



6

STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON 25305

GUS R. DOUGLASS
COMMISSIONER

January 31, 2000

RECEIVED
FSIS
FEB 03 11:10:02

U.S. Department of Agriculture
Food Safety and Inspection Service
FSIS Docket Clerk
Docket No. 99-055R
Cotton Annex, Room 102
300 12th Street, SW
Washington, D.C. 20250-3700

99-055R-6
99-055R
Gus R. Douglass

RE: Exemption of Retail Operations from Inspection Requirements
Interim Final Interpretive Rule with an Opportunity for Comment
Docket No 99-055R

On behalf of the State of West Virginia, the following comments are submitted on the Interim Final Interpretive Rule with an Opportunity for Comment, as published in the Federal Register on January 4, 2000 (pages 201 – 202).

We question three erroneous statements referring to State inspection programs:

- (1) The last sentence of the first paragraph under Supplementary Information which reads: "Intrastate operations and transactions are effectively subject to the same requirements and prohibitions, pursuant to a State inspection or designation for federal inspection (21 U.S.C. 454 (c) (1) and 661 (c) (1))";
- (2) The last sentence of the second paragraph, under Supplementary Information, that states: "In Sec. 303.1 (d) and Sec. 381.10 (d), respectively (9 CFR 303.1 (d) and 381.10 (d), FSIS addresses the conditions under which Federal or state inspection requirements do not apply to retail operations"; and
- (3) The first sentence in the fifth paragraph under Supplementary Information that reads "... sales of these products should not be considered in determining whether an establishment's operations are exempt from requirements for Federal or state inspection."

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) do not require State meat and/or poultry inspection programs to follow Federal regulations in general and those on exemptions in particular. FMIA, Title III, authorizes the Secretary of Agriculture "... to cooperate with the appropriate State agency in developing and administering a State meat inspection program in any State which has enacted a State meat inspection program law that imposes mandatory ante mortem and post mortem inspection, reinspection and

sanitation requirements at least equal to those under title I of this Act, with respect to all or certain classes of persons engaged in the State in slaughtering cattle, sheep, swine, or equines, or preparing the carcasses, parts thereof, meat and or meat food products, of any such animals for use as human food solely for distribution within such State” [21 U.S.C. 661 (a) (2)].

The Poultry Products Inspection Act (PPIA) in similarly worded provisions, sets the same provisions for a State poultry inspection program. In other words, the Federal acts require only that State meat and/or poultry inspection programs are governed by laws equal to the Federal acts in the four basic areas of activities: mandatory ante mortem and post mortem inspection, reinspection and sanitation. Neither Federal act imposes any requirements on exemptions or State regulations. Therefore, the three statements, identified above, that imply that State inspection programs should “effectively” apply the identical provisions on exemptions are not supported by a statutory authorization.

The first erroneous statement in the Interpretative Rule carries misleading references to 21 U.S.C. 454 (c) (1) and 661 (c) (1) dealing entirely with provisions on designation procedures for State meat and/or poultry inspection programs and designation of individual establishments for Federal inspection. The issue of exemptions simply is not addressed in the cited subsections. Both references are irrelevant to the claim that a State should apply Federal rules on exemptions in intrastate operations.

The second erroneous statement in the Interpretive Rule uses general Federal regulations on exemptions [9 CFR 303.1 (d) and 381.10 (d)] to support the claim that states must apply the same exemption criteria. However, the quoted Federal regulations make no reference to State inspection.

The same comment is applicable to the third erroneous statement in the Interpretative Rule.

Many states determined in the past that federal exemptions, as provided in the Federal acts, or interpreted by USDA, Food Safety and Inspection Service (FSIS), compromise on public health protection. States have either more stringent statutory provisions, or interpret Federal exemptions in a narrower manner to adequately protect public health within their jurisdictions.

For example, in our State, the uniform law on inspection of meat and poultry does not allow for any exemption from inspection for poultry carcasses offered for sale. In our view, the Federal exemption allowing for slaughter and processing of up to 20,000 birds without any kind of inspection, whatsoever, and processed under questionable sanitary conditions endangers public health. We believe that in order to enhance public health protection in the United States, it is in the mutual interest of the Federal and State governments to eliminate all exemptions based on dollar values, poundage and numbers, and base any exemptions only on public health risk assessments. The Interim Final Interpretive Rule defies the goal and attempts to impose on states, without sufficient statutory authority, the same evidently flawed criteria on exemptions based on dollar amounts of sales.

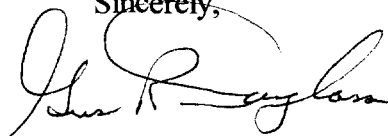
It is our belief, that USDA, FSIS, should work toward eliminating the illogical exemptions that are not based on risk assessment but have potentially detrimental effects on public health protection. State governments should be encouraged to follow suit and not to be forced to perpetuate the incoherent system of Federal exemptions.

The immediate effect of the publication of the Interim Final Interpretative Rule on January 4, 2000, has been the withdrawal of Federal and State inspection from meat and poultry processing facilities located at hundreds of stores belonging to one of the largest chain store companies. It turned out to be impossible to independently verify production data, expressed in dollars, which allow the store chain to claim exemption from inspection under your latest Interpretative Rule. Thanks to your ruling, the store chain avoided mandatory implementation of HACCP systems just days before the effective date of HACCP implementation. We doubt that the company will proceed with voluntary implementation of the HACCP concept in its high risk processing operations.

As we indicated above, FMIA and PPIA do not contain any provisions requiring state governments to apply identical criteria for exemptions, no matter how USDA, FSIS stretches interpretations of the Federal acts. The Interim Final Interpretative Rule on Exemptions of Retail Operations from Inspection Requirements exceeded the scope of your statutory authority in the three statements by referring to State meat and poultry inspection programs. The three erroneous statements may have misled the public and meat and/or poultry establishments under State inspection that may not be exempt from mandatory inspection under State laws.

We understand that, as a result of our adverse and critical comments, USDA, Food Safety and Inspection Service is required to withdraw the Interim Final Rule and to issue a timely notice in the Federal Register. We expect the notice will correct the errors identified above and clarify that the Interim Final Rule is not applicable to State governments.

Sincerely,



Gus R. Douglass
Commissioner

GRD:sm

c: The Honorable Robert C. Byrd, U.S. Senate
The Honorable John D. Rockefeller, IV, U.S. Senate
Commissioners/Secretaries/Directors with State Programs
Richard Kirchhoff, NASDA