



United States  
Department of  
Agriculture

Food Safety  
and Inspection  
Service

Office of  
Investigation,  
Enforcement  
and Audit

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March 19, 2021

Mr. Wade Hodge, Managing Attorney  
Arkansas Department of Agriculture  
1 Natural Resources Dr.  
Little Rock, AR 72205

Dear Mr. Hodge,

This letter is in response to an email sent to the Federal State Audit Branch (FSAB), Office of Investigation, Enforcement and Audit, Food Safety and Inspection Service (FSIS), from the Arkansas Department of Agriculture. This email informed FSAB of Arkansas Senate Bill 248 (SB 248), the Food Freedom Act, a proposed amendment to the Arkansas Code, Title 20, Subtitle 4, Chapter 57, Subchapter 2. If enacted, SB 248 will redefine the terms, "cottage food production operation" and "food service establishment", in Section 1 and add Subchapter 5, Food Freedom Act to Section 3. FSIS has several concerns with this proposed legislation as set forth below.

Section 1 of the Arkansas Code, Title 20, Subtitle 4, Chapter 57, Subchapter 2 defines "Food service establishment" as any place, including wholesale and retail firms, where food is prepared, processed, stored, or intended for use or consumption by the public regardless of whether there is a charge for the food. The language of Subchapter 5, Food Freedom Act implies product produced under the definition of "homemade food or drink product", which are exempt from State licensure or inspection requirements, may be offered for sale at food service establishments. While this law attempts to carve out exceptions for meat and poultry products, FSIS has concerns that it does not completely achieve its goals. For example, this section prohibits the sale of meat product produced under the animal share exemption as home foods at food service establishment. However, it does not define "meat" or "meat products" or refer to an existing State law that provides applicable definitions for both terms. Section 20-57-504.b(3) of the Food freedom Act seems to imply poultry, rabbits and farm-raised fish are defined as meat and meat products by stating that the sale of said animals and resulting products are exempt from state licensure, certification, inspection, and packaging and labeling requirements. This section also references the one thousand poultry exemption listed in Subpart C of Title 9, Code of Federal Regulations (9 CFR). It is silent on the applicability of other poultry exemptions listed in this subpart. Thus, it is unclear if Arkansas law recognizes or enforces the requirements for the other poultry exemptions outlined in 9 CFR 381.10(c).

Section 3 of the Food Freedom Act does not include catfish in its classification of farm-raised fish and indicates farm-raised fish will be raised and processed in accordance with Federal laws. It implies farm-raised fish not included in the order Siluriformes can be processed and sold directly to an informed end consumer and are exempted from State licensing and inspection requirements. In contrast with FMIA, SB 248 authorizes a governing State agency to oversee transactions regarding all fish classifications except the order Siluriformes. Currently, FSIS is the only regulatory Agency, Federal or State, authorized to implement an inspection program for Siluriformes in the United States. The 2008 Farm Bill amended the FMIA to make catfish an amenable species subject to FSIS inspection and authorize FSIS to redefine the term "catfish." In 2015, FSIS released a final rule

(80 FR 75594, December 2, 2015; 9 CFR 531.1) establishing an inspection program for only fish under the order Siluriformes, which includes catfish. The final rule, which applies to both domestically raised and imported Siluriformes fish, was developed in order to implement provisions required by the 2014 Farm Bill. As a result, FSIS inspection of Siluriformes, including North American Siluriformes fish, basa, swai, and others, is mandated by Federal law.

Section 20-57-503 of the Food Freedom Act defines “Animal share” as an ownership interest in an animal or herd of animals created by a written contract of a transaction between an informed end consumer and a farmer or rancher. The purpose of the additional of the animal share provisions is unclear. It sets forth what an animal share is and then lists several provisions under which animals and resulting meat and meat products must be slaughtered, processed, and distributed. As written, FSIS cannot determine the impact this provision would have on custom exempt or retail operations. If the purpose is to define permissible animal share transactions and exempt these facilities from slaughter, sanitation, processing, packaging, labeling and inspection requirements of Arkansas law, then this section of the Food Freedom Act contradict the FMIA.

FSIS has determined the animal share transaction, as defined in the Food Freedom Act, is outside of inspection exemptions currently allowed by the FMIA and may detrimentally impact the health of end consumers. First, the section does not identify any sanitation conditions under which animals and resulting meat products will be processed and stored to prevent adulteration. Secondly, it is silent on the disposal of unwanted animal parts or byproducts owned by the informed end consumer by way of the purchased animal share, and, in turn, does not preclude the use of unwanted, uninspected parts or byproducts in inspected products. Finally, it does not include assurances that each informed end consumer who purchased an animal share will receive only meat products specified in the transaction made with farmer or rancher.

Currently, Arkansas is a designated State, which means FSIS will continue to have oversight of all meat and poultry facilities in the State of Arkansas notwithstanding the enactment of SB 248. Facilities taking part in animal share transactions will be subject to the custom exempt provisions of FMIA, PPIA and applicable parts of 9 CFR. At this time, the FMIA (21 U.S.C. 623(a)), and 9 CFR 303.1 and 316.16 require all custom exempt livestock meat food products to be plainly marked “Not for Sale” immediately after being prepared until the products are delivered only to the owner. Annually, FSIS will conduct reviews at custom operations in Arkansas to ensure compliance with sanitation, labeling, humane handling, product control, and recordkeeping requirements necessary to prevent the production of adulterated product. If it is determined that a custom operation is performing activities or producing meat and poultry products in violation with the Federal laws, FSIS may pursue further legal actions against the custom operation that may include the detention of violative products or prosecution.

Recently, Arkansas House Bill 1315 (HB 1315) has been introduced to Arkansas legislature. It amends Section 1 of Arkansas Code Title 19, Chapter 5, Subchapter 12, the Arkansas Meat and Meat Products Inspection Act, to create a new State meat inspection program. Section 20-60-206 of the Arkansas Meat and Meat Products Inspection Act authorizes the Arkansas Department of Agriculture to operate the State Meat Inspection Program and prescribe rules necessary to carry out the purposes or provisions of this subchapter. The stated objective of this Act is to prescribe rules conforming to those imposed under the FMIA, PPIA and applicable parts of 9 CFR. FSIS appreciates the efforts of the Arkansas legislature to increase the market availability of locally produced meat and poultry products and expand opportunities for State livestock producers and meatpackers. Nonetheless, these efforts must ensure all meat and poultry products produced under the jurisdiction of a State meat and poultry inspection (MPI) program are safe, wholesome, and unadulterated.

Enactment of SB 248, as written, will likely jeopardize Arkansas’ pursuit to enter a Federal-State cooperative agreement with FSIS for the purpose of implementing a new State meat inspection program. FSIS is concerned that slaughter or processing facilities operating under the animal share exemption may not be held to standards “at least equal to” those imposed under the FMIA and Title 9, Code of Federal Regulations (9 CFR). SB 248 does

not identify provisions that address basic adulteration, misbranding, recordkeeping, or sanitation requirements for ensuring the production of safe, wholesome, and properly labeled meat products.

If SB 248 is enacted, FSIS would expect a State MPI program to impose additional recordkeeping provisions or regulations at facilities operating under the animal shared exemption to the provisions outlined in Section 20-57-505(a)(1) of the Food Freedom Act. Each exempt operator is expected to maintain records showing that each livestock owner (i.e., animal share holder) receives for personal use only the meat and poultry products produced from animals he or she owns. An agent of the State (e.g., State Department of Agriculture, State Department of Health, etc.) is expected to verify all facilities operating under the animal shared exemption maintain records necessary to demonstrate ownership of all or part of an individual animal by each animal share holder and to verify all resulting meat and poultry products are returned only to the animal shareholders for personal use.

Under the FMIA and PPIA, FSIS is authorized to cooperate with State agencies in developing and administering State MPI programs. Authorities and requirements for ante-mortem and post-mortem inspection, sanitation, recordkeeping, and enforcement under these State MPI programs must be “at least equal to” those provided for by the FMIA and PPIA. Enactment of SB 248 may prevent Arkansas from effectively operating an MPI program that maintains the necessary regulatory oversight in intrastate commerce, and, in turn, that complies with the provisions of the FMIA and PPIA. If a State fails to demonstrate the ability to administer an MPI program that is “at least equal to” the program that FSIS has established under these provisions, the Secretary of Agriculture may move to decline a State’s request to enter into a cooperative agreement in accordance with 21 U.S.C 661 (c) and 454(c).

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

Respectfully,

*for*  
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Branch Chief  
Federal-State Audit Branch  
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