

DATCP Docket No. 11-R-11

Filed with LRB: September 10, 2012
Publication Date: September 13, 2012
Effective Dates: September 13, 2012 through February 9, 2013
Extension Through: June 9, 2013
Hearing Date(s): October 15, 18, 19, 2012

The statement of scope for this rule, SS 005-12, was approved by the Governor on January 11, 2012, published in Register No. 673, on January 31, 2012, and approved by the Natural Resources Board on February 22, 2012. This emergency rule was approved by the Governor on September 6, 2012.

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**

EMERGENCY RULE

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule *to amend* ss. ATCP 55.04 (title), (2) (title), (a) and (b), and (6), 55.07 (1) (a), (2) (a) and (3) (a); and *to create* ss. ATCP 55.02 (4m), 55.03 (2) (f), 55.04 (1m), 55.06 (5) (j), 55.07 (1) (c), (2) (d) and (3) (c) *relating to* allowing certain selected Wisconsin state-inspected meat establishments to sell meat and meat products in other states and thereby affecting small business.

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

This emergency rule implements federal regulations required for Wisconsin's state meat and poultry inspection program to meet 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 Statutory Authority

DATCP has broad 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 and 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 United States Department of Agriculture's (USDA) 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, respectively. Section 11015 of Title XI of the Food, Conservation, and Energy Act of 2008 (the 2008 "Farm Bill"), enacted on June 18, 2008, amended the 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 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, 308, 310, 317, 416, and 417 which relate to meat and poultry and food products and 9 CFR 381, Subparts G, I, J, K, L, O, and P which relate 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 plants 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 sell their products only within the state where the plant 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 this program, known as the Cooperative Interstate Shipment (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 plants selected to participate in the CIS program.

This emergency rule will revise ch. ATCP 55, Meat and Meat Food Products, to incorporate by reference federal regulations creating the CIS program and specifying rules of practice that ensure the state program operates the "same as" the federal program for plants selected for the CIS program. DATCP also plans to adopt a permanent rule to revise ch. ATCP 55.

Fiscal Impact

This emergency 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 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 need to make some procedural changes to meet “same as” federal inspection requirements, but, the costs associated with these changes are minimal. A complete fiscal estimate is attached.

Business Impact

This emergency rule will have a positive impact on small state-inspected meat and poultry establishments that choose to participate and are selected for the program. The department estimates that 17 plants will participate in the program in the first year of the program. Participation in the CIS program will allow these state-inspected meat and poultry plants to expand their markets from selling only in Wisconsin to potentially selling in all fifty states. USDA expected establishments may incur one-time start-up costs associated with filing an application, training employees, meeting regulatory performance standards, obtaining label approval, and implementing a food safety program and some state-inspected establishments may need to make structural modifications to their facilities to comply with all federal requirements. The department anticipates that costs associated with these activities will be minimal and 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 already meeting most of the federal regulations the state program will adopt a program deemed to be the “same as” the federal program. Small and very small meat and poultry plants (as defined by USDA) in Wisconsin chose 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.

Federal and Surrounding State Programs

Federal Programs

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 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 preventive 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 the program’s 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 plants that participate in the program.

Surrounding State Programs

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 plants 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 federally-inspected.

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 these plants hope to produce. 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.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this emergency rule is approved by the Governor and published in the Wisconsin State Journal.

14.1

FINDING OF EMERGENCY

The department of agriculture, trade and consumer protection finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

(1) Wisconsin has more than 270 small state-inspected meat establishments that contribute to the vitality of the state's rural economy, producing many unique, specialty products. Wisconsin's state-inspected meat and poultry establishments are inspected by Wisconsin's Bureau of Meat Safety and Inspection under a cooperative agreement with the United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) program. Under the cooperative agreement, state meat inspection programs must provide inspection that is "at least equal to" federal inspection under the Federal Meat Inspection Act (FMIA) (21 USC 661) and the Poultry Products Inspection Act (PPIA) (21 USC 454). State-inspected meat and poultry establishments are prohibited from selling their products in other states.

(2) USDA recently established the new Cooperative Interstate Shipment (CIS) program, which will allow state-inspected meat and poultry establishments to sell their products in other states. To qualify for participation in the CIS program, state meat and poultry inspections programs must inspect establishments that volunteer to participate in the program using procedures that are the "same as", rather than "at least equal to," USDA's federal inspections under FMIA and PPIA. This emergency rule incorporates certain federal regulations that Wisconsin's state meat inspection program must adopt in order to establish a regulatory foundation deemed the "same as" the foundation for the federal program, and thereby allowing Wisconsin to participate in the CIS program.

(3) The department of agriculture, trade and consumer protection (DATCP) is adopting this emergency rule to prevent a potential hardship to Wisconsin's state-inspected meat establishments selected to participate in the program; adoption of the emergency rule will ensure that these establishments are not prevented from selling their meat and poultry products in other states because the pending "permanent" rules cannot be adopted in time.

EMERGENCY RULE

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

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

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

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

SECTION 3. ATCP 55.04(title) is amended to read:

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

SECTION 4. ATCP 55.04 (1m) is created to read:

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

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

SECTION 5. ATCP 55.04 (2) (title), (a), (b), and (6) are amended to read:

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

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

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

(6) SLAUGHTER AND PROCESSING INSPECTION PROCEDURES. Slaughter and processing inspection procedures shall comply with this chapter, including ss. ATCP 55.05 to 55.07 and applicable federal requirements as specified in 9 CFR 305, 309, 310, 316, 318, 321, 329, 332, and 500, and 9 CFR 381, Subparts E, J, K, O, R, U, and Z.

SECTION 6. ATCP 55.06 (5) (j) is created to read:

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

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

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

SECTION 8. ATCP 55.07 (1) (c) is created to read:

ATCP 55.07(1) (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 must comply with applicable federal standards under 9 CFR 321 and 332.

SECTION 9. ATCP 55.07 (2) (a) and (3) (a) are amended to read:

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

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

SECTION 10. ATCP 55.07 (2) (d) and (3) (c) are created to read:

ATCP 55.07 (2) (d) 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.

(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 11. EFFECTIVE DATE: This emergency rule takes effect upon publication, and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this _____ day of _____, 2012.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Meat and Meat Products
Adm. Code Reference: ATCP 55, Emergency Rule
Rules Clearinghouse #: Not Applicable
DATCP Docket #: 11-R-11

Rule Summary

Wisconsin operates the nation's largest state meat and poultry inspection program, with more than 270 official licensed establishments. State meat and poultry inspection programs operate under a cooperative agreement with the United States Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS). Under this agreement, states must provide inspection services "at least equal to" federal meat and poultry inspection. State-inspected meat and poultry establishments may only sell their products within the state in which they are located. In May, 2011, USDA finalized rules that will allow some selected state-inspected 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 that is the "same as" (identical to) federal inspection.

This emergency rule provides the regulatory foundation needed for Wisconsin's state meat and poultry inspection program to participate in USDA's CIS program. This emergency rule will revise ch. ATCP 55, Meat and Meat Food Products, to incorporate by reference federal regulations creating the CIS program and specify rules of practice that ensure the state program operates the "same as" the federal program when overseeing plants selected for the CIS program. DATCP will also seek a non-emergency, permanent rule to revise ch. ATCP 55.

Business Impact

This emergency 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 plants may only sell products in the state in which they are located. The department estimates 17 plants will participate in the program within the first year, with more plants joining the program over time. Participation in CIS will allow these state-inspected meat and poultry plants to expand their markets from selling only in Wisconsin to potentially selling in all fifty states.

¹ This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under ss. 227.114 and 227.19(3)(e), Stats.

As part of their planning process for the CIS program, USDA expected establishments may incur one-time start-up costs associated with filing an application, training employees, meeting regulatory performance standards, obtaining label approval, and implementing a food safety program and expected some state-inspected establishments may need to make structural modifications to their facilities to comply with all federal requirements. Based on preliminary reviews of establishments expressing interest in participation in the program, the department anticipates that costs associated with these activities will be minimal. Most Wisconsin businesses will not need to change their business practices substantially to meet federal regulations. The department expects that establishments may incur minor costs related to revising labels to meet federal requirements. As a voluntary program, no Wisconsin state-inspected meat establishment will be required to make any change unless they volunteer to participate in the CIS program. Finally, there are no new or additional licensing fees to participate in the program.

Accommodation for Small Business

Federal law requires participants in the CIS program to meet inspection requirements that are the “same as” federal meat inspection requirements. Wisconsin will not be able to provide flexibility from these federal regulations to small businesses. However, state-inspected meat and poultry businesses already meet federal regulations that are “at least equal to” federal requirements, which are not substantially different from “same as” requirements. In addition, the program is voluntary and no state-inspected meat or poultry business will be required to participate. Businesses may choose to continue to be inspected under the state meat inspection program and sell their products only within the state of Wisconsin.

Conclusion

This rule will benefit 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.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this _____ day of _____, 2012.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Steven C. Ingham, Administrator,
Division of Food Safety