



United States  
Department of  
Agriculture

Food Safety  
and Inspection  
Service

Office of  
Investigation,  
Enforcement  
and Audit

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February 3, 2021

Mr. Gary Hamel, Bureau Chief  
Meat Inspection  
Montana Department of Livestock  
301 North Roberts  
Scott-Hart Building  
Helena, MT 59620-2001

Dear Mr. Hamel,

This letter is in response to the January 21, 2021, phone conversation between Dr. Keith Gilmore and Dr. Jonathan Coleman of the Federal State Audit Branch (FSAB), Office of Investigation, Enforcement and Audit, Food Safety Inspection Service (FSIS), and the Montana Department of Livestock, Meat and Poultry Inspection Bureau. During this call, you informed FSAB of two proposed pieces of legislation, draft bill numbers LC0590 and LC0728, to amend several sections of the Montana Code Annotated (MCA 30-12-301, 50-31-104 *et seq.*, 50-50-301, 81-2-101 *et seq.*, 81-9-217 *et seq.*, 81-21-101 *et seq.*, 81-22-101 *et seq.*, and 81-23-103 *et seq.*). If finalized as written, the draft bills LC0590 and LC0728 would create multiple inspection exemptions that appear to conflict with the requirements of the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 601, *et seq.*) or Poultry Products Inspection Act (PPIA) (21 U.S.C. § 451, *et seq.*). Therefore, the enactment of either of these bills will likely jeopardize the “at least equal to” status of the Montana meat and poultry inspection (MPI) program. Further, the direct distribution of uninspected meat and poultry products into commerce, outside of inspection exemptions currently allowed by the Acts, will likely both detrimentally impact the health of end consumers and violate Federal law.

The FMIA and PPIA, and the regulations issued thereunder, require the slaughter, processing and labeling of meat and poultry products, with certain specific and limited exemptions, to be conducted under inspection. If a State exempts any meat or poultry products from inspection under its own MPI program, the provisions allowing that exemption must be “at least equal to” corresponding provisions found in the FMIA, PPIA, or FSIS’s inspection regulations. If State legislation exempts meat products from inspection or labeling otherwise required by the FMIA, PPIA, or FSIS regulations, the State MPI program operating under that legislation would no longer be “at least equal to” the Federal inspection program.

By allowing the introduction of uninspected meat and poultry products into commerce, including local retail meat establishments, if they are marked as “Local Montana Product” and are “prepared and packaged in a sanitary manner and in a sanitary facility,” LC0590 expands both the statutory retail and custom exempt regulations in a manner inconsistent with the FMIA and PPIA and not “at least equal to” FSIS requirements. Under current FSIS regulations, a producer cannot slaughter livestock for retail sale unless they are a State or Federally inspected establishment. Although certain exemptions provide limited pathways for the sale of uninspected poultry products into retail establishments, it is the opinion of FSIS that LC0590 broadens the scope of these exemptions to the point that they no longer meet “at least equal to” standards. LC0590 additionally falls far short of providing even minimal oversight for critical sanitation standards that underly the production of safe, wholesome, and unadulterated meat and poultry products, even under custom and retail exempt regulations. Finally, as Federal law requires that retail establishments handle only Federal or State inspected livestock products, this draft piece of legislation would further create Federal statutory and regulatory compliance issues for those retail establishments that offer for sale such

uninspected products.

Similarly LC0728, short titled as the “Montana Local Food Choice Act,” outlines several exemptions from licensing and inspection requirements for a wide variety of homemade food products, as long as they are sold to “an informed end consumer” who has been made aware that “the product is not licensed, permitted, certified, packaged, labelled, or inspected per any official regulations.” Since it is unclear if LC0728 pertains to meat and poultry products, as currently written LC0728 has the potential to allow an exceptionally broad exemption from the required inspection of meat and poultry products that exceeds any provided for by the Federal Acts. LC0728 allows the distribution or transfer into commerce of homemade products, including potentially meat and poultry products, on a much wider basis than allowed by custom or retail exempt regulations in the FMIA and PPIA, by permitting their use at traditional community social events. This bill defines a traditional community social event as a “wedding, funeral, church or religious social, school event, farmer’s market, potluck, neighborhood gathering, or club meeting or social.” It is difficult to consider the attendees of these gatherings as informed end consumers, because not all attendees would be aware of the conditions under which such products were prepared, processed, stored, or repackaged. By potentially expanding the availability of uninspected meat and poultry products to such traditional community social events, the risk to public health is unacceptably increased and FSIS would have a compelling interest in preventing such practices from occurring within State MPI programs.

Finally, FSIS is concerned that LC0590 and LC0728, as written, both appear to fail to include provisions that address basic adulteration, misbranding, recordkeeping, or sanitation requirements to ensure the production of safe, wholesome, and properly labeled meat and poultry products, and are essential for the protection of public health. Under the FMIA, and PPIA, FSIS is authorized to cooperate with State agencies in developing and administering State MPI programs. These State MPI programs need to operate in a manner that is, and with authorities that are “at least equal to” Federal inspection requirements for ante-mortem and post-mortem inspection, sanitation, record keeping, and enforcement provisions of the FMIA and PPIA. It is FSIS’ belief that the enactment of either of these pieces of legislation, as written, will prevent Montana from operating an MPI program that maintains the necessary regulatory oversight in intrastate commerce and, in turn, jeopardize the program’s “at least equal to” status. If a State fails to administer a MPI program that is “at least equal to” the program that FSIS has established under these provisions, the Secretary of Agriculture may move to designate the State in accordance with 21 U.S.C 661 (c) and 454(c).

Thank you again for informing FSIS of this important issue. If you have additional questions, please contact Dr. Keith Gilmore at (515) 727-8970.

Respectfully,

Keith Gilmore, DVM  
Branch Chief  
Federal-State Audit Branch  
Audit and Resource Management Division  
Office of Investigation, Enforcement, and Audit

cc:

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