

Attack on Food and Farmers + And How to Fight Back

Transcript & Recommended Materials

Regulatory Obstacles for Raw Milk and Local Meat: Efforts to Overcome Them

By Pete Kennedy, Esq

Hi, I'm Pete Kennedy. Thank you, Meryl for inviting me to speak on “Regulatory Obstacles for Raw Milk and Local Meat: Efforts to Overcome Them.”

I am the executive director for the **Food Freedom Foundation**, a nonprofit supporting the rights of family farmers and cottage food producers to make a living. I also serve as a consultant for the **Weston A. Price Foundation**, a nonprofit whose mission is to restore nutrient-dense foods to the American diet through research, education and activism. I also host the Solari Food Series audiocast on **Solari.com**. In the past, I was a staff attorney and president for the **Farm-to-Consumer Legal Defense Fund**.

—1— Ban on Raw Milk for Human Consumption

Unpasteurized dairy products are the only foods banned in interstate commerce. This came about because of a 1986 ruling by the federal district court of the District of Columbia in the case of *Public Citizen v. Heckler* [653 F. Supp. 1229 (D.D.C. 1987)]. The Department of Health and Human Services had rejected a citizens petition filed by a group called Public Citizen to issue a rule banning all raw milk and raw milk products in interstate commerce. The court found that raw milk is a health risk and the refusal to issue the rule was “arbitrary and capricious” and then ordered FDA and the Secretary of Health and Human Services to publish a rule instituting the ban.

FDA issued the rule in 1987, basing its authority on its power to “control communicable disease” under the Public Health Service Act. The *Heckler* case involved the consideration of only fluid raw milk products not other raw dairy products such as butter, cheese,

and ice cream; so in 1992, FDA issued a regulation defining a “milk product” as anything except cheeses that were aged at least 60 days.

What’s significant, among other things, is that Congress--the people’s branch of government--had no input on the ban. The ban makes for bad law. You know you have a bad law when otherwise law-abiding citizens violate it with regularity. Every week in this country, people obtain raw milk produced across state lines.

—2— FTCLDF Lawsuit on Ban

In 2010 the Farm-to-Consumer Legal Defense Fund [FTCLDF] filed a constitutional challenge to the interstate ban against FDA in an Iowa federal district court. Even though the judge hearing the case eventually dismissed it for “lack of standing”, the lawsuit was productive for a couple of reasons.

First, FDA stated on public record that it would not take enforcement action against individuals crossing state lines with raw milk and raw milk products; although it did leave open the possibility of action against both farmers delivering raw dairy across state lines and individuals crossing state lines with raw dairy to distribute to a group of people, such as a buyers club.

Second, FDA put its views on food freedom on the public record in its Reply Brief to the lawsuit, providing a wake-up call for many people. FDA declared that there were no fundamental rights to consume the foods of your choice, to feed your children the foods of your choice, and that you have no fundamental right to bodily autonomy.

Dept. of Health and Human Services (HHS). (2010, April 26). Brief in Support of United States' Motion to Dismiss Plaintiffs Amended Complaint. (Case 5:10-cv-04018-MWB) <https://www.farmtoconsumer.org/litigation/ey100426--ds%20mtd%20memo%20in%20support.pdf>

- *“There’s no absolute right to consume or feed children any particular food.”* [p. 25]
- *”Plaintiffs’ assertion of a ‘fundamental right to their own bodily and physical health, which includes what foods they do and do not choose to consume for themselves and their families’ is similarly unavailing because plaintiffs do not have a fundamental right to obtain any food they wish.”* [p.26]

—3— Intrastate Raw Dairy Distribution

With the FDA ban, states have devised their own laws on raw milk sales and distribution within their own borders; with other foods there are federal regulations in place that states typically adopt. The result with raw milk is a hodgepodge of laws.

The pushback to the federal ban has happened one state at a time. To date, 47 states have legalized the sale or distribution of raw milk by statute, regulation or policy. States have legalized raw milk sales for human consumption, raw milk sales for pet consumption, and distribution of raw milk through herdshare arrangements [agreements] which are contractual arrangements where someone secures the right to obtain raw milk through purchasing a percentage ownership interest in a dairy animal or herd of dairy animals. Out of the 47 states, 40 have legalized the right to sale or distribution for human consumption.

State laws run the gamut from on-farm sales to retail sales, from a limit on the number of dairy animals producing raw milk to a cap on the amount that can be sold each month. In some states farmers are subject to licensing and inspection; in others, the farmers are unregulated when they sell raw milk. There is no interstate ban on raw pet milk. People shipping raw pet milk across state lines should be in compliance with federal laws on adulteration and misbranding.

—4— Interstate Milk Freedom Act (H.R. 8374)

A complete repeal of the interstate raw dairy ban would be a bad idea. FDA treatment of raw cheese producers chronicled in Catherine Donnelly's book, *The War on Artisan Cheese*, is an indication of how the agency would treat producers of other raw dairy products. FDA would have jurisdiction over those producers if there was a complete repeal of the ban.

There's currently a bill before Congress, the Interstate Milk Freedom Act (H.R. 8374) that would partially repeal the interstate ban. The bill [H.R. 8374] would allow the interstate shipment of

raw milk and raw milk products from one state where the sale or distribution is legal to another state where the same is legal. Shipped product would need to be in compliance with federal adulteration and misbranding laws. H.R. 8374 does not give FDA any rule-making power.

—5— Growing Raw Milk Demand

The demand for raw milk is growing faster than ever before. A 2007 CDC survey found there were about 10 million raw milk drinkers in the U.S.; the number now could easily be double that.

[See p. 14, 3% U.S. population: Centers for Disease Control and Prevention (CDC). Foodborne Active Surveillance Network (FoodNet) Population Survey Atlas of Exposures. Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2006-2007. <https://www.cdc.gov/foodnet/pdfs/fnexpat103022011.pdf>]

Raw milk demand exploded at the onset of COVID in 2020 with more people going direct to the farm for their food. In 2022 the shutdown of a large plant producing infant formula led to another surge in demand. Traffic to a page about raw milk infant formula on Weston Price's website jumped 1,000% after the plant shut down. In 2024 demand has jumped another level as growing distrust of the medical system after COVID has led to more people taking charge of their health.

Along with rising demand, the accelerating decline of the conventional dairy industry has led to more states passing laws, legalizing or expanding raw milk access including raw dairy products other than milk or cheese in recent years. About half the states allow the sale or distribution of raw cream now, and about a quarter allow the distribution of raw kefir and raw butter. The dairy industry has also been more supportive, at least in some states. Grade A dairies were the drivers in the raw bills passing the legislature in Delaware and Georgia.

FDA and CDC are as anti-raw milk as ever, but states are becoming more independent of the federal agencies and more supportive of raw milk. In Delaware the Commissioner of Agriculture testified in the House and Senate for a bill legalizing

raw milk sales for human consumption. Delaware Farm Bureau also supported the bill, something that has rarely happened in other states and the health department was neutral—also a rarity.

Fearmongering from the federal government on bird flu in raw milk has done nothing to curb demand. So far, Massachusetts is the only state that has implemented mandatory testing for bird flu for raw milk producers.

The challenge with the current popularity of raw milk is to pass more favorable [state] laws enabling new producers to get onboard selling raw milk to meet the demand.

—6— Wholesome Meat Act of 1967 (WMA)

The Wholesome Meat Act of 1967 [WMA] was sold to the public as a consumer protection act when the reality is: it was actually an industry consolidation measure. It drove up costs for slaughterhouses and preempted state laws on slaughter and meat processing. Any state law had to be at least as strict as the corresponding federal law.

The WMA was largely responsible for the decimation of local slaughterhouse infrastructure; in 1968 there were 9,600¹ slaughterhouses in the U.S. Today according to USDA [United States Department of Agriculture] there are 2,850².

A Small Business Administration report³ in 1971 compared the effect of the WMA on small meat firms to a hurricane. The report also noted that the U.S. meat industry in 1967 was among the most competitive in the American economy. Farmers in many parts of the country have little or no access to a local slaughterhouse, often having to transport their animals several hours. And that is due to the industry consolidation of the report foresaw. Today four companies control over 80% of beef processing in the U.S., and four companies control over 60% of pork processing⁴.

1. Denny, R.C.H. (2012). Between the Farm and the Farmer's Market: Slaughterhouses, Regulations, and Alternative Food Networks (Master's thesis). Retrieved from Auburn University AUETD database, <https://etd.auburn.edu/handle/10415/3247>
2. National Agricultural Statistics Service. (2024, April). *Livestock Slaughter 2023 Summary*. <https://downloads.usda.library.cornell.edu/usda-esmis/files/r207tp32d/wh248d422/p5549g65c/lsan0424.pdf>
3. United States. Small Business Administration, and United States. Congress. Senate. Committee on Small Business. The Effects of the Wholesome Meat Act of 1967 Upon Small Business: A Study of One Industry's Economic Problems Resulting from Environmental-Consumer Legislation. Washington: U.S. Govt. Print. Off., 1971.
4. Hendrickson, Mary & William Heffernan. (2027, April). Concentration of Agricultural Markets. Dept. of Rural Sociology: Univ. of Missouri. <https://www.farmtoconsumer.org/wp-content/uploads/2015/07/UnivMO-RuralSoc-07contable.pdf>

—7— U.S. Meat Industry Consolidation

Food safety has not improved since passage of the WMA. From 2005 to 2020, over 6,000 illnesses were attributed to meat consumption⁵. The big plants process 300 to 400 cattle an hour, making it difficult to maintain quality control no matter how many inspectors are present.

According to a report by the National Agricultural Statistics Service [NASS]⁶, federally inspected [USDA] slaughterhouses accounted for 98.1% of the cattle slaughtered in the U.S. in 2023 and 99.5% of the hogs slaughtered.

- 11 plants slaughter 48% of cattle.
- 14 plants slaughter 60% of hogs.
- 90 plants slaughter 98% of cattle.
- 95 plant slaughter 99.5% of hogs.

5. Centers for Disease Control and Prevention (CDC). (2021, May 26). Access® database for outbreaks reported from 2005 to 2020 from all transmission sources (food, water, animal contact, environmental, and person-to-person) [Data set]. Provided by Hannah Lawinger, CDC NORS Data Request Manager. National Agricultural Statistics Service. 2024, April).

6. *Livestock Slaughter 2023 Summary*. <https://downloads.usda.library.cornell.edu/usda-esmis/files/r207tp32d/wh248d422/p5549g65c/lsan0424.pdf>

—8— Personal Use Exemption - 9 CFR 303(a)(1)

There are several exemptions the small farmer or rancher can take advantage of to reduce the regulatory burden for slaughtering and/or processing meat animals. I'll briefly discuss the Personal Use Exemption and the Custom Exemption. "Exempt" in this context means there is no requirement that an inspector be present when slaughter and/or processing is taking place.

The Personal Use Exemption exempts from inspection, "The slaughtering and processing by any individual of livestock of his own raising" as long as the meat and meat food products of such livestock are "exclusively for use by him and members of his household and his non-paying guests and employees."

USDA's Food Safety Inspection Service (FSIS) interprets this exemption to include any individual who purchases a live animal from a farmer, **IF** the individual slaughters and processes the animal without any help from the farmer. The individual can use the farmer's equipment and slaughter and process on the farmer's land.

Vermont has a statute which allows an itinerant slaughterer to slaughter an owner's animal on the farm. At one time, USDA [FSIS] interpreted that transaction to be under the Personal Use Exemption, but has since changed its position.

In response, several nonprofits have worked on a federal bill that would codify in statute the owner's agent being under the personal use exemption when slaughtering the owner's animal on the farm. From a food safety standpoint, this makes sense; the farmer or another agent retained to slaughter the animal is going to have more experience and skill slaughtering and processing the animal than the owner.

In response to a FOIA request filed by the Weston Price Foundation [WAPF], FSIS acknowledged that, from 2010 through the first half of 2022, there hadn't been a single foodborne illness

outbreak attributed to the consumption of meat from an animal slaughtered on the farm. Under current law if the farmer slaughters or processes the owner's animal, it falls under the Custom Exemption which has considerably more requirements, including a recordkeeping requirement.

Wyoming had a bill on the unregulated sale of on-farm or custom slaughtered meat direct to the consumer that was vetoed by the governor earlier this year. The bill contained a 'trigger clause' that would have legalized sales with either an act of Congress or a favorable ruling by a federal court with jurisdiction over Wyoming.

—9— Custom Exemption - 9 CFR 303(a)(2)

The Custom Exemption provides an exemption from inspection for the custom slaughter and/or processing of the owner's animal, as long as the meat and meat food products are "exclusively for use in the household of such owner, by him and members of his household, nonpaying guests and employees." Unlike inspected slaughterhouses, there is no HACCP [Hazard Analysis of Critical Control Points] requirement for custom, making the cost for the farmer considerably less.

FSIS has no limit on the number of owners there can be for a custom animal, but it's guidance on the custom exemption states: "The custom operation must maintain records showing the identity of the individual owner's name prior to slaughter. In the case of more than one owner of the livestock, a list of the individual owners' names is required prior to slaughter."

Custom meat has a good track record for safety. FSIS has acknowledged in response to a FOIA request filed by the Farm and Ranch Freedom Alliance [FARFA] that, from 2012 through the middle of 2020, there wasn't a single foodborne illness outbreak attributed to the consumption of custom meat.

In recent years, Colorado, Nebraska, Wyoming and Texas have passed bills legalizing **meat share operations**. In a meat share, those who have purchased an ownership interest in a herd of

livestock are entitled to some of the meat from any of the livestock that is slaughtered and processed. Colorado and Wyoming have passed laws where the owners of a processed animal don't have to be identified before slaughter and can purchase the meat processed from their livestock anytime they want. This, in effect, increases the demand of the owners for the custom animals since there is no upfront investment required of the owners when the animal goes for slaughtering and processing.

—10— The PRIME Act (H.R. 2814), *Processing Revival and Intrastate Meat Exemption*

The PRIME Act, House Resolution 2814 [H.R. 2814], was first introduced in 2015 to give states the option of legalizing the intrastate sale of custom meat by the cut direct to the consumer, to restaurants and retail stores.

The 2024 House Farm Bill has a version of the PRIME Act that would allow a limited number of custom facilities in each state to participate in a pilot program where meat slaughtered and processed at the custom facility could be sold in intrastate commerce by the cut direct to the consumer by either the facility itself or the owner of the animal.

—11— Interstate Sales of State-Inspected Meat

The general requirement under the Federal Meat Inspection Act [FMIA] is that state-inspected meat can only be sold in intrastate commerce. Since state laws on slaughtering and processing must be at least as strict as federal law, there's no good reason meat slaughtered and processed at a state-inspected facility cannot be sold in interstate commerce.

There is an existing federal law, the **Cooperative Interstate Shipment Program** (or CIS), which allows the distribution in interstate commerce of meat slaughtered and processed in state-inspected facilities with 25 or fewer employees.

States with their own meat inspection programs can apply to USDA-FSIS to join the Cooperative Interstate Shipment Program [CIS]. Once accepted into the program, eligible slaughterhouses and meat processing facilities in the member state can apply to ship meat across state lines. There are 29 states with their own inspection program but only 10 have joined CIS.

There is a bill before Congress that will allow the interstate shipment of meat and poultry products that were slaughtered and processed in any state-inspected facility. House Resolution 1646 [H.R. 1646], New Markets for State-Inspected Meat and Poultry Act of 2023, deserves support but has gotten little traction so far.

—11— Country of Origin Labeling (COOL)

There is some help on the way for meat producers when it comes to labeling. An adverse opinion from the World Trade Organization [WTO] in 2015 moved Congress to repeal mandatory Country of Origin Labeling (COOL) laws for beef and pork.

Foreign producers took advantage; as long as there was any kind of further processing done in the U.S., the meat product could be labeled “product of the USA” even if the animal that the meat came from was born, raised, slaughtered, and initially processed in another country. Even just repackaging the meat product was enough to make a “product of the USA” designation on the label legal.

Earlier this year USDA issued a final rule giving American farmers and ranchers the right to label the beef and pork they sell as a product of the USA, **IF** the meat was from an animal born, raised, slaughtered and processed in the USA; all four requirements must be met to take advantage of the voluntary labeling law.

There is still no mandatory country of origin labeling requirements, but the loophole that foreign meat producers manipulated is no longer there. The new rule goes into effect in January 2025.

So, that's my talk. Thanks for watching.

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Let me know if you have questions,

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Websites

Food Freedom Foundation (FFF) - foodfreedomfoundation.org
Farm-to-Consumer Legal Defense Fund (FTCLDF) -
farmtoconsumer.org
Weston A. Price Foundation (WAPF) - westonaprice.org
The Solari Food Series at Solari.com - food.solari.com

Recommended Viewing

Canty, Kristin. (2011). *Farmageddon: The Unseen War on American Family Farms*. (video). YouTube
<https://youtu.be/J5ZKZshwOtw>

Recommended Reading

A. RAW MILK

1. Kennedy, Pete. (2022, Nov 22). Food Series: Raw Milk Nation.
<https://home.solari.com/solari-food-series-raw-milk-nation/>
2. Kennedy, Pete. (2010, May 10). FDA - Interstate Raw Milk Ban.
<https://www.farmtoconsumer.org/blog/2010/05/06/litigation-fda-status/>
3. Kennedy, Pete. (2013, May 20). The Vernon Hershberger Trial Begins Today
<https://www.farmtoconsumer.org/blog/2013/05/20/the-vernon-hershberger-trial-begins-today/>

B. LOCAL MEAT

1. Kennedy, Pete. (2015, Sep 10). The Wholesome Meat Act of 1967: Disaster for Small Slaughterhouses from the Start.
<https://www.farmtoconsumer.org/blog/2015/09/10/the-wholesome-meat-act-of-1967-disaster-for-small-slaughterhouses-from-the-start/>
2. Kennedy, Pete. (2016, Feb 26). Support the PRIME Act (H.R. 3187) - Processing Revival and Interstate Meat Exemption Act.
<https://www.farmtoconsumer.org/wp-content/uploads/2016/02/Prime-Act-FTCLDF-white-paper.pdf>
3. Kennedy, Pete. (2023, Sep. 15). The Time for PRIME Is Now!
<https://www.foodfreedomfoundation.org/blog/the-time-for-prime-is-now>
4. Food & Water Watch. (2009, June). Where's the Local Beef? Rebuilding Small-Scale Meat Processing Infrastructure.
<https://www.farmtoconsumer.org/wp-content/uploads/2015/09/FWW-WheresTheLocalBeef-2009.pdf>