State of Wisconsin
Governor Scott Walker

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

DATE: August 31, 2016

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
Steve Ingham, Administrator, Division of Food Safety

SUBJECT: **ATCP 55–Meat and Meat Food Products; Rulemaking Scope Statement**

PRESENTED BY: Steve Ingham, Division of Food and Recreational Safety

REQUESTED ACTION:

At its September 8, 2016, meeting, the Department of Agriculture, Trade and Consumer Protection ("Department") will ask the Board to approve the attached scope statement for potential changes to ATCP 55, relating to Meat and Meat Food Products. The primary goal of the rule revision will be to adopt statutory changes made in 2015 Wisconsin Act 243.

Act 243 does all of the following: 1) requires the Department to set, by rule, annual license fee amounts, not to exceed the current level, based on the type of inspection required; 2) specifies exemptions from requirements for retail food establishments producing certain meat items to hold a meat establishment license; 3) broadens the range of animals for which slaughter inspection is provided without a fee by the Department (alpacas, bison, llamas, and rabbits are now "amenable" species); and 5) provides the Department authority to withdraw inspection from a licensed meat establishment, and the procedure for doing so. The Department also proposes revisions to: 1) make the rule terminology consistent with that in 2015 Wisconsin Act 243; 2) ensure that all appropriate United States Department of Agriculture (USDA) regulations enforced by the Department are correctly cited; 3) remove the requirement for Department approval of formulas and labels for meat products prepared at a licensed meat establishment solely for sale at a retail food establishment operated on the same premises; and 4) clarify whether a mandatory inspection frequency should be set for custom meat establishments.

A scope statement spells out the general purpose and scope of a proposed rule. The Department may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for that rule as required under s. 227.135(2), Stats. This scope statement was approved by the Governor on August 23, 2016. Wisconsin statutes also require the Board to approve a scope statement before the Department can begin to draft a proposed rule.

If the Board approves the scope statement, the Department will prepare a hearing draft rule. The Board must approve a hearing draft rule before the Department may hold public hearings on it. The Board must also approve the final draft rule before the Department may adopt the rule. The permanent rule will be effective when the final draft has been approved by the Board, approved by the Governor, reviewed and approved by legislative committee, and adopted by the Secretary.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 55, Wis. Adm. Code

Relating to: Meat establishment license fees, requirements and exemptions; federal regulations cited, and affecting small business.

1. Description of the objective of the rule:

The Department proposes rule revisions to implement provisions of 2015 Wisconsin Act 243. This act: 1) requires the Department to set, by rule, annual license fee amounts, not to exceed the current level, based on the type of inspection required, 2) specifies exemptions from requirements for retail food establishments producing certain meat items to hold a meat establishment license, 3) broadens the range of animals for which slaughter inspection is provided without a fee by Department, and 5) provides the Department's authority to withdraw inspection from a licensed meat establishment, and the procedure for doing so. The Department also proposes revisions to: 1) make the rule terminology consistent with that in 2015 Wisconsin Act 243, 2) ensure that all appropriate United States Department of Agriculture (USDA) regulations enforced by the Department are correctly cited, 3) remove the requirement for Department approval of formulas and labels of meat products prepared at a licensed meat establishment solely for sale at a retail food establishment operated on the same premises, and 4) clarify whether a mandatory inspection frequency should be set for custom meat establishments.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

New statutory (2015 Wisconsin Act 243) exemptions from requirements to hold a meat establishment license affect a greater number of retail food establishments than were previously considered exempt. The statutory language is now consistent with USDA regulations and the Department proposes to ensure that exemptions in rule will be consistent with those in statute.

The statute broadens the range of animals for which slaughter inspection is provided without fee by the Department. Alpacas, bison, llamas, and rabbits are now considered "livestock" and eligible for the no-fee inspection starting in 2018. In addition, to implement 2015 Wisconsin Act 243, and assist small rabbit producers who currently are prohibited by a statutory requirement for rabbits to be slaughtered anywhere but in a licensed establishment, the Department proposes to create a no-cost license category for on-farm rabbit slaughtering establishments, with baseline sanitation and recordkeeping requirements, which will adequately safeguard public health while allowing low-volume rabbit producers to develop their businesses. The Department will consider, with stakeholder input, specifying the minimum inspection frequency for these establishments. Higher-cost license categories with more stringent sanitary requirements and more frequent inspection may be created for larger-volume on-farm rabbit slaughter operations.

Creation of these license categories is consistent with the statutory mandate to establish license fees based on the type of mandatory inspection required. The Department proposes to create, with stakeholder input, multiple license categories to replace the current two licenses, a meat establishment license costing $200 and a custom meat establishment license costing $80.

Many licensed meat establishments operate a retail food establishment on the same premises. Provided that non-meat items sold in the retail food establishment do not exceed 25% of the total sales, the Department, by rule, does not require the retail food establishment to hold a separate retail food establishment license. In this situation, many licensed meat establishments manufacture some meat products solely for the retail food establishment part of their business. The packages containing these products are not required to bear the inspection legend that is required for meat products being sold wholesale. However, existing rule has long been interpreted as requiring that the formula and label of each of these products must be pre-approved by the Department before retail sale. Some business operators have questioned the fairness of this interpretation, as there are no such requirements for other, non-meat, potentially hazardous foods made for retail sale, such as fish sausage, and retail food establishments, not linked to a meat establishment, commonly make and sell meat items without formula or label approval, (*e.g.,* rotisserie chicken).

Currently there is no mandated frequency for inspection of custom meat establishments. These licensed establishments perform slaughter and/or processing, during which there is generally no inspector present and no mark of inspection is applied to the carcass or packages of products. The resulting products are returned to the owner, (*i.e.* the products are "not for sale"). Since custom meat establishment operators pay a fee, it is only fitting that they are provided at least a minimum level of Department service. The Department currently strives to inspect custom establishments monthly, and seeks industry input on whether to set a minimum inspection frequency. The Department is open to considering an inspection frequency based upon previous establishment performance.

The Department meat inspection program is required by USDA to have inspection procedures that are "at least equal to" USDA procedures for establishments making products that may only be sold in Wisconsin, or to have inspection procedures that are the "same as" USDA procedures for establishments in the Cooperative Interstate Shipment program that are allowed to ship products to retail businesses in other states. In the former situation ("at least equal to"), the Department's inspection procedures may differ in detail but must have the same inspection outcomes. In the latter situation ("same as") the inspection procedures must be identical. The USDA has several actions that can be taken to maintain inspector safety or encourage non-compliant establishments to take corrective actions. One of the more serious actions is to suspend inspection services, a step that essentially forces an establishment to cease operations or risk being prosecuted for operating illegally. 2015 Wisconsin 243 provided this same suspension authority to the Department. The Department will consider whether this authority should be listed along with the other enforcement actions currently described in the rule.

Policy Alternatives. If the Department does not update the current rules as outlined above, there will be several contradictions between statute and rule. Industry could be confused about license exemption criteria, the species of animals for which there is no inspection fee, the authority of Department personnel to suspend inspection services, and general terminology. On-farm

slaughter of rabbits would be definitively illegal, potentially stifling a growing value-added agricultural sector. The opportunity to tailor license fees to the type of inspection will be lost, along with an opportunity to reduce the fee burden on industry. The opportunity to streamline retail meat operations by eliminating the requirement for Department formula and label approval would also be lost, resulting in additional steps in bringing meat products to retail customers.

3. Statutory authority for the rule (including the statutory citation and language): Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.42 (4), Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, Stats., which regulations shall have the force of law.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

97.42 Compulsory inspection of animals, poultry and carcasses.

(4) RULES. The department may issue reasonable rules requiring or prescribing any of the following:

(a) The inspection before and after slaughter of all animals and poultry killed or dressed for human consumption at any establishment....

(g) Specifications and standards for location, construction, operation, facilities, equipment and sanitation for any premises, establishment or mobile facility where slaughter or processing is carried on, including custom slaughtering of animals or poultry and custom or retail processing of meat and poultry products.

(h) Conditions of sanitation under which carcasses, parts of carcasses, poultry and meat and poultry products shall be stored, transported or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, transporting or processing such products.

(i) Record-keeping requirements for persons engaged in slaughtering or processing operations, or in the storage or transportation of meat, poultry, or meat food products, including record-keeping requirements for meat brokers and the registration of meat brokers with the department.

(j) Any other rules reasonably necessary to the administration and enforcement of this section.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

The Department estimates that it will use approximately 0.10 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating stakeholder meetings, holding public hearings and otherwise communicating with affected persons and groups. The Department will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

Meat establishment operators, retail food establishment operators, and livestock producers will all benefit from the proposed revisions. License fees may decrease for many meat establishment operators, and an increased number of retail food establishment operators will not have to obtain an additional meat establishment license. Meat establishments producing items specifically for sale in their own retail food establishment (operated in conjunction with the meat establishment) will not have to face the procedural hurdles of formula and label approval. Producers of alpacas, bison, and llamas will have lower costs, due to the inclusion of these animal species in the list of species for which the Department provides no-fee slaughter inspection. On-farm rabbit-slaughter operations will be licensable, allowing the sale of their products to licensed retail food establishments and restaurants, while facing a minimal regulatory burden. Discrepancies in terminology and requirements between statute and rules will be eliminated.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

State meat inspection programs operate under a cooperative agreement with the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS). Under this agreement, state meat inspection programs are required to adopt regulations that are "at least equal to" federal meat and poultry inspection regulations. In addition, Wisconsin is one of four states participating in the Cooperative Interstate Shipment (CIS) program allowing certain selected state-inspected meat establishments to ship their products in interstate commerce. States in the CIS program must adopt regulations that are the "same as" federal meat inspection regulations.

The proposed rule will ensure Wisconsin's state meat inspection program is consistent with federal regulations and expectations for inspection and enforcement procedures, as well as exemptions from inspection, and suspension of inspection. By increasing the number of animal species that can be slaughtered in Wisconsin under no-fee inspection, as opposed to under voluntary for-fee inspection, the rule enhances the economic position of farmers producing alpacas, bison, and llamas.

7. Anticipated economic impact

This rule change is anticipated to decrease costs for producers of alpacas, bison, and llamas; reduce license fees for most meat establishments and several retail food establishments; and decrease procedural barriers for meat establishment operators running a retail food establishment on the same premises. While rabbit producers may face a slight increase in costs, the ability to slaughter rabbits in an on-farm licensed facility may increase their ability to sell rabbit to restaurants and other retail food establishments. The rule will not have an economic impact on local governmental units or public utility taxpayers.

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for Ben Brancel
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August 4, 2016
Date Submitted