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BEFORE FEDERAL COURTS AND AGENCIES

MEMORANDUM

May 13, 2020

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: FSIS Leadership – Stakeholder Call Regarding Waiving Inspection Requirements

On May 12, 2020, Dr. Mindy Brashears, Under Secretary of the U.S. Department of Agriculture's (USDA) Office of Food Safety, and Paul Kiecker, USDA's Food Safety and Inspection Service (FSIS) Administrator, hosted a joint teleconference with meat industry and consumer safety stakeholders. The purpose of the discussion was to address recent grassroots efforts to waive FSIS inspection requirements for meat sold in commerce. Proponents of these efforts assert that waiving FSIS inspection requirements will provide farmers and ranchers with alternate outlets for slaughtering livestock and alleviating supply concerns that have arisen with the COVID-19 pandemic.

As background, the most prominent of these efforts is the [Processing Revival and Intrastate Meat Exemption Act](#) (PRIME Act). The PRIME Act is proposed legislation that would allow meat and poultry produced under the custom slaughter exemption to be prepared for sale directly to restaurants, hotels, boarding houses, grocery stores, and other establishments. Currently, the custom slaughter exemption only waives inspection for cattle, sheep, swine or goats that are slaughtered for their owner's household consumption and consumption by the owner's non-paying guests and employees.¹ The PRIME Act is sponsored by Thomas Massie (R - Ky.) and has attracted 39 co-sponsors.

Additionally, there are also grassroots efforts to allow meat and poultry produced under state meat inspection programs to be sold across state lines, regardless of whether the producing establishments participate in the [Cooperative Interstate Shipment](#) (CIS) program. Currently, states are permitted to operate their own inspection system under a cooperative agreement with FSIS if

¹ 9 C.F.R. § 303.1(a)(2).

they enforce requirements that are “at least equal to,” but not necessarily the same as, federal requirements. However, meat and poultry establishments that are State-inspected cannot sell product across state lines unless the state and the establishment also participate in the CIS, which requires FSIS to verify that the state at issue applies the *same* federal inspection services as FSIS and enforces the *same* federal regulatory standards and the establishment meets those standards.²

Dr. Brashears opened the meeting with a clear statement that FSIS opposes requests to waive federal inspection requirements for meat, poultry, or egg products sold in interstate commerce. She explained the agency views these requests as an affront to food safety. She elaborated that FSIS would have difficulty tracing foodborne illness outbreaks if there were products sold in interstate commerce that were not produced at federal establishments or state establishments operating under standards equivalent to FSIS. She also noted that allowing products to be sold in commerce without FSIS inspection or State inspection that has been deemed equivalent to federal inspection (i.e., the CIS program) would create challenges with trade partners and foreign equivalence programs.

Next, Mr. Kiecker reiterated the agency’s concern that waiving inspection would pose issues for our trade partners and the administration of the equivalence program in accordance with the World Trade Organization’s requirements. If products are allowed to enter interstate or foreign commerce without meeting requirements that are the same as FSIS’ requirements, foreign countries could not be assured that products produced in the U.S. meet minimum safety standards. There is also a concern that the U.S could be in violation of trade agreements with export partners if meat and poultry sold in commerce does not have to meet FSIS requirements.

Additionally, foreign establishments must implement an equivalent meat and poultry inspection program to be eligible to export products to the U.S. If meat and poultry could be sold in interstate commerce without inspection equivalent to federal standards, the equivalency requirements for foreign manufacturers will change.

Mr. Kiecker also noted these proposals raise concerns with investigations and enforcement actions stemming from foodborne illness outbreaks. As an example, he noted that if adulterated state-inspected product is produced in Louisiana and sold in nearby states, if there was a recall of the product for food safety reasons, the State of Louisiana would not be able to enforce the recall in the other state in which the product was sold. Moreover, the other states would be unable to hold the producing establishment responsible.

In response to questions, Dr. Brashears and Mr. Kiecker were not sure if FSIS will be issuing a public statement in opposition to efforts to waive federal inspection requirements. They also indicated that the agency is open to addressing concerns in the CIS program to ensure there are not unnecessary barriers to allowing state-inspected establishments to participate.

* * *

² Although 27 states have inspection programs that have been deemed “at least equal to” FSIS inspection and are eligible for the CIS program, only six states have applied and been approved to participate in the CIS program.. Approximately 60 establishments in those states participate in the CIS program.

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We trust this update is useful. If you have any questions, please do not hesitate to contact us.