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Report From Agency

DATCP Docket No. 11-R-10  
Rules Clearinghouse No. 12-040

Proposed Final Draft  
November 1, 2012

**PROPOSED ORDER  
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION  
AMENDING, CREATING AND ADOPTING RULES**

2 The Wisconsin Department of Agriculture, Trade, and Consumer Protection proposes an order *to*  
3 *amend* ss. ATCP 55.02 (24), 55.04 (title), (2) (title), (a), and (b), and (6), and 55.07 (1) (a)  
4 (intro.), (2) (a) (intro.), and (3) (a) (intro.); and *to create* ss. ATCP 55.02 (4m), 55.03 (2) (f),  
5 55.04 (1m), 55.06 (5) (j), and 55.07 (1) (c), (2) (d), and (3) (c) *relating to* allowing certain  
6 selected Wisconsin state-inspected meat establishments to sell meat and meat products in other  
7 states and affecting small business.

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**Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection**

This proposed rule would implement federal regulations required for Wisconsin's state meat and poultry inspection program to meet United States Department of Agriculture (USDA) requirements for participation in the Cooperative Interstate Shipment (CIS) program. The CIS program will allow certain selected Wisconsin state-inspected meat and poultry establishments, which volunteer to participate in the program, to sell meat, poultry, and meat and poultry products in other states.

***Statutes Interpreted***

Statute Interpreted: s. 97.42, Stats.

***Statutory Authority***

Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.42 (4) (j), Stats.

***Explanation of Agency Authority***

DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP also has general authority under s. 97.09 (4), Stats., to

adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods and specific authority under s. 97.42 (4) (j), Stats., to establish rules to regulate the slaughter and processing of animals and poultry for human consumption.

### ***Related Statutes or Rules***

Wisconsin's state meat and poultry inspection program is governed by ch. 97, Stats. (Food Regulation), including s. 97.42, Stats. (Compulsory inspection of animals, poultry and carcasses). Chapter ATCP 55 interprets and implements ch. 97, Stats., as it relates to Meat and Meat Food Products.

State meat and poultry inspection programs operate under a cooperative agreement with the USDA's Food Safety and Inspection Service (FSIS) to provide inspection services to small and very small meat establishments. State meat and poultry inspection programs were established by the Wholesome Meat Act of 1967 and the Wholesome Poultry Products Act of 1968, which amended the Federal Meat Inspection Act (FMIA) to create 21 USC 661 and the Poultry Products Inspection Act (PPIA) to create 21 USC. 454. Section 11015 of Title XI of the Food, Conservation, and Energy Act of 2008 (the 2008 "Farm Bill"), enacted on June 18, 2008, amended FMIA and PPIA to establish a new voluntary program that will allow certain selected state-inspected meat establishments to sell their products in interstate commerce.

Title 9, Animal and Animal Products, of the Code of Federal Regulations (CFR) interprets and implements the federal FMIA and PPIA. Section 97.42 (4m), Stats., and ss. ATCP 55.06 (2), (3), (4), and (5) (d), and 55.07 (1), (2), and (3), adopt certain relevant sections of 9 CFR 309, 311, 313 to 315, 318, and 319, which relate specifically to inspection of meat and meat food products, 9 CFR 307, 310, 317, 416, 417, 430, 441, and 442 which relate to meat and poultry and food products and 9 CFR 381, Subparts G, I, J, K, L, O, and P which relate specifically to poultry and poultry products inspection.

### ***Plain Language Analysis***

#### **Background**

Wisconsin operates the nation's largest state meat and poultry inspection program, with more than 270 official licensed establishments. Twenty-seven states currently operate state meat and poultry inspection programs. All state-inspected Wisconsin meat and poultry establishments are very small (as defined by USDA) and fill an important niche in the state's economy. According to USDA, state meat and poultry inspection programs provide unique services to these small establishments by "providing more personalized guidance to establishments in developing their food safety oriented operations." USDA provides half of the funding for state meat and poultry inspection programs.

State meat and poultry inspection programs operate under a cooperative agreement with USDA FSIS. Under this agreement, states must provide inspection services "at least equal to" federal meat inspection. Each program conducts a self-assessment annually and USDA FSIS conducts an on-site audit every three years to determine whether the program meets federal "at least equal

to” requirements. Wisconsin’s program currently meets these “at least equal to” standards and has met them since the program’s inception.

State-inspected meat and poultry establishments may currently sell their products only within the state where the establishment is located. However, in May, 2011, USDA finalized rules that allow some selected state-inspected meat and poultry establishments to sell their meat and poultry products in other states. To qualify for the CIS program, states must provide inspection that is the “same as” (identical to) federal inspection. USDA will fund 60 percent of the state’s costs for inspecting meat and poultry establishments selected to participate in the CIS program.

This proposed rule will revise ch. ATCP 55, Meat and Meat Food Products, to incorporate by reference federal regulations creating the CIS program. The proposed rule will also incorporate by reference federal regulations that specify practices the state program must follow to operate the “same as” the federal program in establishments selected for the CIS program. These incorporated regulations address: conditions and facilities required before inspection begins, use of the inspection legend and mark, processing inspection procedures, cooking lethality; destruction of trichinae in pork products; chilling, freezing, and thawing of poultry; canning and canned meat and poultry products, nutrition labeling, record-keeping and record retention, transportation of meat and meat food products, procedures for detention, seizure and condemnation of product, mandatory recall plans to be prepared by the meat establishment, and safe and suitable uses of ingredients.

In addition, the proposed rule will revise ch. ATCP 55 to include, through incorporation of federal regulations by reference, two exemptions from meat establishment licensing requirements. These exemptions are for establishments which make meat pizzas and ship them hot for sale by a non-profit organization, and establishments which make meat items at a central commissary and ship them for meal sales at restaurants owned by the same company. These exemptions have long been part of the federal regulations and have been honored as “common sense” policy by Wisconsin inspection program personnel because the establishments would already be licensed as restaurants under s. 254.74 Stats., or food processing establishments under s. 97.29 Stats.

***Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis.***

This rule is not anticipated to have a significant fiscal impact on state operations and will have no fiscal impact on local governments. The Bureau of Meat Safety and Inspection expects that it will incur minimal costs to implement the CIS program since the Bureau already inspects meat and poultry establishments selected into the program using procedures deemed “at least equal to” the federal standards. In its analysis of the final federal rule, USDA noted that states may incur some costs associated with processing and evaluating applications submitted by establishments requesting selection into the CIS program. Wisconsin may make some changes in procedures to meet “same as” federal inspection requirements, but the costs associated with these changes are minimal. A complete Economic Impact Analysis is attached.

### ***Effect on Small Business***

This rule will have a positive impact on very small state-inspected meat and poultry establishments that choose to participate and are selected for the program. The department estimates 17 establishments will participate in the program in the first year of its operation. Participation in the CIS program will allow these state-inspected meat and poultry establishments to expand their markets from selling only in Wisconsin to all fifty states. USDA expects establishments to incur a one-time start-up cost associated with filing an application, training employees, meeting regulatory performance standards, obtaining label approval, and implementing a food safety program. Furthermore, some state-inspected establishments may need to make structural modifications to their facilities to comply with all federal requirements. The department anticipates costs associated with these activities to be minimal and likely to be offset by increased sales in a larger market area.

Wisconsin will not be able to provide flexibility to small businesses in complying with federal regulations. By complying with state regulations under a program deemed to be “at least equal to” the federal program, these businesses are essentially meeting most of the federal regulations the state program will adopt in administering a program deemed to be the “same as” the federal program. Small and very small meat and poultry establishments (as defined by USDA) in Wisconsin that choose to operate under federal inspection are already complying with the federal regulations. In addition, the CIS program is voluntary and no state-inspected meat or poultry business will be required to participate.

### ***Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations.***

The FMIA and the PPIA gave USDA FSIS the responsibility for ensuring the safety and wholesomeness of meat and poultry distributed in commerce for use as human food. FSIS inspects more than 6,200 establishments, conducting ante and post mortem slaughter inspection, inspection of meat and poultry food products and inspection of basic sanitation practices. FSIS also ensures that meat and poultry businesses follow labeling and humane handling procedures during slaughter, as required by federal law. The agency also reviews Hazard Analysis and Critical Control Point (HACCP) systems. HACCP is a system employed by each establishment for preventing contamination and ensuring the safety of meat and poultry products.

Wisconsin’s state meat and poultry inspection program operates under a cooperative agreement with FSIS. The Wholesome Meat Act of 1967 and the Wholesome Poultry Products Act of 1968 created state meat inspection programs under the authority of FSIS. FSIS ensures that state programs meet inspection standards that are “at least equal to” federal meat inspection standards. FSIS provides 50 percent of Wisconsin’s program funding.

Until 2008, only meat and poultry establishments inspected by FSIS were allowed to sell products in interstate commerce. The 2008 Farm Bill authorized FSIS to create the CIS program, allowing selected state-inspected meat and poultry establishments to sell their products in interstate commerce. FSIS published final rules for the voluntary program in May 2011 and will provide oversight for the program to ensure that state meat inspection programs deliver inspection services that are the “same as” federal meat inspection. FSIS will provide states with 60 percent of the cost for inspecting those establishments that participate in the program.

### ***Comparison with Rules in Adjacent States***

Michigan currently does not operate a state meat and poultry inspection program and is not eligible to participate in the CIS program. Minnesota, Iowa and Illinois do operate state meat inspection programs, but these states do not plan to participate in the CIS program at this time. Illinois’ state meat inspection program includes USDA’s Federal-State Cooperative program (formerly known as the “Talmadge-Aiken” program). Under this program, state inspectors conduct federal inspections, and the inspected establishments are thereby allowed to sell their products in interstate commerce. Unlike the CIS program where meat establishments will continue to be operated under the state meat inspection program, meat establishments in the Federal-State Cooperative program are considered to be federally-inspected.

### ***Summary of Factual Data and Analytical Methodologies***

The Bureau of Meat Safety and Inspection surveyed Wisconsin state-inspected meat and poultry establishments that previously expressed interest in participating in the CIS program, to gauge their level of interest and the range of products the establishments hope to produce in the CIS program. The Bureau reviewed information about state meat inspection programs and contacted surrounding states to determine the extent to which each state plans to participate in the CIS program.

### ***Agency Contact Person***

Questions and comments related to this rule may be directed to:

Cindy Klug, Director  
Bureau of Meat Safety and Inspection  
Department of Agriculture, Trade and Consumer Protection  
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***Place Where Comments are to be Submitted and Deadline for Submission***

Comments on the proposed rule could be submitted to the following individual until October 29, 2012:

Cindy Klug, Director  
Bureau of Meat Safety and Inspection  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
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E-Mail: [Cindy.Klug@Wisconsin.gov](mailto:Cindy.Klug@Wisconsin.gov)

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1           **SECTION 1.** ATCP 55.02 (4m) is created to read:

2           ATCP 55.02 (4m) “Cooperative interstate shipment program” means the program under  
3           which an establishment licensed and inspected under this chapter and complying with applicable  
4           requirements in 9 CFR 321 and 332, or applicable requirements of 9 CFR 381, Subparts R and Z,  
5           is allowed to distribute and sell in interstate commerce meat or poultry products manufactured  
6           bearing the mark of inspection authorized under s. ATCP 55.06 (5) (j).

7           **SECTION 2.** ATCP 55.02 (24) is amended to read:

8           ATCP 55.02 (24) “Poultry” means domesticated fowl commonly used for human food,  
9           including domesticated chickens, turkeys, geese, ducks, guinea fowl and squab. “Poultry” does  
10          not include ~~rattles~~ or captive game birds.

11          **SECTION 3.** ATCP 55.03 (2) (f) is created to read:

12          ATCP 55.03 (2) (f) A retail establishment qualifying for an exemption under 9 CFR  
13          303.1 (d) (2) (iv) (c) or (e) (1) or 9 CFR 381.10 (d) (1) or (e) (1).

14          **SECTION 4.** ATCP 55.04 (title) is amended to read:

1 ATCP 55.04 (title) **Slaughter and processing inspection; general.**

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3 **SECTION 5.** ATCP 55.04 (1m) is created to read:

4 ATCP 55.04 (1m) PROCESSING INSPECTION REQUIRED. (a) No person operating a  
5 licensed meat establishment may sell any meat food product unless that meat food product is  
6 labeled as provided in s. ATCP 55.10 (3).

7 (b) Paragraph (a) does not apply to meat food products processed at a retail establishment and  
8 sold only to individual consumers at that establishment.

9 **SECTION 6.** ATCP 55.04 (2) (title), (a), and (b), and (6) are amended to read:

10 ATCP 55.04 (2) (title) SLAUGHTER AND PROCESSING INSPECTION PROVIDED TO LICENSED  
11 MEAT ESTABLISHMENTS.

12 (a) The department shall provide ante mortem and post mortem slaughter inspection  
13 services and processing inspection services to operators of meat establishments licensed under s.  
14 ATCP 55.03. The department may not provide slaughter or processing inspection services to  
15 other persons.

16 (b) A meat establishment operator requesting slaughter or processing inspection services  
17 shall submit the request to the department in writing, and shall specify a proposed slaughter or  
18 processing schedule according to s. ATCP 55.03 (12) (b). The department may require a  
19 different schedule, as provided in s. ATCP 55.03 (12) (c). The meat establishment operator may  
20 not deviate from the specified schedule without prior department approval, as provided in s.  
21 ATCP 55.03 (12) (d).

22 (6) SLAUGHTER AND PROCESSING INSPECTION PROCEDURES. Slaughter and processing  
23 inspection procedures shall comply with this chapter, including ss. ATCP 55.05 to 55.07 and

1 applicable federal requirements as specified in 9 CFR 305, 309, 310, 316, 318, 321, 329, 332,  
2 416, 417, and 500, and 9 CFR 381, Subparts E, J, K,M, O, R, U, Y, and Z.

3 **SECTION 7.** ATCP 55.06 (5) (j) is created to read:

4 ATCP 55.06 (5) (j) The official inspection mark at a licensed establishment selected for  
5 participation in the cooperative interstate shipment program shall comply with the requirements  
6 of 9 CFR 332 or 9 CFR 381, Subpart Z as applicable.

7 **SECTION 8.** ATCP 55.07 (1) (a) (intro.) is amended to read:

8 ATCP 55.07 (1) (a) (intro.) A meat establishment operator who does any of the following  
9 shall comply with applicable federal standards under 9 CFR ~~parts 307 to~~, 309, 310, 311, 313 to  
10 315, 317, 318, 319, 320, 325, 416, 417, 418, 424, 430, 441, and 442, and 500:

11 **SECTION 9.** ATCP 55.07 (1) (c) is created to read:

12 ATCP 55.07(1) (c) A meat establishment operator who does any of the activities in par.  
13 (a) and whose establishment is selected for participation in the cooperative interstate shipment  
14 program shall comply with applicable federal standards under 9 CFR 321 and 332.

15 **SECTION 10.** ATCP 55.07 (2) (a) (intro.) is amended to read:

16 ATCP 55.07 (2) (a) A meat establishment operator who does any of the following shall  
17 comply with applicable requirements under 9 CFR 416, 417 ~~and~~, 418, 424, 430, 441, and  
18 ~~subparts 442, and 500, and 9 CFR 381, Subparts G, H, I, J, K, L, N, O, and, P of 9 CFR 381, Q,~~  
19 R, S, X, Y, and Z:

20 **SECTION 11.** ATCP 55.07 (2) (d) is created to read:

21 ATCP 55.07 (2) (d) A meat establishment operator who does any of the activities in par.  
22 (a), and whose establishment is selected for participation in the cooperative interstate shipment  
23 program, shall comply with applicable federal standards under 9 CFR 381, Subparts S and Z.

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**SECTION 12.** ATCP 55.07 (3) (a) (intro.) is amended to read:

ATCP 55.07 (3) (a) (intro.) A meat establishment operator who does any of the following shall comply with applicable requirements under 9 CFR 416 ~~and~~ 417, 418, 424, 430, 441, 442, and 500 and ~~subparts 9 CFR 381, Subparts G, H, I, J, K, L, N, O, and P of 9 CFR 381, Q, R, S,~~ X, Y, and Z:

**SECTION 13.** ATCP 55.07 (3) (c) is created to read:

ATCP 55.07 (3) (c) A meat establishment operator who does any of the activities in par. (a), and whose establishment is selected for participation in the cooperative interstate shipment program, shall comply with applicable federal standards under 9 CFR 381, Subparts S and Z.

**SECTION 14. EFFECTIVE DATE:** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (intro.) Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel, Secretary