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Hot Topics in Animal Ag

“Prop 12,” Slaughter/Processing, and the End of Chevron?

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 - The NALC is a unit of the University of Arkansas System Division of Agriculture
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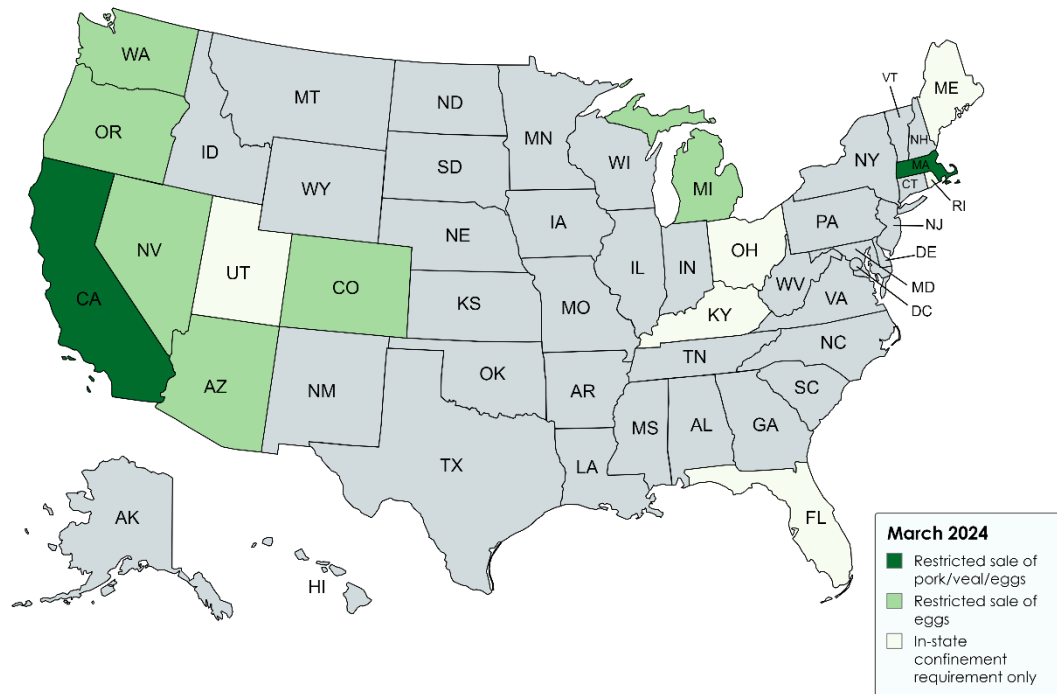


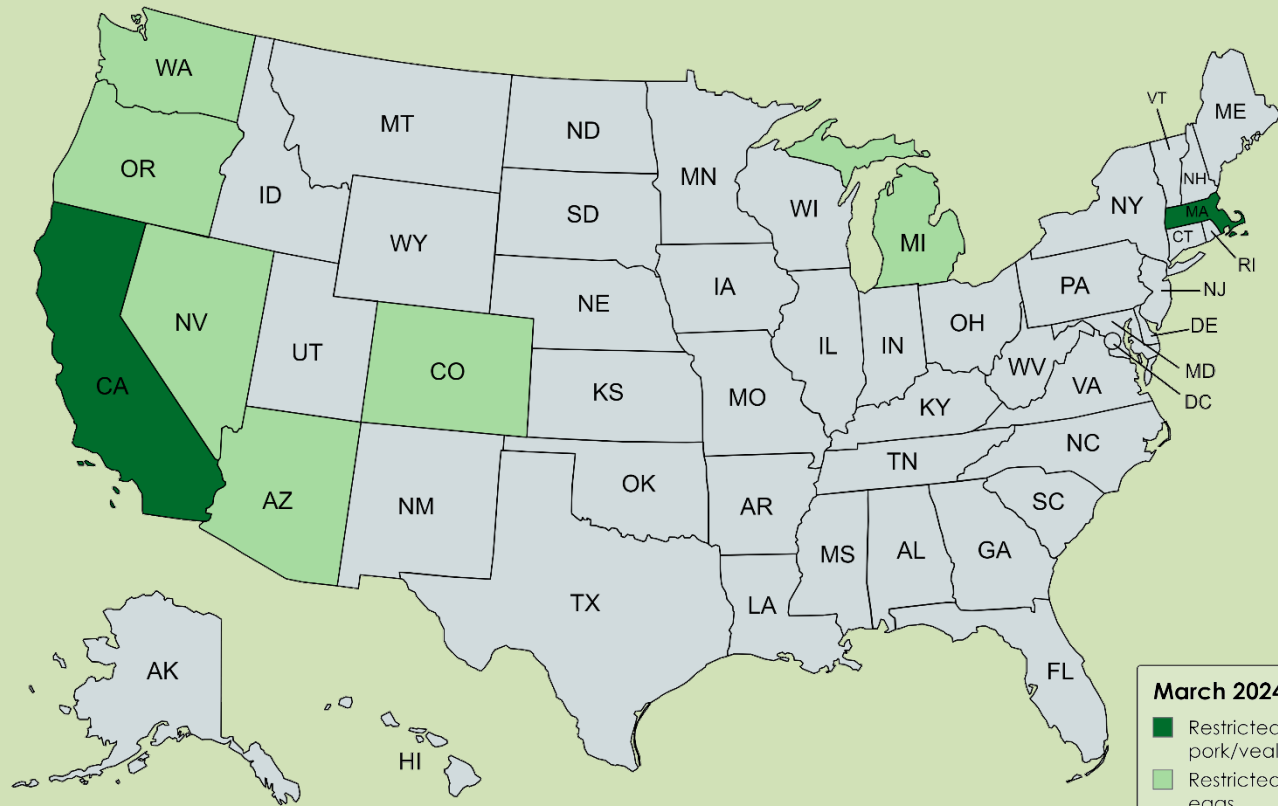
Outline:

-  *Prop 12: Current Effect, Future Model?*
-  *Slaughter/Processing*
-  *The Future of Federal Regulations*

Current Confinement Statutes/Regs: 2024

- Regulating living conditions for specific livestock
 - Laying hens
 - Pregnant sows
 - Veal calves
- Regulating in-state sales of products from non-conforming operations





Current Sales Restrictions



Prop 12 Basics

- 2018 CA ballot proposal

- Sponsored by HSUS
- Passage 62% to 37%

- Overall requirements:

- Prohibited the act of confining farm animals (egg-laying hens, veal calves and breeding pigs) in a “cruel manner.”
 - Applied to actions and animals within the state of California
- Prohibited the sale of products within the state that had been made from animals who had been confined in the “cruel manner” outlined in California’s law.

- In other words:

- Eggs produced/sold in California come from cage-free birds.
 - Previous requirement: “lying down, standing up and fully extending limbs or turning around freely”
- Pork/veal sold in California come from farms without crates.
 - Applies to: gilts at six months of age or pregnant, older sows that have been bred for commercial breeding to produce pork meat, including a sow's immediate offspring.



Prop 12 Challenge

- Challenge- NPPC/AFBF
 - Foundation of claims: Commerce clause
 - Barrier to trade by imposing “substantial burdens” obligations on out-of-state competitors v. in state producers
- Status:
 - NPPC lost in district & 9th Cir
 - Case appealed to, cert accepted and case heard by SCOTUS in October 2022
- Options for SCOTUS
 - Agree that CA can pass the law, it goes into effect as scheduled.
 - Consequence: states can pass similar laws that have an outsized effect on out-of-state production.
 - Send to lower/trial court for further development of the record
 - Hearing/briefings on what effect it has on in-state v. out-of-state, intent of the law etc.
 - Consequence: potentially see it back at USSC in 2ish years.
 - Disagree that CA can pass the law, Prop 12 struck down as unconstitutional
 - CA’s original animal confinement law (Prop 2), would remain in effect.
 - Unlawful to prevent pregnant sows, veal calves and laying hens from lying down, standing up and fully extending limbs or turning around freely
 - Cannot sell shelled eggs in state unless they come from Prop 2 living conditions.



Prop 12 SCOTUS Ruling

- Overall decision: Prop 12 is constitutional and enforceable by California
 - Split decision. “Opinion of the Court” (Gorsuch) and several concurrence/dissents written by other justices
 - Minority of justices would have sent it back to district court for further consideration
- Analysis:
 - Purposeful facial discrimination against out of state producers = unconstitutional
 - No facial discrimination + “practical effect of controlling commerce” = constitutional
 - No facial discrimination + disproportionate effect on out of state businesses = it depends, but not in this case



Read opinion here



More analysis here



How to determine “disproportionate effect”?

“Pike Balancing Test”: Exposes ‘sneaky’ discrimination (aka the practical effects of the law expose purposeful, but hidden, discrimination against out of state businesses)

- *Test: Is the burden on out of state producers clearly excessive in relation to local benefit?*

NPPC Opinion of the court

- 3 justices agreed that it was the role of Congress to intervene, rather than having SCOTUS balance policy issues
- 5 justices agreed that NPPC, in its initial complaint, did not allege enough facts to suggest that the practical effects disclose purposeful discrimination
- 4 justices agreed that NPPC, in its initial complaint, did not allege enough facts to suggest that there was a “substantial burden” on out-of-state producers
- 3 justices agreed that Pike only allows for consideration of economic harms (not social costs, traditions, industry practices), b/c other harms are difficult to quantify

NPPC Concurrences/Dissents

- 2 justices agreed that NPPC did not allege enough facts to show substantial burden, but argue that *Pike* doesn’t require allegations of discrimination, and that the court is competent to balance policy issues
- 1 justice agreed that the court is not able to balance policy issues, but would have found that NPPC did allege enough facts to show a substantial burden
- 4 justices disagreed with the entire *Pike* analysis from the main Court opinion, and would have sent it back to the district court for fact-finding beyond the original complaint
- 1 justice pointed out that a majority of the justices agreed to continue using the *Pike* test (leaving it as good law). He would have sent it back to the district court, but also believes it may raise other constitutional questions that were not raised in the complaint



How to determine “disproportionate effect”?

“Pike Balancing Test”: Exposes ‘sneaky’ discrimination (aka the practical effects of the law expose purposeful, but hidden, discrimination against out of state businesses)

- *Test: Is the burden on out of state producers clearly excessive in relation to local benefit?*
 - Note: designation as difficult to measure policy/“moral” issue; focus on role of court v. elected officials



- “How is a court supposed to compare or weigh economic costs (to some) against noneconomic benefits (to others)? No neutral legal rule guides the way. The competing goods before us are insusceptible to resolution by reference to any juridical principle.”
- “[W]e remain left with a task no court is equipped to undertake. ... How should we settle that dispute? The competing goods are incommensurable. Your guess is as good as ours. More accurately, your guess is better than ours. In a functioning democracy, policy choices like these usually belong to the people and their elected representatives. They are entitled to weigh the relevant ‘political and economic’ costs and benefits for themselves”

• Justices Gorsuch/Thomas/Barrett (main opinion)



- “California’s interest in eliminating allegedly inhumane products from its markets cannot be weighed on a scale opposite dollars and cents—at least not without second-guessing the moral judgments of California voters or making the kind of policy decisions reserved for politicians.”

• Justice Barrett (concurrence in part)





Final Memo & Order-
Triumph Foods 23-cv-
11671 (D. MA, 2-5-24)

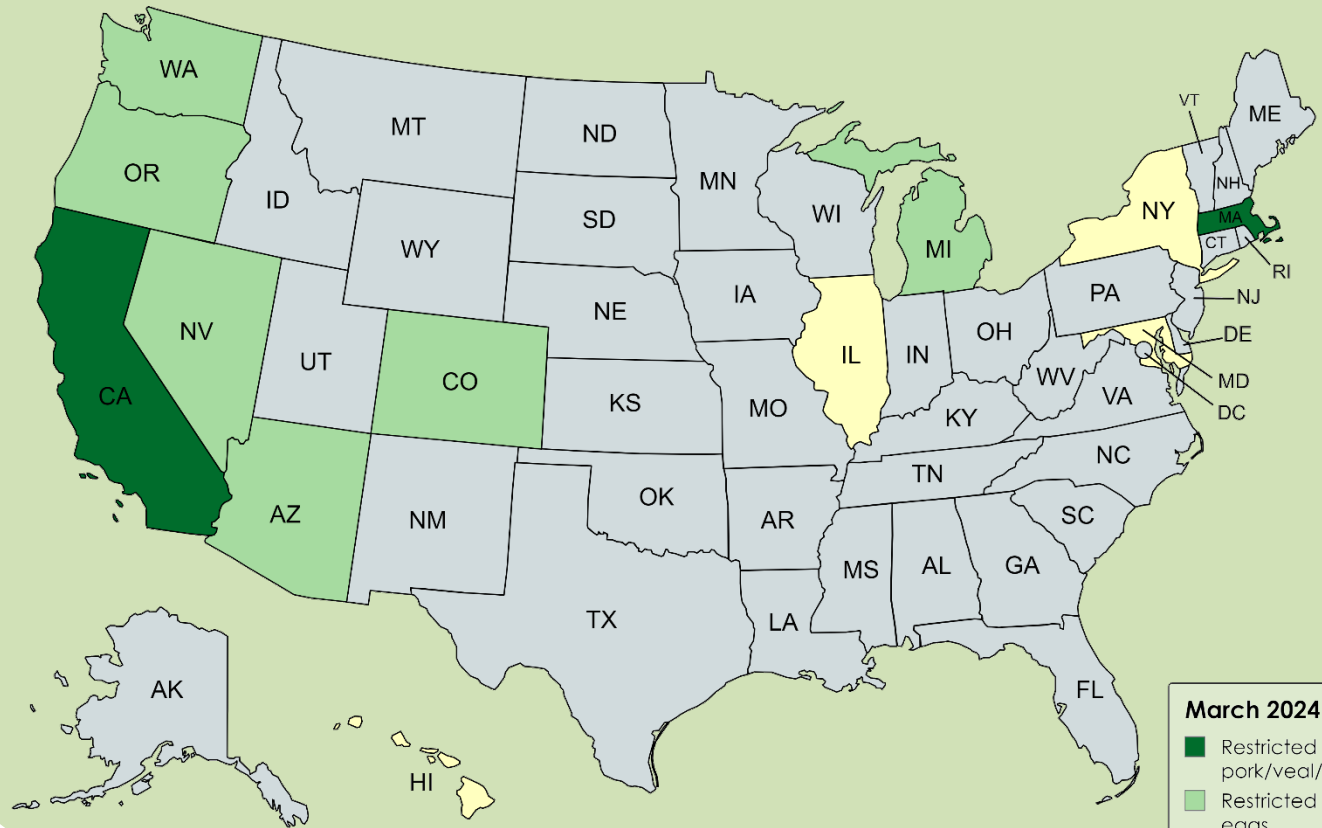


*Farm Animal Confinement:
Legal Challenges to Mass.
Question 3
(NALC Blog Post, E. Rumley)*



Massachusetts/Question 3

- 2016 Ballot proposal
 - Massachusetts Conditions for Farm Animals Initiative
- Prohibited
 - Unlawful, for more than 6 hours in a 24 hour period, to prevent animal from lying down, standing up, fully extending the animal's limbs, or turning around freely.
 - Veal calves, pregnant sows & laying hens
 - Also requires that shell eggs, veal and pork sold within the state must not come from "a covered animal that was confined in a cruel manner"
- Pending lawsuit by several non-MA pork processors- ct dx all claims except arguments re: commerce clause.
- Current status: Ruling that slaughterhouse exemption violated commerce clause, pending SJ motion arguing that remaining Q3 is preempted by FMIA, as well as related response



March 2024

- Restricted sale of pork/veal/eggs
- Restricted sale of eggs
- Pending legislation for sales restriction

Sales Restrictions- Current and Proposed



Ending Agricultural Trade Suppression Act (S. 2019; HR4417)

- “Ending Agricultural Trade Suppression Act” (“EATS Act”)
 - S. 2019, proposed by Sen. Roger Marshall (R-KS; cosponsored by 14 R)
 - H.R.4417, proposed by Rep. Ashley Hinson (R-IA; cosponsored by 36 R)
- Consequences if passed:
 - State governments cannot impose standards/conditions on preharvest production of ag products if 1) production occurred in different state and 2) the standard is different than that imposed by the other state
 - If there are no standards in the other state, that becomes de facto standard.



S. 2019



Harvard Analysis

- Notes:
 - Letter opposing EATS act signed by 171 Reps (163 D, 5 R and 2 D from non-voting areas) and 30 Sens (27 D, 1 R, 2 I)
 - Harvard Animal Law & Policy Program, July 2023: [*Legislative Analysis of S.2019 / H.R.4417: The “Ending Agricultural Trade Suppression Act” 118th Congress – 2023-2024*](#)
 - Findings
 - 1000+ state laws could be overturned if the act takes effect
 - Ex: Zoonotic, plant/pest, food safety, natural resources
 - Would result in extensive litigation, imposing costs on state/local governments and fed agencies
 - Would create regulatory uncertainty for producers/industry/consumers



Protecting Interstate Commerce for Livestock Producers- S 3382

- S. 3382, proposed by Sen Josh Hawley (R-MO)
 - Proposed 11/30/23
- Consequences if passed:
 - Prevent state and local entities from regulating the production, raising or importation of livestock and livestock goods from other states.
 - If there are no standards in the other state, that becomes de facto standard.
 - States could regulate imports in the event of animal disease.



Farm, Food, and National Security Act of 2024



- Farm Bill Proposal
 - Rep. Thompson (R), Chair House Ag Comm.
- Consequences if passed:
 - States may impose conditions on production of livestock for animals physically located in that state.
 - States may not set conditions for sale on products derived from “covered livestock” that are beyond those imposed by the state where “production” occurred.
- Definitions:
 - *Covered livestock*: domestic animal raised for purpose of 1) slaughter or 2) producing milk/milk products.
 - Specifically excludes laying hens
 - *Production*: raising (including breeding) of covered livestock.
 - Specifically excludes movement, harvesting, or further processing of covered livestock.



Senate Ag Republican-Drafted Framework



- Farm Bill Proposal
 - Sen. Boozman (R), Ranking Member Sen. Ag Comm.

Proposal:

- “Protects the ability of livestock producers to raise and sell products into interstate commerce without interference from other states.”

Quick Thoughts:

- Animal welfare
 - Only grass fed
 - No tail docking
 - Prohibit slaughter of livestock unless the animal has lived “one quarter of their natural lifespan”
 - Natural lifespan; Cow= 20 years, Chicken= 8 years, Turkey= 10 years, Duck= 6 years, Pig= 15 years, Sheep= 15 years, Rabbit=6 years”
 - 2021 CO ballot proposal
- Env issues (pesticides, water, land use)
 - No use of dicamba or chlorpyrifos or glyphosate or ???
 - No use of irrigation
 - No CAFOs
 - Require production on sod/swampbuster compliant land
- Energy
 - Only products from companies that are 75% carbon neutral
 - Only products from companies that utilize 75% fossil fuels
- Labor
 - Only products picked/produced by individuals authorized to work in the United States
 - No child labor
 - Minimum wage/overtime requirements

“If upheld against all constitutional challenges, California’s novel and far-reaching regulations could provide a blueprint for other states.”

- Justice Kavanaugh’s NPPC dissent

Ex: Regulating Food Additives

- Passed:

- California passed the California Food Safety Act (Oct 2023)
- First state to ban the manufacturing, distribution *and sale* of food and beverages containing several food and color additives:
 - Brominated vegetable oil (BVO)
 - Potassium bromate
 - Propylparaben
 - Red dye 3.
- Effective date: January 2027

Update on Proposed Food Additive Bans

- NALC Blog Post, E. Stone






- Proposed:

- Illinois
 - Prohibit manufacture, distribution, and sale of food and beverages containing same food additives as CA.
- Missouri
 - Prohibit manufacturing, distribution, and sale of food and beverages containing same food additives as CA.
- Washington
 - Previous session, (not currently active): ban the use of same food additives as CA.
- New York
 - Prohibit same food additives as CA *plus* azodicarbonamide, butylated hydroxyanisole, and titanium dioxide.
 - Unlawful to “manufacture, compound, brew, distill, produce, process, sell, deliver, distribute, hold, offer or expose for sale”



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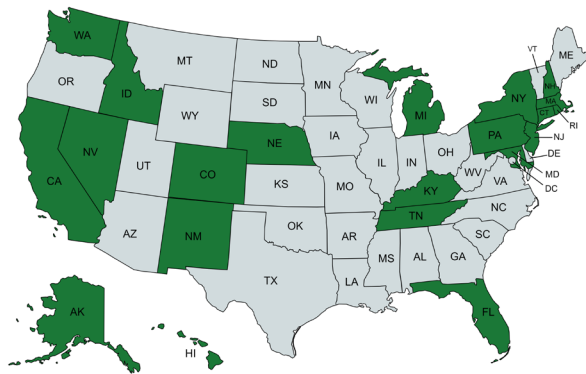
General Requirements

- Inspectors present at all times during slaughterhouse operation.
 - Inspect every animal (livestock and poultry) both before and after slaughter for signs of disease or health problems
 - Continuously staff processing lines during operation
 - Ensure humane handling/slaughter through:
 - Compliance with the HMSA/regulations (livestock)
 - Compliance with good commercial practices (poultry)
- Sanitation requirements
 - Hazard Analysis and Critical Control Point (HACCP) plan
 - Microbial sampling and testing (E. coli and salmonella)
- Recordkeeping
 - Establish compliance with humane handling/good commercial practices
 - Provide record of HACCP/SOP and other requirements
- Enforcement
 - Surveillance/regulatory action
 - Up to/including suspending facility operations

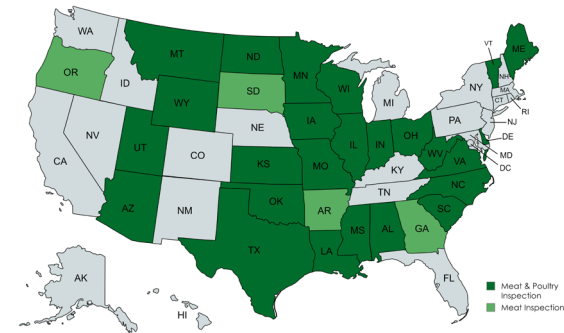


Oversight of Slaughter and Processing

- USDA/FSIS
- Paid by federal funds
- Interstate/international sale of products

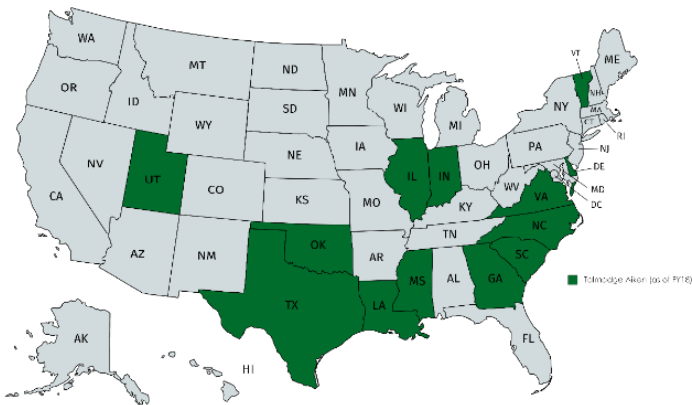


- State inspection programs (MPI) must enter into cooperative agreement with FSIS
 - Reviewed annually for compliance
- Requirements must be “at least equal to”
- Paid by state, federal cost-share
- Intrastate sale of products



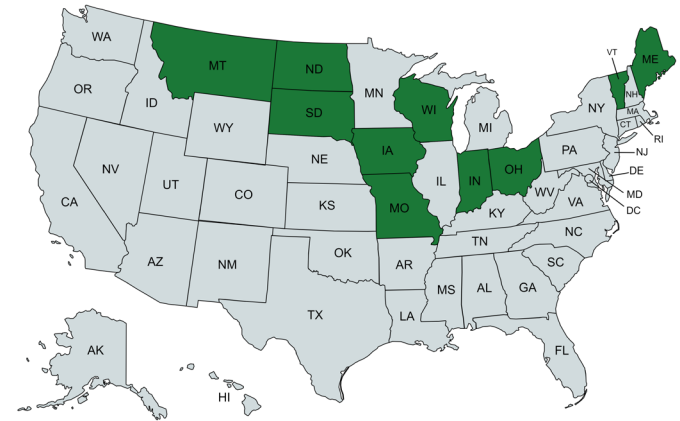
Federal-State Cooperative Inspection Program

- AKA “Talmadge-Aiken” or “cross-utilization agreement” plants
- Under federal inspection, but operating with state inspection personnel.
 - Federal inspection requirements
- Inspectors employed by/paid by state, 100% federal reimbursement
- Additional cooperative agreement required
- Interstate/international commerce



Cooperative Interstate Shipment

- Eligibility: Small plants in MPI states that meet FSIS inspection standards
 - “Same as” federal inspection reqs
- State inspectors/state funds, 60% federal reimbursement
- Additional cooperative agreement required
- Interstate/international commerce

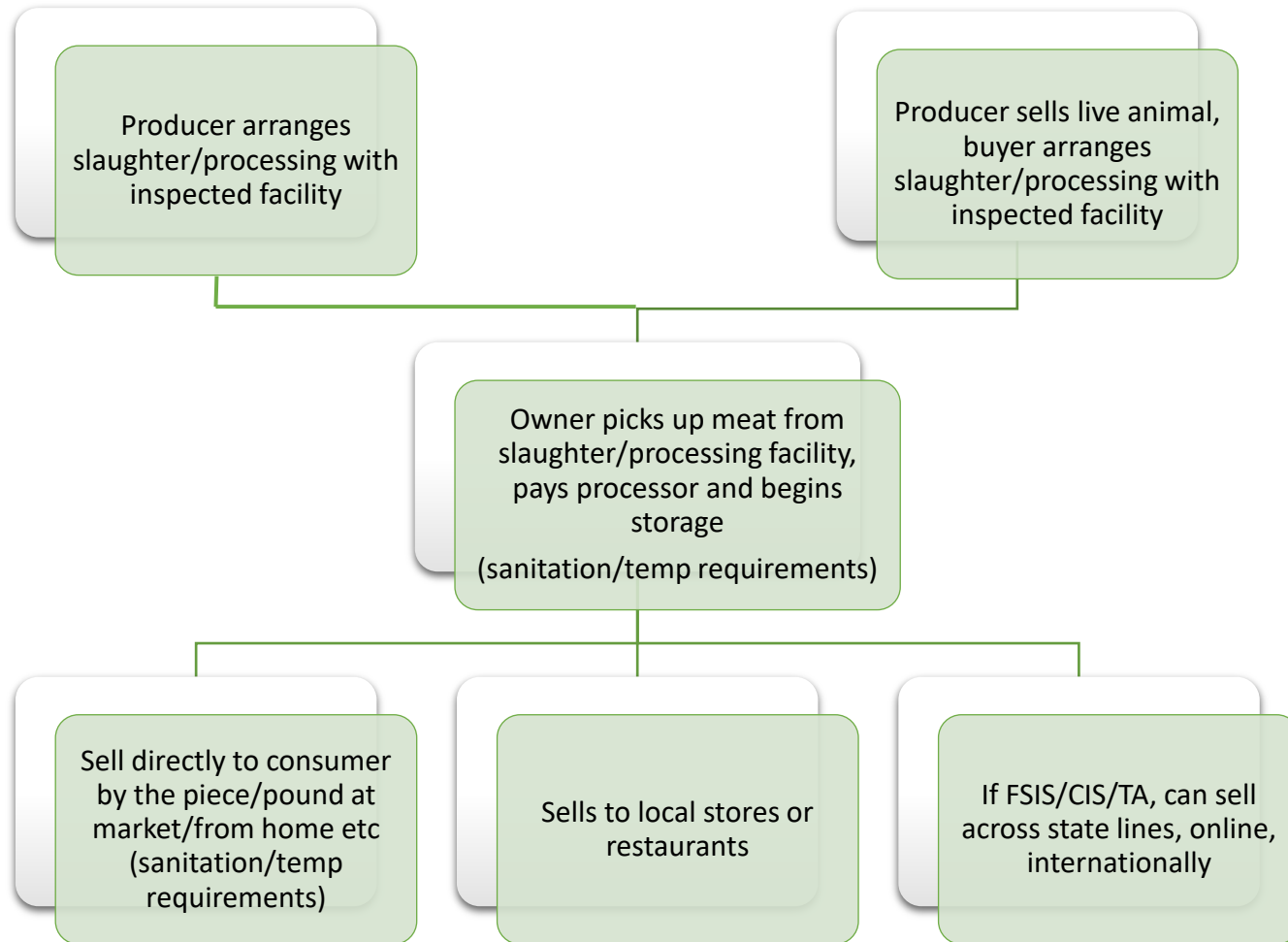


Inspected: Comparison Chart

	Agency Contact	Inspection Requirements	Inspector Employer	Inspector Funding Source	Available Markets	Potential Facility Size
FSIS	FSIS Office of Field Operations	Federal requirements	Federal	Federal *User fees for overtime/holiday	Interstate International	Any
MPI	State program	“At least equal to”	State	50% state, 50% federal	Intrastate	Any
TA	FSIS Office of Field Operations	Federal requirements	State, on behalf of FSIS	Federal *User fees for overtime/holiday	Interstate International	Any
CIS	State program	“Same as”	State	40% state, 60% federal	Interstate International	Under 25 employees



Inspected Slaughter: For Producers/Consumers

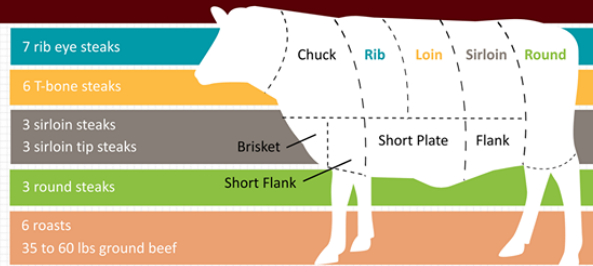


Custom Slaughter:

Preparing to Buy a Quarter of Beef

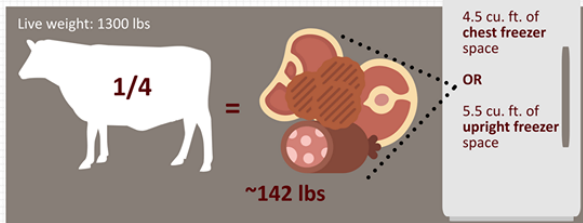
How much meat is a quarter of a beef?

Meat from a typical quarter of a beef with a live weight of 1300 lbs:



Cuts and quantities of meat will depend on the animal and processor.

How much cooler/freezer space do you need?



What costs should you expect?



 UNIVERSITY OF MINNESOTA EXTENSION

- Continuous inspection not required, lower building/sanitation/recordkeeping requirements
- Meat can be used by owner/members of their household
 - May not be sold or donated
- Performed by a custom exempt facility acting on behalf of the owner of the animal
- In practice:
 - Producer sells the animal or portions of the animal to consumer(s) while it is still alive
 - Ex: 1/4 steer, 1/2 hog
 - After animal is completely sold, the producer acts as an agent to arrange transportation to the custom exempt facility
 - Each individual consumer/owner is responsible for choosing how their portion of the animal should be processed
 - Consumer/owner is responsible for costs to:
 - Producer (for the animal)
 - Custom exempt facility (for processing)



Note: Combining Slaughter Types

- Livestock processing plants can process some animals that are custom exempt and others that are federal inspected
 - Must meet existing sanitary standards for each type of slaughter
 - Additional requirement: keep products/containers/meat from each category separated at all times
 - Separation can be achieved by time or space.
 - In practice: provide services on different days of the week, specific times of the month, or one after a complete conclusion, shut-down and sanitation of the other
- Poultry plants are prohibited from processing both custom exempt and federally inspected products



Photo credit: Dr. Casey Hanning

Q&A:

“Rumley Farms sells an animal to Patsy Purchaser.”

After the sale, Patsy asks to slaughter and process the animal by herself, using Rumley Farms facilities and equipment.

After the sale, Rusty offers to show Patsy how to slaughter and dress the animal.

After the sale, Patsy asks to slaughter and process the animal by herself, using Rumley Farms facilities and equipment. She asks Rusty to dispose of the resulting offal/waste.

What type of slaughter is this? What requirements are there?

- [FSIS](#) guidelines: personal slaughter.
- State requirements: laws will vary, and it might be considered custom slaughter, requiring compliance with custom exempt regulations.
 - Ex: [NC](#)

- [FSIS](#) guidelines: Custom slaughter, because of the producer’s assistance and involvement.

- FSIS: Uncertain!
 - The line between personal and custom is crossed when the seller “assists” in the slaughter or processing of the animal. No clear definition of that phrase.
- State requirements: Laws vary greatly!
 - [State law compilation](#)



Farm, Food, and National Security Act of 2024



- Farm Bill Proposal
 - Rep. Thompson (R), Chair House Ag Comm.
- Potential change:
 - Pilot program allowing some custom exempt facilities or customers who have animal processed at a custom exempt plant to sell meat products directly to consumers.
 - Modeled on “PRIME” Act proposal (HR 2814, SB 907)
- Requirements
 - Sold directly to consumers within the State either by the owner of the animal or the custom exempt facility where processed
 - Not eligible for re-sale
 - Labeled with:
 - Name and address of the facility at which the meat products were processed;
 - Name and address of the owner of the animals from which such meat products are derived;
 - Location where animals from which such meat products are derived were raised;
 - the date of slaughter of such animals and the period of time over which the owner raised such animals;
 - that such meat products were not subject to Federal inspection; and
 - that such meat products shall not be resold
- Limitations/restrictions
 - Pilot program will operate until 2029.
 - Initially limited to 5 participating plants per state and/or 10 total from states that do not have a state program; after two years, both numbers double.
 - Inspections at least once a year by health department or state agency






Senate Ag Republican-Drafted Framework



- Farm Bill Proposal
 - Sen. Boozman (R), Ranking Member Sen. Ag Comm.
- Proposal
 - “Provides new funding opportunities and regulatory guidance for small meat and poultry processing and rendering establishments and includes enhancements to the Cooperative Interstate Shipment Program”
 - “Creates a narrow pathway for the online interstate sale of certain state-inspected meat and poultry products directly to consumers”
 - Similar proposals in 118th Congress?
 - DIRECT Act (Allow processors/butchers/other retailers to sell retail quantities (300 lbs of beef, 100 lbs of pork, 27.5 lbs of lamb) of state-inspected meat online to consumers across state lines)
 - SB 1512
 - New Markets for State-Inspected Meat and Poultry Act of 2023 (Allow meat/poultry slaughtered/processed at *state inspected facility* (ie: by an approved state program following “at least equal to” standard) to be sold across state lines)
 - HR 1646, SB 846

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Admin Law Today: Changes Ahead?

- In January, SCOTUS heard *Loper Bright Enterprises v. Raimondo*
 - Case directly challenging “Chevron deference”
- *Chevron* deference is a judicial doctrine based on 40-year-old SCOTUS decision *Chevron v. Natural Resources Defense Council*
 - **Rule:** Courts will defer to a federal agency’s interpretation of an ambiguous statute as long as the interpretation is reasonable
 - Gives agencies a lot of leeway in how they interpret statutes, recognizes that agencies have expertise in implementing the laws they are responsible for
 - May allow agencies to regulate beyond what Congress intended



Loper Bright Enterprises v. Raimondo

- Law: Magnuson-Stevens Act; allows for federal observers to be “carried on board a vessel”
 - Ambiguous on how the cost of such observers should be covered
- Regulation:
 - Commercial fishing vessels operating in the waters off the coast of New England must cover the cost of federal observers stationed on their vessels if Congress has not appropriated the funds to cover the costs
- Case history:
 - Challenged by group of commercial fishermen
 - Lower courts upheld the regulation, relying on *Chevron* deference
- Current issue: Request to overturn both the regulation and *Chevron* deference



Oral Arguments



NALC Blog Post



Admin Law Today: World Without *Chevron*?

- This Supreme Court is notably less friendly towards *Chevron* deference than previous Courts
 - It is likely that the Court will overturn or limit *Chevron* when it decides *Loper Bright Enterprises v. Raimondo*
- What would be the consequences of overturning *Chevron*?
 - Agency interpretation of ambiguous statutory provisions would likely be given less deference during judicial review
 - Would give courts more power to determine whether an agency regulation is an appropriate interpretation of the law
 - Could change how Congress writes legislation – in recent decades, Congress has chosen to write broad statutory language and leave the details up to the agencies, without *Chevron* it may be more difficult for Congress to delegate





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