

**Department of State Health Services
Council Agenda Memo for State Health Services Council
February 26-27, 2014**

Agenda Item Title: Amendment to a rule concerning federal regulations on meat and poultry inspection

Agenda Number: 5.h

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Meat Safety Assurance (MSA) Program within the Division for Regulatory Services partners with the citizens, communities, and meat and poultry industries of Texas to protect, promote, and improve health. The MSA Program's efforts assure that products bearing the Texas Mark of Inspection originate from healthy, humanely slaughtered livestock; are prepared in a sanitary manner; contain no harmful ingredients; and have truthful marking and labeling.

The MSA Program operates under a cooperative agreement with the Federal Meat and Poultry Inspection Program of the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS). The State Program regulates and enforces regulatory requirements that are "at least equal to" those enforced under the Federal Program. Under this agreement, FSIS provides up to 50 percent of the funds for operating the Texas state meat and poultry inspection program, and the State provides funds for the remainder.

Approximately 193 establishments in Texas currently have a State Grant of Meat and/or Poultry Inspection.

Summary:

The purpose of the proposed amendment is to ensure that the Texas State Meat and Poultry Inspection Program is at least equal to the federal regulations administered by the USDA/FSIS.

USDA adopted 9 Code of Federal Regulations (CFR) Parts 418 and 442, that:

- require establishments to prepare and maintain written recall procedures and to notify DSHS within 24 hours of learning or determining that adulterated meat products entered commerce; and
- prescribe the requirements for measuring and labeling content weight for meat products. (This does not create new requirements but instead updates and consolidates language previously adopted by DSHS.)

The proposed amendment will incorporate these changes by reference.

Key Health Measures:

The proposed amendment is anticipated to decrease the public's exposure to mislabeled and harmful meat products. These proposed changes are also required for the MSA Program to maintain its "at least equal to" status for federal meat and poultry inspections as required by Health and Safety Code, Section 433.071 and Title 21, United States Code, Section 661.

The MSA Program monitors the number of recalls and inspection findings. There have been six instances in the last three years where a meat recall was necessary at meat establishments with a Grant of Meat Inspection with the MSA Program. In all instances, the establishment chose to voluntarily recall the products and voluntarily notify the consignees and/or retail consumers that received the recalled products through written notice and/or public service announcements via radio, television, and/or newspaper. From the final quarter of 2004 through the first quarter of 2014, MSA performed 25,966 inspections to ensure compliance with the net weight regulations throughout the state. Less than one percent (65) resulted in a noncompliance finding.

Summary of Input from Stakeholder Groups:

USDA has provided notification regarding changes to CFR Parts 418 and 442 via the *Federal Register*. Additionally, various meat processing associations have provided notification through their publications of the upcoming federal rule change on numerous occasions over the past several years.

Following the publication of the proposed rule amendment in the *Texas Register*, establishments with a Grant of Meat Inspection will receive notification of a comment period during their regularly scheduled weekly meetings. This notification will be documented within a Memorandum of Interview.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #5.h.

Approved by Assistant Commissioner/Director: Kathryn C. Perkins, R.N., M.B.A. **Date:** 2/13/2014

Presenter: Adam Buuck, Meat Group **Program:** Policy/Standards/Quality Assurance Unit **Phone No.:** (512) 834-6760 ext. 2542

Approved by CCEA: Carolyn Bivens **Date:** 2/12/2014

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 221. Meat Safety Assurance
Subchapter B. Meat and Poultry Inspection
Amendment §221.11

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §221.11, concerning federal regulations on meat and poultry inspection.

BACKGROUND AND PURPOSE

Health and Safety Code, §433.071 requires the department to ensure that department rules are at least equal to the federal regulations administered by the United States Department of Agriculture (USDA) Food Safety Inspection Service.

USDA adopted 9 CFR Parts 418 and 442. 9 CFR Part 418 requires establishments to prepare and maintain written recall procedures and to notify the department within 24 hours of learning or determining that adulterated meat products entered commerce. 9 CFR Part 442 prescribes the requirements for measuring and labeling content weight for meat products. 9 CFR 442 does not create new requirements but instead updates and consolidates language from 9 CFR 317 and 9 CFR 381, which the department had previously adopted in §221.11.

The proposed amendment is necessary to ensure department rules are at least equal to USDA's federal regulations, in accordance with Health and Safety Code, §433.071.

SECTION-BY-SECTION SUMMARY

The amendment to §221.11(a)(1) updates the title of 9 CFR (Code of Federal Regulations), Part 301. The title "Terminology; Adulteration and Misbranding Standards" replaces "Definitions."

The amendment to §221.11(a)(26) corrects an error in the title of 9 CFR, Part 350. The word "relation" is deleted and replaced with the word "Relating."

The amendment to §221.11(a)(27) updates the title of 9 CFR, Part 352. The title "Exotic Animals and Horses; Voluntary Inspection" replaces "Exotic animals; voluntary inspection."

The amendment to §221.11(a)(34) proposes to incorporate by reference 9 CFR, Part 418, Recalls. 9 CFR, Part 418 requires establishments to prepare and maintain written recall procedures and to notify the department within 24 hours of learning or determining that adulterated meat products entered commerce.

The amendment to §221.11(a)(34)-(36) renumbers the paragraphs to (35)-(37).

New §221.11(a)(38) proposes to incorporate by reference 9 CFR, Part 442, "Quantity of Contents Labeling and Procedures and Requirements for Accurate Weights." 9 CFR, Part 442 prescribes the requirements for measuring and labeling content weight for meat products and 9 CFR 442 also updates and consolidates language from 9 CFR 317 and 9 CFR 381, which had been previously adopted in §221.11.

The amendment to §221.11(b) updates the Internet website link from <http://www.tdh.state.tx.us/bfds/msa/meatinsp.html> to <http://www.dshs.state.tx.us/msa/>.

The amendment to §221.11(a)(2)-(25), (28)-(33) also revises for grammar and other technical form.

FISCAL NOTE

Jon Huss, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to the state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed. This is determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Huss has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering this section as proposed is to ensure that no product that is injurious to health or otherwise adulterated enters commerce.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of the state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bradley C. Martin, Rules Coordinator, Division of Regulatory Services, Environmental and Consumer Safety Section, Policy, Standards, and Quality Assurance Meat Group, Department of State Health Services, P.O. Box 149347, Mail Code 1872, Austin, Texas 78714-9347, or Bradley.Martin@dshs.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Liza Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by the Health and Safety Code, Chapter 433, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt and use federal regulations and procedures for meat and poultry inspection; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendment affects Health and Safety Code, Chapters 433 and 1001; and Government Code, Chapter 531.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

§221.11. Federal Regulations on Meat and Poultry Inspection.

(a) The department adopts by reference the following federal regulations **[requirements]** in the Code of Federal Regulations (CFR), as amended:

(1) 9 CFR, Part 301, Terminology; Adulteration and Misbranding Standards **["Definitions"]**;

(2) 9 CFR, Part 303, except 303.1(a) and (b), **["Exemptions"]**;

(3) 9 CFR, Part 304, **["Application for Inspection; Grant of Inspection **[inspection; grant of inspection]**"]**;

(4) 9 CFR, Part 305, **["Official Numbers; Inauguration of Inspection; Withdrawal of Inspection; Reports of Violation **[numbers; inauguration of inspection; withdrawal of inspection; reports of violation]**"]**;

(5) 9 CFR, Part 306, **["Assignment and Authorities of Program Employees **[authorities of program employees]**"]**;

(6) 9 CFR, Part 307, **["Facilities for Inspection **[inspection]**"]**;

(7) 9 CFR, Part 309, Ante-Mortem Inspection **["Ante-mortem inspection"]**;

(8) 9 CFR, Part 310, Post-Mortem Inspection **["Post-mortem inspection"]**;

(9) 9 CFR, Part 311, Disposal of Diseased or Otherwise Adulterated Carcasses and Parts **["Disposal of diseased or otherwise adulterated carcasses and parts"]**;

(10) 9 CFR, Part 312, Official Marks, Devices, and Certificates **["Official marks, devices, and certificates"]**;

(11) 9 CFR, Part 313, Humane Slaughter of Livestock **["Humane slaughter of livestock"]**;

(12) 9 CFR, Part 314, Handling and Disposal of Condemned or Other Inedible Products at Official Establishments **["Handling and disposal of condemned or other inedible products at official establishments"]**;

(13) 9 CFR, Part 315, Rendering or Other Disposal of Carcasses and Parts Passed for Cooking **["Rendering or other disposal of carcasses and parts passed for cooking"]**;

(14) 9 CFR, Part 316, Marking Products and Their Containers [**"Marking products and their containers"**];

(15) 9 CFR, Part 317, Labeling, Marking Devices, and Containers [**"Labeling, marking devices, and containers"**];

(16) 9 CFR, Part 318, Entry into Official Establishments; Reinspection and Preparation of Products [**"Entry into official establishments; reinspection and preparation of products"**];

(17) 9 CFR, Part 319, Definitions and Standards of Identity or Composition. The following requirements [**"Definitions and standards of identity or composition", the department adds the following requirements, which**] shall apply except in the case of restaurant menus and signs.

(A) The label of products prepared from bison meat must contain the words "bison meat," "North American bison meat," or "Native American bison meat." [.]

(B) The label of products prepared from buffalo meat must contain the words "water buffalo meat," or "Asian buffalo meat." [.]

(18) 9 CFR, Part 320, Records, Registration, and Reports [**"Records, registration, and reports"**];

(19) 9 CFR, Part 321, ["]Cooperation with States and Territories [**territories"**];

(20) 9 CFR, Part 322, ["]Exports["];

(21) 9 CFR, Part 325, ["]Transportation["];

(22) 9 CFR, Part 327, ["]Imported Products [**products"**];

(23) 9 CFR, Part 329, Detention; Seizure and Condemnation; Criminal Offenses [**"Detention; seizure and condemnation; criminal offenses"**];

(24) 9 CFR, Part 331, Special Provisions for Designated States and Territories; and for Designation of Establishments Which Endanger Public Health and for Such Designated Establishments [**"Special provisions for designated States and Territories; and for designation of establishments which endanger public health and for such designated establishments"**];

(25) 9 CFR, Part 335, Rules of Practice Governing Proceedings under the Federal Meat Inspection Act [**"Rules of practice governing proceedings under the Federal Meat Inspection Act"**];

(26) 9 CFR, Part 350, Special Services Relating to Meat and Other Products ["**Special services relation to meat and other products**"];

(27) 9 CFR, Part 352, Exotic Animals and Horses; Voluntary Inspection ["**Exotic animals; voluntary inspection**"];

(28) 9 CFR, Part 354, Voluntary Inspection of Rabbits and Edible Products Thereof ["**Voluntary inspection of rabbits and edible products thereof**"];

(29) 9 CFR, Part 355, Certified Products for Dogs, Cats and Other Carnivora; Inspection, Certification, and Identification as to Class, Quality, Quantity, and Condition ["**Certified products for dogs, cats and other carnivora; inspection, certification, and identification as to class, quality, quantity, and condition**"];

(30) 9 CFR, Part 362, Voluntary Poultry Inspection Regulations ["**Voluntary poultry inspection regulations**"];

(31) 9 CFR, Part 381, Poultry Products Inspection Regulation ["**Poultry products inspection regulation**"], except §381.10(a)(3) through §381.10(c);

(32) 9 CFR, Part 416, ["Sanitation"];

(33) 9 CFR, Part 417, ["Hazard Analysis and Critical Control Point (HACCP) Systems"];

(34) 9 CFR, Part 418, Recalls [**9 CFR, Part 424, "Preparation and Processing Operations"**];

(35) 9 CFR, Part 424, Preparation and Processing Operations; [**9 CFR, Part 430, "Requirements for Specific Classes of Product"**; and]

(36) 9 CFR, Part 430, Requirements for Specific Classes of Product; [**9 CFR, Part 441, "Consumer Protection Standards: Raw Products"**.]

(37) 9 CFR, Part 441, Consumer Protection Standards: Raw Products; and

(38) 9 CFR, Part 442, "Quantity of Contents Labeling and Procedures and Requirements for Accurate Weights."

(b) Copies of these regulations are available via the Internet at <http://www.dshs.state.tx.us/msa/> [<http://www.tdh.state.tx.us/bfds/msa/meatinsp.html>]