



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: December 17, 2012

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

The Honorable Jeff Fitzgerald
Speaker, Wisconsin State Assembly
Room 211, West, State Capitol
PO Box 8952
Madison, WI 53708-895

FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Meat and Meat Food Products, ch. ATCP 55; Final Draft Rule
(Clearinghouse Rule #12-040)**

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

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.

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

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very small as defined by the United States Department of Agriculture (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 very 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's Food Safety and Inspection Service (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.

Currently state-inspected meat and poultry establishments may only sell their products within the state where the establishment is located. However, in May, 2011, USDA finalized rules that will allow selected state-inspected meat and poultry establishments to sell their meat and poultry products in other states. To qualify for this program, known as the Cooperative Interstate Shipment (CIS) program, states must provide inspection at the selected establishments 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.

Rule Content

This proposed rule will revise ch. ATCP 55, Meat and Meat Food Products, to incorporate by reference federal regulations which create the CIS program and specify practices that ensure the state program operates the "same as" the federal program for 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 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.

Public Hearings

DATCP held three public hearings on the following dates and locations:

October 15, 2012 Madison, Wisconsin
October 18, 2012 Eau Claire, Wisconsin
October 19, 2012 Green Bay, Wisconsin

Following the public hearings, the hearing record remained open until October 29, 2012 for additional written comments. No one attended the public hearings. The department received written and oral comments from USDA related to the development process of the Cooperative Agreement for the CIS program.

DATCP's Rule Changes in Response to Public Hearings and Rules Clearinghouse Comments

In response to USDA comments, technical changes were made to the list of federal regulations cited in the hearing draft. DATCP also made minor editorial changes suggested by the Legislative Council Rules Clearinghouse.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Fiscal Impact

This rule is not anticipated to have a significant fiscal impact on state operations and will have no 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 analyzing 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.

Business Impact

This rule will have a positive impact on small state-inspected meat and poultry establishments that choose to participate and are selected for the program. Currently, state-inspected meat and poultry establishments may only sell products in the state in which they are located. The

department estimates 17 establishments will participate in the program within the first year, with more establishments joining the program over time. Participation in the CIS program will allow these state-inspected meat and poultry establishments to expand their wholesale markets from selling only in Wisconsin to potentially selling in all fifty states.

This rule will benefit the small Wisconsin state-inspected meat and poultry businesses affected by the rule. Negative effects, if any, will be few and limited, and businesses may choose not to participate in this voluntary program.

Environmental Impact

This rule will not have any environmental impact.

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 wholesale 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 Federal Meat Inspection Act and the Poultry Products Inspection Act 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.