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Retail Exemption Policy Still Has “Gray Areas”

AAMP receives a number of questions on the ins-and-outs of retail exemption, as many small plants choose to do a portion, or even all, of their production under the retail exemption regulations. We have already presented this information at a number of different state association conventions, and many of you have been made aware of the updated interpretation of FSIS’ policy regarding retail exemption. However, for those who have not seen this material, we wanted to bring it to your attention and provide a more clear explanation.



The regulations related to retail exemption can be found under 9 CFR 303.1(d) and 381.10(d). In this section it states that the requirements of the Federal Meat Inspection Act (FMIA) and the regulations for inspection of the preparation of products do not apply to operations of types traditionally conducted at retail stores and restaurants, when sold in normal retail quantities. **According to 9 CFR 303.1(d)(2)(i), operations considered to be traditionally conducted at retail stores and restaurants are the following:**

- a. Cutting up, slicing, and trimming carcasses, halves, quarters, or wholesale cuts into retail cuts such as steaks, chops, and roasts, and freezing such cuts
- b. Grinding, and freezing products made from meat
- c. Curing, cooking, smoking, rendering or refining of livestock fat, or other preparation of products, except for slaughtering or the retort processing of canned products
- d. Breaking bulk shipments of products
- e. Wrapping or rewrapping products

A retail store is any place of business where sales of product are made to consumers only. Only federal or state inspected and passed product can be used in the preparation of any retail exempt product. Retail exempt items purchased by a consumer must be deemed to be a normal retail quantity and cannot exceed the amount representing one-half carcass of the species identified: Cattle – 300 lbs., Calves – 37.5 lbs., Sheep – 27.5 lbs., Swine – 100 lbs., and Goats – 25 lbs. **FSIS' policy regarding whether the preparation of meat products for sale to other than household consumers by a retail store is exempt from inspection is based on what operation is employed in preparing the product.** If the retail store engages in any of sections (a) through (e) above, it would be exempt from inspection, so long as the product is being sold to household consumers. Retail exempt operations are allowed to sell meat products to hotels, restaurants, and similar institutions (known as HRI), according to 9 CFR 303.1(d)(2)(iii)(f). The preparation of products for sale to HRI is limited to traditional and usual operations as defined in 9 CFR 303.1(d)(2)(i)(a), (b), (d), and (e). If a retail store cures, cooks, smokes, renders, refines livestock fat, or engages in other operations to prepare products for HRI, then those operations are subject to inspection, regardless of the percent of its sales that are to other than household consumers or of the dollar amount of those sales.

Retail Exemption Policy Still Has “Gray Areas” continued...

Under the retail exemption regulations, sales to HRI disqualify a store from exemption if they exceed either of two maximum limits: 25% of the dollar value of total product sales, or the calendar year dollar limitation set by the FSIS Administrator. The dollar limitation for calendar year 2007 (*limitations for 2008 have yet to be released*) is \$55,100 for meat and meat food products and \$44,400 for poultry products.

In a presentation made last fall at the National Association of State Meat and Food Inspection Directors (NASMFID) meeting in Reno, NV, Dr. Dan Engeljohn, Deputy Assistant Administrator of FSIS’ Office of Policy, and Program Development, brought up the Agency’s policy on retail exemption. **Within his presentation, he stated that retailers could add ingredients to inspected and passed amenable products that they grind and sell to HRI (within the limits of 9 CFR 303.1) without the loss of retail exemption.** At this point in time, we take this to mean that a retail exempt establishment could make an uncured, unsmoked, uncooked bratwurst (multi-ingredient product) and sell it to those other than household consumers as long as it stayed within the limits of 9 CFR 303.1. On the other hand, it would not be legal to make a cured, smoked, and fully cooked sausage to be sold to HRI under the retail exemption regulations. The difference is the nature of the operation used to prepare the product, not the food composition and ingredients.

This explanation of Agency policy on retail exemption differs from that which AAMP received a few years ago from Mr. Philip Derfler. According to the information that AAMP received when we followed up with Dr. Engeljohn regarding his presentation, FSIS has deemed the 2004 letter from Mr. Derfler is without force or effect, and has since been withdrawn.

One other question that stemmed from Dr. Engeljohn’s presentation related to the issue of interstate sales of retail exempt product. **According to the information in the presentation, retail sale is not restricted in interstate movement when processed under retail exemption and sales may be over the counter, via internet, or other means, including common carrier.** Dr. Engejohn did outline a stipulation that retail exempt products containing state inspected meat were not eligible for interstate sale. Therefore, simply because state inspected and federally inspected product are allowed to be used to produce retail exempt products, only retail exempt products that contain solely federally-inspected materials may be shipped across state lines by the mechanisms mentioned above.

We have had challenges getting definite clarification regarding these policies, and the Agency continues to somewhat dance around questions as they relate to the retail exemption regulations. Instead of developing straight-forward, written policy and making it available to the entire industry, the Agency seems to want to handle issues on an individual plant basis. AAMP is currently developing more questions to reduce the “gray area” content of the regulations or interpretations so that the entire meat industry can be on the same page and have a level playing field.

Obtaining additional written confirmation regarding this information from FSIS will ideally put an end to the confusion over the retail exemption policies. Hopefully the Agency will respond quickly to our request for additional clarification for the questions that remain on the retail exemption policies. Much of the information that has been discussed in this article is available on FSIS’ *askFSIS* feature at www.fsis.usda.gov. Any additional information that becomes available on this subject will be conveyed to you as soon as possible. If you have any questions on the information in this article, contact the AAMP office toll-free at 877-877-0168.