

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

RULES OF THE ARKANSAS MEAT INSPECTION PROGRAM Clean copy

I. Incorporation by reference of federal meat inspection laws and regulations

The Department hereby incorporates by reference the most current revisions of the following Federal laws and regulations as though set forth herein line for line and word for word:

Title 7 of the United States Code, Chapter 48, Sections 1902 and 1906;

Title 21 of the United States Code, Chapter 12, Subchapter I, Sections 601, 603, 604, 605, 606, 607, 608, 610, 611, 612, 613, 621, 622, 623, Subchapter II, Sections 641, 642, 643, 644, and Subchapter IV, Sections 671, 672, 673, 675, 676.

Title 9 of the Code of Federal Regulations, Chapter III, Subchapters A and E, *excluding*

- Subchapter A Parts 300.1-300.4, 302.2, 303.1(c), 304.2(c), 307.4(b)-(d), 307.5, 307.6, 316.13(c), 317.7, 318.8, 318.12, 321, 322, 327, 329, 331, 332, 335, 351, 352, 354, 355, 362, 381, and
- Subchapter E Part 439.

However, unless context otherwise dictates, references to “We”, “the Food Safety and Inspection Service”, and the “United States Department of Agriculture” shall refer to the “Arkansas Department of Agriculture” or “Department”, and all words or terms defined or used in the federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms. Whenever an official mark, form, certificate, or seal is designated or required by federal law or regulation, the appropriate Arkansas Department of Agriculture mark, form, certificate, or seal shall be substituted.

II. Exemptions from the Arkansas Meat Inspection Program

1. The following are exempted from the labeling, sanitary standards, practices, and procedures of the Arkansas Meat Inspection Program:

- A. Livestock producers with respect to livestock carcasses, parts of livestock carcasses, and meat food products, processed by the livestock producer from livestock of the livestock producer’s own raising on the producer’s own farm and used by the livestock producer for personal or private consumption;
- B. A person slaughtering livestock or otherwise processing or handling livestock carcasses, parts of livestock carcasses, or meat food products, that have been or are to be processed as required by recognized religious dietary laws; and
- C. Any establishment engaged in slaughtering livestock or processing livestock carcasses, parts of livestock carcasses, or meat food products for intrastate commerce and the livestock carcass, part of a livestock carcass, or meat food product processed by the establishment when the establishment is subject to inspection under a city ordinance that sets standards in conformity with the minimum standards of the Arkansas Meat Inspection Program.

III. Application for License or Exemption

1. An applicant for inspection shall submit to the Department an annual fee of \$100 at the time the application is submitted.

2. Any establishment seeking exemption from the Arkansas Meat Inspection Program must submit to the Department an application for exemption stating in writing the specific exemption sought by the establishment from the exemptions set in Section II, Paragraph 1 of these rules.
3. The Department may accept or deny any application for license or exemption, but the application fee paid to the Department, if applicable, shall be refunded to the applicant.
4. The costs for routine inspection shall be borne by the State, but the cost of overtime and holiday work shall be borne and paid by the official establishment at the rates for overtime and holiday services established in Ark. Code Ann. § 20-60-212(2).

IV. Custom Establishments

1. Livestock carcasses, parts of livestock carcasses, meat, and meat food products that are slaughtered by a custom establishment shall be:
 - A. Separated at all times from inspected livestock carcasses, parts of livestock carcasses, meat, or meat food products prepared for sale; and
 - B. Conspicuously and plainly marked "Not For Sale" immediately after preparation and shall remain so marked until delivered to the owner.

V. Inspection and Appeals

1. Any livestock carcass, part of a livestock carcass, or meat food product found by an inspector to be unwholesome or adulterated in an official establishment shall be condemned.
 - A. Condemned meat or meat food products shall be destroyed for human food purposes under the supervision of an inspector; or
 - B. If the meat or meat food product may be made wholesome and unadulterated by reprocessing, the meat or meat food product may be reprocessed under the supervision of an inspector and may not be subject to destruction if the meat or meat food product are then found by an inspector to be wholesome and unadulterated.
2. An official establishment may appeal an inspector's finding of condemnation.
 - A. The meat or meat food product subject to condemnation shall be conspicuously marked and segregated pending the completion of inspection appeal.
 - B. The official establishment shall provide its request for inspection appeal in writing to the Department within 48 hours of the initial finding of condemnation.
 - C. The finding from the inspection appeal shall be the final finding, superseding the initial finding of condemnation.
 - D. If on inspection appeal the meat or meat food product is condemned, the meat or meat food product will be subject to Section IV, paragraph (1), without further opportunity for appeal.

VI. Hearings

Hearings and notices for hearings for the Department's withdrawal and denial of inspection or the Department's determination that an advertisement or label is false or misleading shall be performed pursuant to the requirements of the Administrative Procedure Act, Ark. Code Ann. § 25-15-101 et. seq.

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QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Agriculture
DIVISION Livestock & Poultry
DIVISION DIRECTOR Patrick Fisk
CONTACT PERSON Wade Hodge
ADDRESS #1 Natural Resources Drive, Little Rock AR 72205
PHONE NO. 501-219-6361 FAX NO. _____
E-MAIL wade.hodge@agriculture.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Patrick Fisk
PRESENTER E-MAIL Patrick.fisk@agriculture.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Whittaker
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? State Meat Inspection Program Rule
- 2. What is the subject of the proposed rule? To implement the provisions of Act 418 of 2021, which transfers the responsibility of the State Meat Inspection Program from the Department of Health to the Department of Agriculture.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No x _____
If yes, please provide the federal rule, regulation, and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____ No x _____
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes ☒ No ☐ If yes, please provide a brief summary explaining the rule. The rule allows the Department to implement the provisions of Act 418 of 2021, which transfers the responsibility of the State Meat Inspection Program from the Department of Health to the Department of Agriculture.

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☐ No ☒ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does.**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. §§ 20-60-203 (1),(13),(16); 204(a) & (b); 206(a) & (c); 209(a) & (b); 211(b); 212 (c); 213(a); 214(3) & (10); 215(a)
7. What is the purpose of this proposed rule? Why is it necessary? See attached summary
8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.agriculture.arkansas.gov
9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐
If yes, please complete the following:
Date: Dec. 27, 2021
Time: 2:00p.m.
Place: 1 Natural Resources Drive
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
12/27/2021
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
March 1, 2022
12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Agriculture
DIVISION Livestock & Poultry
PERSON COMPLETING THIS STATEMENT Wade Hodge
TELEPHONE NO. 501-219-6361 **FAX NO.** _____
EMAIL: wade.hodge@agriculture.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE State Meat Inspection Program Rule

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes x No
The only financial impact will be application fee. The impact is expected to be minimal.
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes x No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes x No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
 - (b) The reason for adoption of the more costly rule;
 - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
 - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____ N/A _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____ N/A _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. N/A

Current Fiscal Year

\$ _____ N/A _____

Next Fiscal Year

\$ _____ N/A _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____ N/A _____

Next Fiscal Year

\$ _____ N/A _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No x _____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205
agriculture.arkansas.gov
(501) 225-1598



Wes Ward
Secretary of Agriculture

November 22, 2021

MEMORANDUM REGARDING THE PROPOSED RULES FOR THE ARKANSAS DEPARTMENT OF AGRICULTURE STATE MEAT INSPECTION PROGRAM

Purpose

This memorandum analyzes the Arkansas Department of Agriculture's (Department) proposed Rules for the Arkansas Meat Inspection Program (Meat Inspection Rule).

Background

Act 418 of 2021 (Act) moved the authority for a State Meat Inspection Program from the Department of Health to the Department and requires the Department to conduct inspections for meat and meat products manufactured for intrastate sale. The Act requires the Secretary of Agriculture to promulgate rules necessary for the administration of the Program. The Department has developed the proposed Meat Inspection Rule to satisfy the legal requirements under the Act and the Federal laws and rules regarding meat inspection, 21 U.S.C. § 601 et seq., 7 U.S.C. §§ 1902 and 1906, and 9 C.F.R. Chapter III, Subchapters A and E (Federal law).

Discussion

While meat inspection is mostly performed by the United States Department of Agriculture – Food Safety and Inspection Service (USDA), the Federal law authorizes the Department to establish a state meat inspection program, provided that (1) Program rules are “at least equal to” the requirements of the Federal Act and (2) the USDA approves a plan submitted by the Department to the USDA to administer the Program. Meat and meat product manufacturing facilities have the option to participate in either the state or federal meat inspection program.

The proposed Meat Inspection Rule incorporates federal meat inspection laws and regulations by reference, as permitted by Act 418, which states, “[t]he rules shall be in conformity with the rules and regulations under the Federal Meat Inspection Act, 21 U.S.C. § 601 et seq.” Incorporation by reference will allow for quicker USDA approval of the State program, enable the Program to integrate facilities into the Program more efficiently by utilizing the rules the facilities are already following, and avoid any potential confusion that may be created by requiring additional regulatory requirements for Arkansas facilities.

Key Points

- The Act moves responsibility for the State Meat Inspection Program from the Department of Health and requires the Department to establish rules for administering the State Meat Inspection Program.
- The Program is authorized by the Act to perform inspection services to facilities manufacturing meat or meat products for intrastate sale and will give these types of facilities an option to participate in the state or federal program.

- The State Meat Inspection Rule Incorporates federal meat inspection statutes and regulations by reference, ensuring a smooth transition for facilities entering the Program.
- The Program and the State Meat Inspection Rule must be approved by USDA.