



Regulation of Small to Mid-Sized U.S. Farms

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Photo Credit – Oregon farm of President,
Farm-to-Consumer Legal Defense Fund

Summary of Policy Harming Small to Mid-Size Farms

- ❖ Impact of Consolidation
- ❖ Farm Bill Benefits Specific to Commodity Crops
- ❖ Climate Change
 - ❖ Less Support for sustainable food production, regenerative ag, carbon sequestration that could be *part* of a solution.
- ❖ Application of COOL Labeling, Truth in Labeling
- ❖ Support for Export Market
- ❖ Difficulty in Meeting Federal Regulation as to FSMA, Meat Inspection, Poultry Inspection, conservation, and a myriad of state and local regulation.

Small Farm, 10 Acres, Raising Laying Hens,
Livestock – two pigs, couple cattle,
One dairy cow – selling dairy products, not milk.
Some Value-added items for sale.

Not so complicated, right?

- Not a commodity crop or “specialty crop” grower, so few benefits under the Farm Bill, P.L. 115-334. www.ers.usda.gov/agriculture-improvement-act-of-1018-highlights-and-implications/
I.e., no crop insurance, commodity crop programs.
- Subject to regulations concerning wetlands, - Corps of Army Engineers and EPA, pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 – 1387.
- Federal Egg Rule – 21 C.F.R. 118.1 (regulates biosecurity, sanitation, refrigeration, environment testing, record keeping).
- Our small farm may be exempt because it keeps than 3000 laying hens at a particular farm, and/or producer sells all eggs directly to consumers.
- Will be state law regulations, farmer market requirements. May be visits from the State Dept of Agriculture and Department of Public Health.
- Dairy – Pasteurized Milk Ordinance – Model law, not law/regulation. Found at <https://www.fda.gov/media/114169/download>. States then choose to adopt PMO, or parts thereof.
- Prohibition on Interstate sales of raw milk OR milk product, 21 C.F.R. 1240.61.

Then need to know State Law. Variations on legalities, standards for production, marketing, distribution.

Cottage Food Regulations

- Cottage Food Laws by State – 43 States have state laws regarding food produced in home kitchens / on farm. Typically include some provision for production and sale of “non-potentially hazardous foods (NPH), those with low water activity low pH level that inhibit the grow of dangerous micro-organisms.
 - For example, these typically include foods that need not be refrigerated such as examples: dry baked goods, breads, cookies, fruit pies, jams, jellies, preserves, fruit butters, honey, sorghum, cracked nuts, dried herbs, spices, soup mixes (not all shelf-stable foods are non-potentially hazardous).
- State law typically specific list of foods that can be sold directly to consumers at home, farmers market, etc., often label requirements, sale limit, may require permit or license.



Federal Meat Inspection Act / Wholesome Meat Act, 21 U.S.C. § 603
(we'll come back to this).

If poultry as well, Poultry and Poultry Products Inspection Act, 21 U.S.C. § 451 *et. seq.*, federal regulations 9 C.F.R. Part 381.

Product labeling!

Both the FMIA and the PPIA require labels in compliance with the laws, and implementing regulations.

FMIA – 21, U.S.C. §§ 601, 607,

PPIA - 21 U.S.C. §§ 21 U.S.C. 451, 457

REGS - 9 CFR Section 317.2, Part 381 Subpart N.

** 9 C.F.R. 412.1 – labels with special statements and claims are required to be approved by FSIS prior to use in commerce, including labels bearing animal raising claims.

And local regulation:

State business structure.

Property tax evaluation.

Zoning and Right to Farm.

Meat Inspection Act 1906:

1. Mandatory inspection of livestock before slaughter;
2. Mandatory postmortem inspection of every animal;
3. Sanitary standards established for slaughterhouses and meat processing plants.
4. Authorized U.S. Department of Agriculture ongoing monitoring and inspection of slaughter and processing operations.

Amended by the Wholesome Meat Act of 1967,
21 U.S.C. § 603

TERMS OF THE WMA



- Federal law prohibits sale of custom processed meat
- Meat must be processed at a facility that was either federally inspected or inspected in a state whose meat inspection laws were at least as strict as federal requirements
- Meat slaughtered and processed at a state facility can only be sold within the state

And may have to consider

- **Food Safety Modernization Act of 2009**, 111 P.L. 353 (2011), amending the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq.*
- **Federal Meat Inspection Act**, 21 U.S.C. § 601 *et. al.*, amended by the Wholesome Food Act.
- **Animal Tags / Proposed RCIP chips:**
- In 2010, dropped plans for its proposed National Animal Identification System (NAIS). August 11, 2011, USDA Proposed Rule on Animal ID, 9 C.F.R. Parts 71, 77, 78 and 90. Prohibits movement of livestock interstate without meeting requirements, including official eartag or Group Id. 2017, USDA proposed to “expand” without federal rulemaking, requiring electronic ID – with Id and system reader paid for by the farmer / rancher. Withdrawn.
- **Packers and Stockyards Undue Influence Provisions:**
- 2008 Farm Bill demanded that GIPSA develop new rules to ensure fair competition in the meat and poultry industries.
- Packers and Stockyards Act granted the Grain, Inspection, Packers and Stockyards Administration (GIPSA) to oversee livestock and poultry markets to ensure fair competition. 7 U.S.C. § 181 *et. seq.*
- 12/20/16 GIPSA published interim rule after formal rulemaking at 81 FR 92723, 9 CFR 201 (2016), providing Farmer Fair Practice Rules, which would have eliminated requirement of showing that practice harms entire market to provide a P&S violation and established unfair practices that violate the Act, and addressed the unfair “ranking system” in poultry. Overturned by Trump administration. Super watered down version eventually promulgated that requires USDA to determine in case-by-case basis whether live poultry dealer has given any undue preference or advantage, which cannot be justified by cost savings or reasonable business decision. 9 CFR Part 201,
- **Dairy** – Complex regulations for Grade A Milk, Federal Pasteurized Milk Ordinance, 400+ pages, adopted in whole or in part by all states. States with permit process for raw milk just as onerous for two jersey cows as for a 10,000 head CAFO. E.g., AZ Statutes 3-601-607, AZ Admin Code R3-2-805, PA Statutes, Title 31, Ch. 13, 3 P.S. 646, PA Code of Regs., Title 7, Pt. III, Subpt B.

Summary of Important Federal Law Relevant to Small to Mid-Sized Farms

[Food Safety Modernization Act of 2009](#), 111 P.L. 353 (2011),

[Federal Meat Inspection Act](#), 21 U.S.C. § 601 *et. al.*, amended by the Wholesome Food Act.

[Custom Slaughter Exemption to the FMIA](#), § 623, 661, governed by federal regulations, found at 9 C.F.R. §303.1.

[Poultry Processing Inspection Act](#), 21 U.S.C. §§ 451 - 470 and Poultry Exemptions 9 C.F.R. § 381.10.

[Animal Tags / Proposed RCIP chips](#)

[Packers and Stockyards Undue Influence Provisions](#)

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[Federal Egg Rule](#) – 21 C.F.R. 118.1

FSMA as applied to small FARM:

- Produce Rule, 80 FR 74353:

NEED to insert compliances dates for smaller farms:

- Water requirements:

Water Quality

Testing

Biological soil amendments

Sprouts

Domesticated and wild animals

Worker Training and Health and Hygiene

Equipment Tools and Buildings

** Exclusions: 21 CFR 112.2(a)(1) – rarely consumed raw
112.4(a) - sales less than \$25,000.
Personal use not covered by FMSEA.

** Exemptions: Qualified Exemption, annual sales less than \$500,000, sales to qualified end users, 21 CFR 112.6, 112.7.

Commercial Processing Exemption: 21 CFR 112.2(b)

21 CFR 112.6, 112.7

- Preventive Controls Rules, 21 CFR Part 117,
 - Employees qualified to perform duties, receive education, training and experience.
 - CGMPs address allergen cross contact.
 - Provision for distribution of human food by products
 - Food Safety Plan.
- And ERS reports:
- Fully Regulated non-exempt farms cost from \$4, 477 per year - \$29, 545 per year depending on size.
<https://sustainableagriculture.net/blog/fsma-compliance-costs/>

In other words. . .

- USDA FSIS
- FDA if covered by federal egg rule
- State Department of Agriculture
- State Department of Public Health
- City or County Health Department

- And plenty of extra money for attorney, right?

USDA ERS – more than half of U.S. farms are small, with annual farm sales of under \$10,000. Most of these have off-farm income as well.

Specific Problem: Consolidation of meat processors led to fewer, and larger meat processing plants.

- Top 4 Beef Processors control approximately 80% of the U.S. Meat Supply.
- Top 4 Pork Processors account for 63% of the U.S. Market.

>> less, but larger processing facilities.

>> closure due to Covid -19 had serious potential impact on U.S. beef and pork supply.

Sources:

Heffernan, W. & Hendrickson, M. (2007). University of Missouri, Department of Rural Sociology, <http://foodcircles.Missouri.edu/07contable.pdf>.

Taylor Telford and Kimberly Kindy, *As they Rushed to Maintain U.S. Meat Supply, Big Processors saw Plants become Covid-19 Hot Spots, Worker Illnesses Spike*, Washington Post, April 25, 2020.

A DISASTER FOR SMALL SLAUGHTERHOUSES

- WMA led to decline in slaughterhouse numbers from 10,000 in 1967 to less than 3,000 today.
- Loss in slaughterhouse infrastructure; some farmers have to book slaughter one year in advance, and travel great distances which reduces already narrow profit margin
- WMA was an industry consolidation measure; 4 meat packers control over 80% of meat processing
- Contributes to inability of small farms to meet demand for locally produced meat

Potential Solution: Diversify Supply.

Smaller Producers can contribute to US Meat Supply

- Challenges to this solution?
 - Federal Meat Inspection Act, Amended by Wholesome Food Act, requires inspection of meat at USDA facilities. 21 U.S.C. § 603.

** USDA processors are offering slaughter and processing dates well into 2022 and beyond.

** Small producers cannot get their meat processed.

- Can turn to State Inspection facilities, also limited availability, limited to INTRASTATE sales.
- Can turn to Custom Processing? Can't Sell this meat – only process for owner's use: 9 C.F.R. § 303.1.

RESTORING AN AMERICAN TRADITION

- Unregulated farm-to-consumer direct commerce was the norm for most of this country's history
- Only in the 20th century did farmers become ensnared in a regulatory morass due to problems they did not create
- Resulting over-regulation caused decline of the family farm and community self-sufficiency in food production
- Recent trend toward restoring the direct sales to consumers from farms and home kitchens

Kansas – need citation

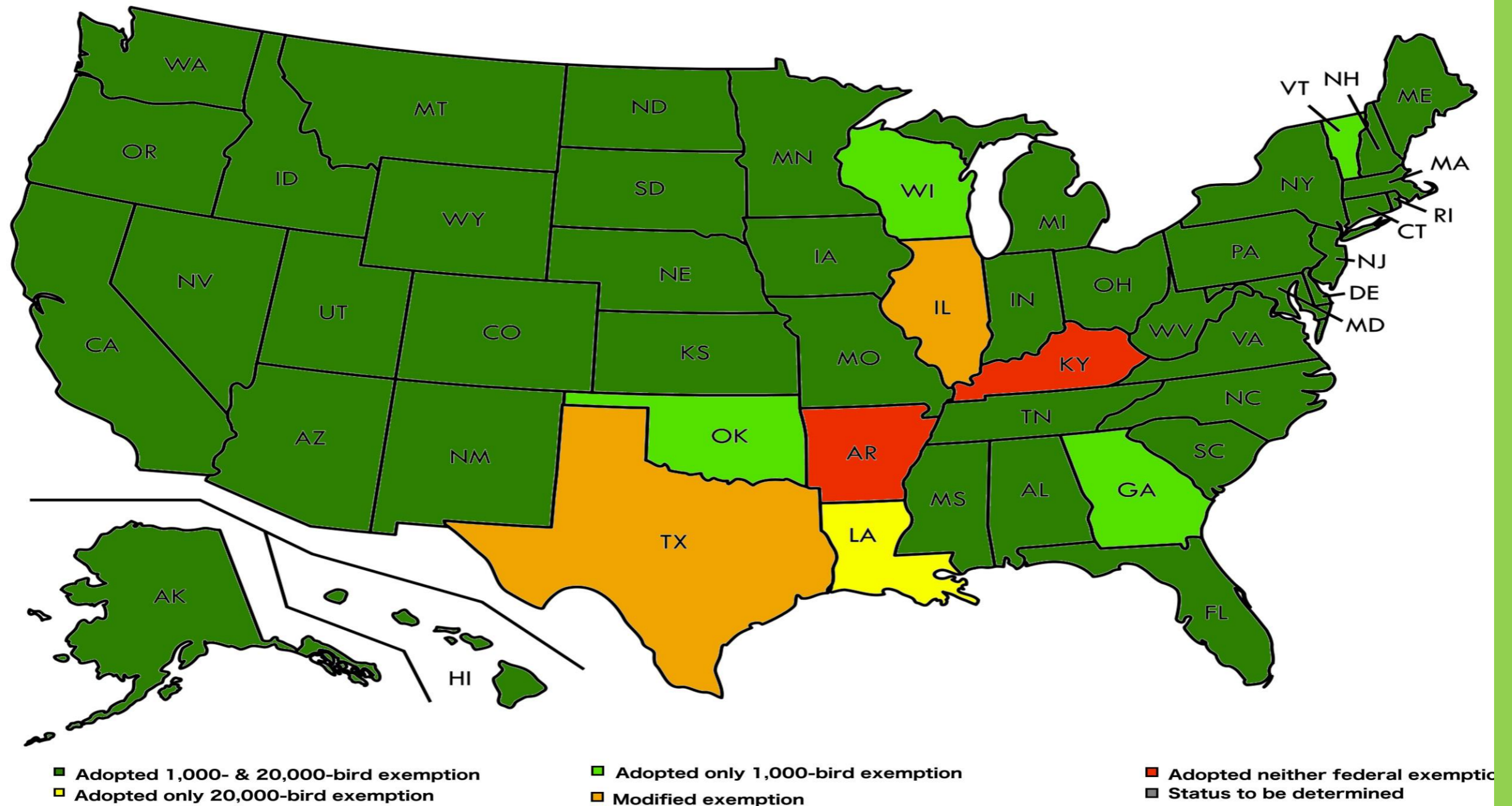
- On farm slaughter permitted.
- Custom slaughter and processing permitted.
- No limitation on number of owners.
- Where different the fed. exemption, 9 CFR 303.1, owner may field dress, producer may not.

Poultry Inspection Act – 21 U.S.C. § 451 *et. seq.*

9 C.F.R. Part 381

Federal Inspector Present, 1000 and 20,000-bird exemptions, §§ 381.10-381.15.

State-by-State* Review of On-Farm Poultry Processing Laws



Poultry Processing in PA – Federal Guidelines

Exemptions from Federal Requirement for On Site Inspection:

1000-Bird Exemption:

Requirements:

- 1. slaughter no more than 1000 of his / her own for distribution.
- 2. not buying /selling other than products raised on own farm.
- 3. Slaughter under sanitary standards and practices
- 4. Keep records that no more than 1000 birds distributed.
- 5. Poultry products distributed only in PA.

20,000 –Bird Exemption

1. Slaughter and process no more than 20,000 poultry in cal. year.
2. Producers sells only poultry produced on his /her farm.
3. Distributes intrastate commerce.
4. Poultry are healthy when slaughtered.
5. Slaughter and processing at premises using sanitary standards.
6. Distributes poultry produced only under this exemption.
7. Facility not used to slaughter another person's poultry.
8. Shipping containers include producers name, address, the statement "exempt, P.L. 90-492."

Local Regulation of Eggs, Locally produced

- Some states – sell ungraded eggs direct to consumers, cannot sell wholesale.
- Labeled with name, address, and “ungraded.”
- Farmers markets different in each state.

COUNTRY OF ORIGIN LABELING LAW REPEALED

- Since 2013, consumers were able to tell from labels where animal was born, raised, and slaughtered
- In late December 2015, Congress repealed COOL for beef and pork. (Lamb and poultry must still be labeled.)
- Issues: consumers' right to know where their meat comes from for food safety reasons, sustainability reasons, and support for domestic farmers.





Farm-to-Consumer Legal Defense Fund[®]

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