

Economic Impact Statement

LSA Document #16-220

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The Board of Animal Health (BOAH) proposes to amend its rules governing meat and poultry products inspection ([345 IAC 9](#); [345 IAC 10](#)). The primary purpose of the changes are to conform BOAH's rules to the United States Department of Agriculture - Food Safety Inspection Service (USDA-FSIS) regulatory requirements under the Federal Meat Inspection Act and Poultry Products Inspection Act (9 CFR Parts 300 – 500).

State law requires the BOAH to enforce requirements with respect to intrastate operations that are at least equal to those imposed and enforced under the federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the federal Poultry Products Inspection Act (21 U.S.C. 451 et seq.). See [IC 15-17-5-1\(4\)](#). In order to comply with this statutory mandate, BOAH must periodically update the meat and poultry regulations to ensure they are at least equal to 9 CFR Subchapter E, which contains the requirements for federally-inspected facilities. This is largely accomplished by updating the incorporation by reference of the pertinent federal regulations every two years, which is what is being proposed in this request. BOAH is proposing to update the incorporation by reference at [345 IAC 9-2.1-1](#) and [345 IAC 10-2.1-1](#) from January 1, 2013, to January 1, 2016.

In the 2016 legislative session, House Enrolled Act (HEA) 1267 was passed to establish requirements for the production and sales of poultry products that are slaughtered and processed in a facility that is exempt from antemortem and postmortem inspection requirements under state and federal law. The federal government requires all red meat products to be inspected by a federal or state inspector, regardless of the size of the producer. However, poultry is treated somewhat differently in that poultry producers who raise 20,000 birds or less per year are eligible for certain exemptions from inspection. The purpose of HEA 1267 is to establish where and under what conditions this uninspected product can be sold in Indiana.

HEA 1267 requires the BOAH to issue a limited permit for any establishment that is used for slaughtering or processing poultry under the above-described exemptions. Pursuant to the legislation, the proposed rule establishes two types of limited permits for poultry producers:

Limited Permit – Household Consumer (HC) – This permit is required for a poultry producer who slaughters or processes 1,000 – 20,000 birds annually. A holder of this limited permit may only sell to a household consumer who: (1) is the last person to purchase the poultry product; and (2) does not resell the poultry. Sales to a household consumer may be made directly from the farm, through direct delivery, at a farmer's market, or at a roadside stand. The facility must comply with the following requirements:

1. The establishment meets the federal sanitation and operating standards in 9 CFR Part 416
2. The poultry products are properly labeled
3. Notification to BOAH of the producer's operating schedule
4. BOAH may enter and inspect the facility to determine continued compliance

Limited Permit – Retail HRI – This permit is required for a poultry producer who slaughters 1 – 20,000 birds and wants to sell to household consumers and retail stores, hotels, restaurants, and institutions that resell or serve the products to consumers. The permit holder must comply with the requirements set forth above for sales to a household consumer. A facility operating under this permit must comply with the following additional requirements:

1. Create a food safety plan that includes an analysis of food safety hazards and control measures to address those hazards.
2. Have at least one person from the establishment who has completed a course in the application of food safety principles to meat and poultry product production.
3. BOAH may conduct microbial testing at the establishment.

1. Description of Affected Industry

BOAH currently provides inspection service to 82 official meat and poultry slaughter and processing plants. In addition, BOAH oversees the operation of 39 custom exempt establishments, which are facilities that are in the business of slaughtering animals for the producer's use in their household. BOAH has worked to involve these regulated entities in the development of the rule. In conjunction with the first reading of the rule on July 7, BOAH issued a news release in an effort to reach stakeholders with an interest in small scale poultry processing that included a link to the proposed rule language. The agency is also using a Facebook page specifically designed for constituents interested in small scale poultry production to engage the affected industry. The affected industry includes small businesses under the definition at [IC 4-22-2.1-4](#).

2. Estimated Annual Reporting, Record Keeping, and Other Administrative Costs

The proposed rule does not increase annual reporting, record keeping, or other administrative costs for

regulated entities. The BOAH currently inspects Indiana's 82 official plants and 39 custom exempt plants. An inspector must be on site at an official plant continually during the slaughtering process and inspect the processing area once per day. A custom exempt plant undergoes a routine inspection twice per year. There have been no changes in the federal regulations being incorporated that expand the scope of current record keeping requirements that are verified during these inspections. With regard to the changes related to the recent passage of HEA 1267, the proposed rule does not impose any reporting or record keeping requirement for small scale poultry processors beyond what is specifically required by the legislation.

3. Estimated Total Annual Economic Impact on Small Businesses

As stated above, because the 121 plants impacted by this rule are already operating in accordance with USDA-FSIS regulations and directives, the BOAH does not anticipate the proposed rule will increase compliance costs for regulated entities. However, HEA 1267 does have some additional requirements beyond the federal law for those who want to sell uninspected poultry to retail buyers, hotels, restaurants, or institutions. These requirements are to create a food safety plan and have at least one person from the establishment who has completed a course in the application of food safety principles to meat and poultry product production.

It is important to note that these are required by the statute and the proposed rule does not impose costs beyond those specifically required by HEA 1267. Although there is time involved in developing a food safety plan and completing the necessary training, the vast majority of academic and government resources to assist a producer with meeting these requirements are provided free of charge.

4. Justification of Requirements

a. Compliance with Federal and State Law

In addition to the state statutory mandate discussed above, this proposed rule is necessary to implement a federal mandate. State law authorizes the BOAH to cooperate with USDA-FSIS to effectuate the purpose of the Meat and Poultry Inspection Law, to accept federal assistance for that purpose, and spend public funds appropriate for the administration of the law to pay not more than fifty percent (50%) of the total cost of the cooperative program ([IC 15-17-5-5\(11\)](#)). Pursuant to this power, the BOAH has entered into a state-federal cooperative agreement with USDA-FSIS in order to receive 50% of the annual operating costs of the Meat and Poultry Inspection program. BOAH's program is subject to regular audits by USDA-FSIS to ensure that the state standards are at least equal to federal requirements. If BOAH does not update the incorporation by reference, it would jeopardize the funding BOAH receives under the state-federal agreement.

If the BOAH does not remain in compliance with the state-federal agreement by proceeding with this proposed rule, it would have negative consequences for the regulated community. Indiana relies on the federal funding to support an adequate number of inspectors for the state's 82 official plants and 39 custom exempt plants. If BOAH cannot fund an adequate number of inspectors, the official plants will not be able to operate at full capacity because an inspector must be on site continually during the slaughtering process and inspect the processing area once per day.

In addition to the above-described benefits to the plants, the proposed rule provides a secondary benefit to the state's livestock and poultry farmers. The increasing demand for locally produced meat products has resulted in continually increasing requests for MPI inspection service. The proposed rule ensures that federal funds continue to be available so inspectors can be present at the plants to assist them in accommodating the farmers' slaughter and processing needs. The ability of the plants to keep pace with increasing demand is critical because animals must be slaughtered and processed under inspection in order for the meat to be sold to end consumers, retailers, and restaurants (with limited exceptions). It also benefits consumer protection by ensuring that plants are being required to comply with the most recent federal food safety regulations.

b. Justification of Requirements not Mandated by Federal or State Law

The proposed rule does not impose a requirement or cost beyond what is expressly required by federal or state law. With regard to the official and custom exempt facilities, the proposed rule does not impose requirements above the incorporated federal standards. In addition, the proposed rule does not impose a requirement or cost beyond what is expressly required by HEA 1267 for small scale poultry slaughter and processing. BOAH estimates that the total estimated impact (cost) will be less than \$500,000.

5. Regulatory Flexibility Analysis

Because the proposed rule does not impose requirements beyond what is required by federal law and HEA 1267, BOAH did not examine alternative methods with regard to the rule changes.

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