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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §331.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

## PART 332—SELECTED ESTABLISHMENTS; COOPERATIVE PROGRAM FOR INTERSTATE SHIPMENT OF CARCASSES, PARTS OF CARCASSES, MEAT, AND MEAT FOOD PRODUCTS

Sec.

332.1 Definitions.

332.2 Purpose.

332.3 Requirements for establishments; ineligible establishments.

332.4 State request for cooperative agreement.

332.5 Establishment selection; official number for selected establishments.

332.6 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.

332.7 Federal oversight of a cooperative interstate shipment program.

332.8 Quarterly reports.

332.9 Enforcement authority.

332.10 Deselection of ineligible establishments.

332.11 Transition to official establishment.

332.12 Transition grants.

332.13 Separation of operations.

332.14 Voluntary withdrawal.

AUTHORITY: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

SOURCE: 76 FR 24753, May 2, 2011, unless otherwise noted.

### § 332.1 Definitions.

*Cooperative interstate shipment program.* A cooperative meat inspection program described in §321.3 of this subchapter.

*Cooperative State meat inspection program.* A cooperative State-Federal meat inspection program described in §321.1 of this subchapter.

*Designated personnel.* State inspection personnel that have been trained in the enforcement of the Act and any additional State program requirements in order to provide inspection services to selected establishments.

*Interstate commerce.* “Interstate commerce” has the same meaning as “commerce” under §301.2 of this subchapter.

*Selected establishment.* An establishment operating under a State cooperative meat inspection program that has been selected by the Administrator, in coordination with the State where the establishment is located, to participate in a cooperative interstate shipment program.

### § 332.2 Purpose.

This part prescribes the conditions under which States that administer cooperative State meat inspection programs and establishments that operate under such programs may participate in a cooperative interstate shipment program.

### § 332.3 Requirements for establishments; ineligible establishments.

(a) An establishment that operates under a cooperative State meat inspection program may apply to participate in a cooperative interstate shipment program under this part if:

(1) The establishment employs on average no more than 25 employees based on the standards described in paragraph (b) of this section, or

(2) The establishment employed more than 25 employees but fewer than 35 employees as of June 18, 2008. If selected to participate in a cooperative interstate shipment program, an establishment under this paragraph must employ on average no more than 25 employees as of July 1, 2014, or it must transition to become an official establishment as provided in §332.11 of this part.

(b) An establishment that has 25 or fewer employees based on the following standards is considered to have 25 or fewer employees on average for purposes of this part.

(1) All individuals, both supervisory and non-supervisory, employed by the establishment on a full-time, part-time, or temporary basis whose duties involve handling the meat or meat food products prepared by the establishment are counted when calculating the total number of employees.

(2) All individuals employed by the establishment from a temporary employee agency, professional employee organization, or leasing concern whose duties involve handling the meat or meat food products prepared by the establishment are counted when calculating the total number of employees.

(3) The average number of employees is calculated for each of the pay periods for the preceding 12 calendar months.

(4) Part-time and temporary employees are counted the same as full-time employees.

(5) If the establishment has not been in business for 12 months, the average number of employees is calculated for each of the pay periods in which the establishment has been in business.

(6) Volunteers who receive no compensation are not considered employees unless their duties involve handling the meat or meat food products prepared by the establishment.

(7) The total number of employees can never exceed 35 individuals at any given time, regardless of the average number of employees.

(c) The following establishments are ineligible to participate in a cooperative interstate shipment program:

(1) Establishments that employ more than 25 employees on average (except as provided under paragraph (a)(2) of this section);

(2) Establishments operating under a Federal-State program as provided in § 321.2 of this subchapter as of June 18, 2008;

(3) Official establishments;

(4) Establishments that were official establishments as of June 18, 2008, but that were re-organized on a later date by the person that controlled the establishment as of June 18, 2008;

(5) Establishments operating under a cooperative State meat inspection that employed more than 35 employees as of June 18, 2008, that were reorganized on a later date by the person that con-

trolled the establishment as of June 18, 2008;

(6) Establishments that are the subject of a transition under § 332.11 of this part;

(7) Establishments that are in violation of the Act;

(8) Establishments located in States without a cooperative State meat inspection program; and

(9) Establishments located in a State whose agreement for a cooperative interstate shipment program was terminated by the Administrator as provided in § 321.3(d) of this subchapter.

(d) An establishment that meets the conditions in paragraph (a) of this section and that is not an ineligible establishment under paragraph (c) of this section may apply for selection into a cooperative interstate shipment program through the State in which the establishment is located.

[76 FR 24753, May 2, 2011; 76 FR 81360, Dec. 28, 2011]

#### **§ 332.4 State request for cooperative agreement.**

(a) State participation in a cooperative interstate shipment program under this part is limited to States that have implemented cooperative State meat inspection programs.

(b) To request an agreement for a cooperative interstate shipment program under this part, a State must submit a written request to the Administrator through the FSIS District Office for the FSIS District in which the State is located. In the request the State must:

(1) Identify establishments in the State that have requested to be selected for the program that the State recommends for initial selection into the program, if any;

(2) Demonstrate that the State is able to provide the necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program established under this part; and

(3) Agree that, if the State enters into an agreement with FSIS for a cooperative interstate shipment program, the State will:

**§ 332.5**

**9 CFR Ch. III (1–1–25 Edition)**

(i) Provide FSIS with access to the results of all laboratory analyses conducted on product samples from selected establishments in the State;

(ii) Notify the selected establishment coordinator for the State of the results of any laboratory analyses that indicate that a product prepared in a selected establishment may be adulterated or may otherwise present a food safety concern; and

(iii) When necessary, cooperate with FSIS to transition selected establishments in the State that have been deselected from a cooperative interstate shipment program to become official establishments.

(c) If the Administrator determines that a State that has submitted a request to participate in a cooperative interstate shipment program qualifies to enter into a cooperative agreement for such a program, the Administrator and the State will sign a cooperative agreement that sets forth the terms and conditions under which each party will cooperate to provide inspection services to selected establishments located in the State.

(d) After the Administrator and a State have signed an agreement for a cooperative interstate shipment program as provided in paragraph (c) of this section, the Administrator will:

(1) Appoint an FSIS employee as the FSIS selected establishment coordinator for the State and

(2) Coordinate with the State to select establishments to participate in the program as provided in §332.5(b) of this part.

**§ 332.5 Establishment selection; official number for selected establishments.**

(a) An establishment operating under a cooperative State meat inspection program will qualify for selection into a cooperative interstate shipment program if the establishment:

(1) Has submitted a request to the State to be selected for the program;

(2) Has the appropriate number of employees under §332.3(a) of this part;

(3) Is not ineligible to participate in a cooperative interstate shipment program under §332.3(c) of this part;

(4) Is in compliance with all requirements under the cooperative State meat inspection program; and

(5) Is in compliance with all requirements under the Act and the implementing regulations in this chapter.

(b) To participate in a cooperative interstate shipment program, an establishment that meets the conditions in paragraph (a) of this section must be selected by the Administrator, in coordination with the State where the establishment is located.

(c) If an establishment is selected to participate in a cooperative interstate shipment program as provided in paragraph (b) of this section, the State is to assign the establishment an official number that reflects the establishment's participation in the cooperative interstate shipment program and advise the FSIS selected establishment coordinator for the State of the official number assigned to each selected establishment in the State. The official number assigned to every selected establishment must contain a suffix, e.g., "SE," that identifies the establishment as a selected establishment and that identifies the State, e.g., "SETX," for "selected establishment Texas."

(d) Failure of the State to comply with paragraph (c) of this section will disqualify the State from participation in the cooperative interstate shipment program.

**§ 332.6 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.**

(a) A cooperative interstate shipment program will commence when the Administrator, in coordination with the State, has selected establishments in the State to participate in the program.

(b) Inspection services for selected establishments participating in a cooperative interstate shipment program must be provided by designated personnel, who will be under the direct supervision of a State employee.

(c) Carcasses, parts of carcasses, meat, and meat food products prepared in a selected establishment and inspected and passed by designated State personnel must bear an official Federal mark, stamp, tag, or label of inspection in the appropriate form prescribed in

## Food Safety and Inspection Service, USDA

## § 332.8

part 312 of this subchapter that includes the information specified in § 332.5(c) of this part.

(d) Carcasses, parts of carcasses, meat, and meat food products prepared in a selected establishment that comply with the conditions in paragraph (c) of this section may be distributed in interstate commerce.

### § 332.7 Federal oversight of a cooperative interstate shipment program.

(a) The FSIS selected establishment coordinator for a State that has entered into an agreement for a cooperative interstate shipment program will visit each selected establishment in the State on a regular basis to verify that the establishment is operating in a manner that is consistent with the Act and the implementing regulations in this chapter. The frequency with which the SEC will visit selected establishments under the SEC's jurisdiction will be based on factors that include, but are not limited to, the complexity of the operations conducted at the selected establishment, the establishment's schedule of operations, and the establishment's performance under the cooperative interstate shipment program. If necessary, the selected establishment coordinator, in consultation with the District Manager that covers the State, may designate qualified FSIS personnel to visit a selected establishment on behalf of the selected establishment coordinator.

(b) The selected establishment coordinator, in coordination with the State, will verify that selected establishments in the State are receiving the necessary inspection services from designated personnel, and that these establishments are eligible, and remain eligible, to participate in a cooperative interstate shipment program. The selected establishment coordinator's verification activities may include:

(1) Verifying that each selected establishment employs, and continues to employ, 25 or fewer employees, on average, as required under § 332.3(a) of this part, unless the establishment is transitioning to become an official establishment;

(2) Verifying that the designated personnel are providing inspection services to selected establishments in a

manner that complies with the Act and the implementing regulations in this chapter;

(3) Verifying that the State staffing levels for each selected establishments are appropriate to carry out the required inspection activities; and

(4) Assessing each selected establishment's compliance with the Act and implementing regulations under this chapter.

(c) If the selected establishment coordinator determines that designated personnel are providing inspection services to selected establishments in the State in a manner that is inconsistent with the Act and the implementing regulations in this chapter, the Administrator will provide an opportunity for the State to develop and implement a corrective action plan to address inspection deficiencies identified by the selected establishment coordinator. If the State fails to develop a corrective action plan, or the selected establishment coordinator for the State determines that the corrective action plan is inadequate, the Administrator will terminate the agreement for the cooperative interstate shipment program as provided in § 321.3(d) of this chapter.

### § 332.8 Quarterly reports.

(a) The selected establishment coordinator will prepare a report on a quarterly basis that describes the status of each selected establishment under his or her jurisdiction.

(b) The quarterly report required in paragraph (a) of this section will:

(1) Include the selected establishment coordinator's assessment of the performance of the designated personnel in conducting inspection activities at selected establishments and

(2) Identify those selected establishments that the selected establishment coordinator has verified are in compliance with the Act and implementing regulations in this chapter, those that have been deselected under § 332.10 of this part, and those that are transitioning to become official establishments under § 332.11 of this part.

(c) The selected establishment coordinator is to submit the quarterly report to the Administrator through the District Manager for the State where

### § 332.9

the selected establishments identified in the report are located.

#### § 332.9 Enforcement authority.

(a) To facilitate oversight and enforcement of this part, selected establishments operating under a cooperative interstate shipment program must, upon request, give the FSIS selected establishment coordinator or other FSIS officials access to all establishment records required under the Act and the implementing regulations in this chapter. The Administrator may deselect any selected establishment that refuses to comply with this paragraph.

(b) Selected establishment coordinators may initiate any appropriate enforcement action provided for in part 500 of this chapter if they determine that a selected establishment under their jurisdiction is operating in a manner that is inconsistent with the Act and the implementing regulations in this chapter. Selected establishments participating in a cooperative interstate shipment program are subject to the notification and appeal procedures set out in part 500 of this chapter.

(c) If inspection at a selected establishment is suspended for any of the reasons specified in § 500.3 or § 500.4 of this chapter, FSIS will:

(1) Provide an opportunity for the establishment to implement corrective actions and remain in the cooperative interstate shipment program, or

(2) Move to deselect the establishment as provided in § 332.10 of this part.

(d) The decision to deselect a selected establishment under a suspension will be made on a case-by-case basis. In making this decision, FSIS, in consultation with the State where the selected establishment is located, will consider, among other factors:

(1) The non-compliance that led to the suspension;

(2) The selected establishment's compliance history; and

(3) The corrective actions proposed by the selected establishment.

#### § 332.10 Deselection of ineligible establishments.

(a) The Administrator will deselect a selected establishment that becomes

### 9 CFR Ch. III (1–1–25 Edition)

ineligible to participate in a cooperative interstate shipment program for any reason listed under § 332.3(c) of this part.

(b) An establishment that has been deselected must transition to become an official establishment as provided in § 332.11 of this part.

#### § 332.11 Transition to official establishment.

(a) If an establishment is deselected from a cooperative interstate shipment program as provided in § 332.10 of this part, FSIS, in coordination with the State where the establishment is located, will develop and implement a plan to transition the establishment to become an official establishment. Except that an establishment that was deselected from a cooperative interstate shipment program because it is located in a State whose agreement for such a program was terminated may either transition to become an official establishment or transition to become a State-inspected establishment under the cooperative State meat inspection program.

(b) An establishment that has been deselected from a cooperative interstate shipment program and successfully transitioned to become an official establishment may withdraw from the Federal inspection program and resume operations under the cooperative State meat inspection program after operating as an official establishment in full compliance with the Act for a year.

#### § 332.12 Transition grants.

(a) Transition grants are funds that a State participating in a cooperative interstate shipment program under this part may apply for to reimburse selected establishments in the State for the cost to train one individual in the seven HACCP principles for meat or poultry processing as required under § 417.7 of this chapter and associated training in the development of sanitation standard operating procedures required under part 416 of this chapter.

(b) A State participating in a cooperative interstate shipment program that receives a transition grant must use grant funds to reimburse the training costs of one employee per each selected

establishment in the State. Any other use of such funds is prohibited.

**§ 332.13 Separation of operations.**

A selected establishment may conduct operations under the cooperative State meat inspection program if the establishment implements and maintains written procedures for complete physical separation of product and process for each operation by time or space.

**§ 332.14 Voluntary withdrawal.**

A selected establishment that is in full compliance with the requirements in this part may voluntarily end its participation in a cooperative interstate shipment program and operate under the cooperative State meat inspection program. Establishments that voluntarily end their participation in the cooperative may re-apply for the program after operating under the cooperative State meat inspection program for one year.

**PART 335—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE FEDERAL MEAT INSPECTION ACT**

AUTHORITY: 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

SOURCE: 42 FR 10960, Feb. 25, 1977, unless otherwise noted. Redesignated at 64 FR 66545, Nov. 29, 1999.

**Subpart A—Criminal Violations**

AUTHORITY: Sec. 406, Pub. L. 99-641, 100 Stat. 3571; 21 U.S.C. 606 note.

**§ 335.40 Opportunity for presentation of views before report of criminal violations.**

(a) Except as provided in paragraphs (a)(1) through (5) of this section, before any violation of the Federal Meat Inspection Act is reported to the Department of Justice by the Secretary for criminal prosecution the Secretary must give reasonable notice to the suspected violator that the Secretary intends to report the violation for prosecution and give the suspected violator an opportunity to present the viola-

tor's views to the Secretary with respect to such proceeding.

(1) Notice and opportunity need not be provided if the Secretary has any reason to believe that providing such notice and opportunity could result in the alteration or destruction of evidence, or where disclosure could result in injury to persons or property.

(2) Notice and opportunity need not be provided if the Secretary has any reason to believe that providing such notice and opportunity could result in flight of a suspected violator to avoid prosecution.

(3) Notice and opportunity need not be provided if the Secretary has any reason to believe that providing such notice and opportunity could result in compromising special investigative techniques, such as undercover or other covert operations.

(4) Notice and opportunity need not be provided when the impending criminal referral involves suspicion of bribery and related offenses, or clandestine slaughtering and/or processing operations.

(5) Notice and opportunity need not be provided when the impending referral is part of an investigation involving non-Act violations, and the Act and non-Act violations are jointly referred for prosecution.

(b) A notice of opportunity to present views will be sent by registered or certified mail, summarize the violations that constitute the basis of the contemplated prosecution, and describe the procedures for presentation of views. Any information given by a respondent, orally or in writing, shall become part of the Department's official record concerning the matter. The Department is under no obligation to disclose evidence to the suspected violator.

[52 FR 13828, Apr. 27, 1987]

**PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS**

- Sec.
- 350.1 Meaning of words.
- 350.2 Definitions.
- 350.3 Types and availability of service.
- 350.4 [Reserved]
- 350.5 Application for service.