSURE FAST, EFFECTIVE RECALLS OF ADULTERATED MEAT/POULTRY PRODUCTS SOLD ACROSS STATE LINES THREATENS PUBLIC HEALTH

Food safety protection requires the power and commitment to move quickly and efficiently to get adulterated meat or poultry products off the market before they make people sick.

The states cannot meet this standard because their legal authority is limited by their boundaries. No state can act effectively to recover adulterated meat from another state quickly, nor can a state send staff to packing plants and stores in another state to assure adulterated food is removed from shelves. No state has resources to warn consumers in distant states about a recall and urge them to protect themselves.

Finally, states do not have authority to detain and seize adulterated products if the processor fails to implement an effective recall.⁴

¹ U.S. Court of Appeals for the Sixth Circuit, Dailey v. Veneman, 2002 U.S. APP. Lexis 24623 December 3, 2002.

² USDA Office of Inspector General Audit Report, *Food Safety and Inspection Service’s Oversight of State-Administered Meat and Poultry Inspection Programs*, January 1994.

³ USDA Office of Inspector General, Southeast Region, Audit Report, *Food Safety and Inspection Service—State Meat and Poultry Inspection Programs*, Report No. 24005-1-AT, September 2006, pps 6-11 www.usda/OIG-A/24005-1-AT

⁴ The federal government cannot require a company to recall adulterated food. The federal government, however, has far greater power to negotiate with meat companies to assure that recalls are thorough and expeditious. FSIS has staff in every state and can go into packing plants and retail stores to assure a recall is being carried out as agreed. The Agency also has legal authority to detain and seize products, removing them from stores, if necessary. USDA has the communications capacity to give consumers information necessary to avoid consuming adulterated food.

Congress cannot address this gaping hole in state inspection by requiring USDA to oversee recalls of state inspected meat. FSIS has no records on state inspected meat and poultry and no capacity to track distribution. Precious time would pass while a state government collected and sent FSIS the data needed to help carry out a recall and, according to OIG, some states have less than adequate record keeping. FSIS's technical comments on H.R. 2419 detail the agency's inability to manage recalls of state inspected products

THOUSANDS OF “VERY SMALL” MEAT AND POULTRY PLANTS THRIVE UNDER FEDERAL INSPECTION, REFUTING CLAIMS THAT ONLY STATE INSPECTORS CAN SERVE VERY SMALL PLANTS

Supporters of the bills want to increase markets for state inspected meat and poultry. They say federal inspection is designed to serve large slaughterhouses and processors, and that federal inspection requirements are too onerous for very small companies. They argue that state inspection programs are more sympathetic to and better understand the needs of small processors.

There are several problems with this claim. First, supporters have no data to back them up. Second, USDA data on federally inspected plants contradict this assertion. Over half of the meat and poultry plants inspected by the federal government have ten or fewer employees (USDA's definition of a very small plant) Of the 5,603 meat and poultry slaughter and processing plants operating under federal inspection, 2,878 are “very small.”⁵

Third, the small and very small plants now under federal inspection have invested time and money to comply with all federal regulations and operate under federal inspection. They operate successfully under federal inspection and can sell their products anywhere. The proposed legislation ignores the effort and expense these plants have made to qualify for federal inspection by meeting all federal requirements. The bills expose the federally inspected very small plants to unfair competition from companies that want to change the rules rather than invest in their businesses. Very small plants that want to sell in interstate commerce can do so by applying for federal inspection and complying with federal standards.

In addition to the above problems, consumers are concerned about the claim that state inspection is “more sympathetic to” or “more understanding of” the problems of very small meat packers. The purpose of meat and poultry inspection is to protect public health. Foodborne illness is a serious public health problem in the U.S., causing 76 million cases of illness, 325,000 hospitalizations and 5,000 deaths each year. CDC recently reported that reductions in the rate of disease caused by *E. coli* O157:H7, *Salmonella* and *campylobacter* have stalled and the government failed to meet its goal of reducing *Listeria* related foodborne illness cases by half by 2005.⁶

If there is a conflict between public health and company convenience or profit, we believe the American people want Congress to be sure it is resolved in favor of public health. We urge Congress not to put concerns about “creating new markets for state inspected meat and poultry products” ahead of protecting Americans from foodborne illness.

⁵ Communication from USDA/FSIS Office of Field Operations, July 19, 2007.

⁶ US Centers for Disease Control and prevention, *Preliminary FoodNet Data on the Incidence of Infection with Pathogens transmitted Commonly Through Food—10 States, 2006*, Mortality and Morbidity Weekly Report, Vol.51, Number 14, April 13, 2007, pp 336-339.

THE BILLS ARE NOT LIMITED TO VERY SMALL PLANTS. EIGHTY PERCENT OF ALL MEAT AND POULTRY PLANTS WOULD BE ELIGIBLE TO LEAVE FEDERAL INSPECTION.

Supporters say their goal is to help very small businesses but the language of the bills before Congress is far more ambitious. Most of the bills permit any plant with up to 50 employees to switch from federal to state inspection. That language makes eighty percent of all federally inspected plants eligible to leave federal inspection in favor of the more sympathetic state oversight, effectively ending federal inspection.

THE BILLS LET COMPANIES SWING FROM FEDERAL TO STATE INSPECTION AND THEN BACK AGAIN, UNDERMINING STRONG STANDARDS AND ENFORCEMENT AT BOTH STATE AND FEDERAL LEVELS

H.R. 2419, and most of the other bills, permit plants with 50 or fewer employees to switch back and forth between jurisdictions every four years. A plant with a record of poor sanitation, under pressure from USDA to remedy the problem, could simply switch to state inspection. Four years later, if pressured by the state on the same issues, the plant could switch back to the federal system. The plant could easily avoid addressing serious sanitation issues for years—and continue to sell questionable meat or poultry to an unsuspecting public. In addition to creating public health risks this would make it impossible for states or the federal government to plan budgets or staffing needs.

H.R. 2419 AND OTHER BILLS UNDERMINE EFFORTS TO “EAT LOCALLY” GROWN AND PROCESSED FOOD

Current law encourages efforts to “eat locally” grown and processed foods. Very small state inspected slaughterhouses and processors are able to offer all the environmental, energy conservation and taste benefits associated with food that is produced, sold and eaten within a limited area and shorter time period.

The proposed legislation is likely to result in two unintended negative changes:

- The bills are intended to encourage companies that now sell only locally to refocus their marketing on a larger area, beyond the state where they are located. Some firms will switch from serving local markets to selling nationally and internationally and, ironically, will become more like the big processing companies they were created to counter.
- Conversely, the bills will allow many of those big, national and international processing companies to take their smaller plants out of federal inspection and become state inspected, thereby competing with local plants for state inspection resources.

THE LEGISLATION THREATENS EXPORTS OF U.S. PRODUCED MEAT AND POULTRY PRODUCTS

The pending bills permit state inspected meat and poultry products to be shipped to foreign countries. Current U.S. trade agreements assure trading partners that all exported meat and poultry products come from “USDA inspected” plants. It is unclear whether Congress expects that trade agreements will be rewritten to require that foreign governments accept state inspected meat and poultry. Those governments will likely not be enthusiastic about entering into separate trade agreements with every state that has a state inspection system. It is unknown if Congress intends to exert its authority on our trading partners to force them to accept state inspected meat. Additionally, if contaminated meat from a state inspected plant is co-mingled with meat from a federally inspected plant and then exported to a foreign country, the foreign country may consider the presence of state inspected meat a violation of the trade agreement with USDA.

Finally, supporters of the bills have not addressed an important issue with regard to international trade. It seems likely that, if the U.S. insists that foreign countries accept our state inspected meat and poultry products, then foreign trading partners will demand that the U.S. accept products inspected by their local and regional governments. Congress needs to consider the potential economic and health issues that may be raised by agreeing to such demands.

CONGRESS HAS FAILED TO MEET BASIC STANDARDS OF OPENNESS AND TRANSPARENCY IN CONSIDERING THESE BILLS

Congress is about to weaken substantially an essential public health program. A basic change in federal public health standards demands openness and transparency and a vigorous public debate. None of this has happened. The provisions in the House version of the Farm Bill were approved by the House Agriculture Committee without any public hearings to explore the crucial issues or give opponents an opportunity to be heard. Consumer and public health experts, as well as the unions who represent federal inspectors and workers in meatpacking plants, had no opportunity to voice their concerns.

Some of the bills also foreclose openness and transparency and public participation in the process of developing regulations to implement the legislation if it becomes law. H.R. 2419 directs the Secretary of Agriculture to promulgate rules for the major new program within 180 days after the bill becomes law. That short period effectively eliminates the opportunity for notice and comment rulemaking, open meetings and meaningful discussion of implementation issues.

H.R. 2419 also creates an advisory committee limited to officials of state inspection programs, excluding public health experts and consumer representatives who might challenge whether public health is being given first consideration.

CONGRESS CAN ASSIST SMALL MEAT AND POULTRY PLANTS WHILE PRESERVING FEDERAL PUBLIC HEALTH PROTECTION

Sponsors of these bills genuinely want to help small businesses and create new markets for cattle, pork and poultry producers. Congress can do this without undermining federal safety standards and threatening consumers.

Some very small companies, especially those that don't operate every day, say it is difficult to get federal inspectors to work around the plant's schedule. Congress can take steps to assure FSIS provides inspection to all meat and poultry plants expeditiously. Congress can:

- Assure that there are enough federal inspectors to cover all plants that seek inspection.
- Require FSIS to go beyond its current efforts to serve small plants and establish a permanent office to serve very small businesses and train staff that can provide inspection to small plants on a schedule that doesn't place an undue financial burden on the small plant.
- Direct FSIS to create a corps of inspectors specifically trained and available to work with small plants. The inspectors would serve very small federally inspected plants. These plants would meet all federal requirements without creating the problems that arise from multiple state laws that vary in the rigor of standards and enforcement. This would require adding enough federal inspectors to cover the additional plants but would cost far less than supporting separate federal programs that have often not offered equal standards or enforcement.

THE TALMADGE-AIKEN ACT MAY OFFER A WAY TO MEET THE NEEDS OF VERY SMALL PLANTS AND PRESERVE FEDERAL INSPECTION STANDARDS

Before abandoning 40 years of federal food safety standards, Congress should explore utilizing the *Talmadge-Aiken (T-A) Act* structure as a way to assure very small plants have the ability to be inspected on a timely basis, while preserving federal meat and poultry safety standards.

Plants that operate under the *Talmadge-Aiken* law are subject to all federal regulations, but inspection is performed by state employees. T-A eliminates the problems created by having separate state laws and regulations and bureaucracies. Relying on T-A would not require additional federal inspectors. It would reduce the problems of states having the different inspection standards and enforcement described in the OIG reports.

THE BUSH ADMINISTRATION HAS NOT ENDORSED PERMITTING STATE INSPECTED MEAT TO BE SOLD IN INTERSTATE COMMERCE AND THE CURRENT BILLS INCLUDE ADDITIONAL PROVISIONS TO THOSE SUBMITTED BY THE CLINTON ADMINISTRATION

Congress should examine the concerns expressed in the USDA's technical comments. Congress should know that these bills are not identical to the legislative language submitted by the Clinton Administration. Several of the current provisions were added after 2001. In addition, the Clinton Administration never explored the impact of nor told Congress that the 50 employee limit would make 80 percent of federally inspected plants eligible to leave federal inspection. Most importantly, the Clinton Administration bill was submitted in the rush of optimism after HACCP was introduced. We now have ten years of experience under HACCP and have learned the many difficulties of administering it successfully. Some very small plants and some state inspection programs have had a particularly hard time adjusting to HACCP and its requirements for microbiological testing and detailed record keeping.

If Congress were to hold hearings on this important legislation there would be an opportunity to explore these and other options.