

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA,</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	<b>NO.</b>
<b>v.</b>	:	
	:	
<b>MILLER’S ORGANIC FARM and AMOS MILLER,</b>	:	
	:	
<b>Defendants.</b>	:	

**COMPLAINT TO ENFORCE U.S. DEPARTMENT OF AGRICULTURE,  
FOOD SAFETY AND INSPECTION SERVICE, SUBPOENA *DUCES TECUM***

For its Complaint, plaintiff United States of America, through the United States Attorney for the Eastern District of Pennsylvania, avers as follows:

1. This is a proceeding to enforce an administrative subpoena (the “Subpoena”) issued by the Food Safety and Inspection Service (“FSIS”). FSIS is an agency within the United States Department of Agriculture (“USDA”) that is charged with enforcing the Federal Meat Inspection Act, 21 U.S.C. § 601, et seq. (the “Meat Act”), and the Poultry Products Inspection Act, 21 U.S.C. § 451, et seq. (the “Poultry Act”), among other laws.

2. FSIS issued the Subpoena as authorized by 15 U.S.C. § 49, 21 U.S.C. § 467d (Poultry Act), 21 U.S.C. § 677 (Meat Act), and 7 C.F.R. § 2.53(a)(2)(ii) (delegating to FSIS USDA’s authority to enforce the Meat and Poultry Acts).

3. The Meat Act and the Poultry Act provide this Court with jurisdiction to enforce the Subpoena. See 21 U.S.C. § 674; 21 U.S.C. § 467c; 28 U.S.C. § 1331. A copy of the Subpoena is attached as Exhibit “A.”

4. Paul Flanagan is an Investigator within FSIS’ Office of Investigation, Enforcement, and Audit, Compliance and Investigations Division. He is assigned to FSIS’

Philadelphia Compliance Sub-Office, Northeast Region. His declaration is attached as Exhibit “B” and supports this Complaint. See Flanagan Decl. ¶ 1.

5. Defendant Miller’s Organic Farm is a farm business located at 648 Millcreek School Road, Bird-in-Hand, Pennsylvania 17505, which is in Lancaster County, Pennsylvania and is within the jurisdiction and venue of this Court. Flanagan Decl. ¶ 12.

6. Defendant Amos Miller is the owner of Miller’s Organic Farm and resides on the farm property at 648 Millcreek School Road, Bird-in-Hand, Pennsylvania 17505. Flanagan Decl. ¶ 12.

7. On information and belief, Miller’s Organic Farm: (a) operates a dairy and a retail store as a “private membership association,” which includes in-store, telephonic, and internet sales of raw milk, meat, poultry, and other products; (b) conducts custom meat and poultry slaughtering and processing operations; and (c) is processing, storing, offering for sale, and selling in person at Miller’s Organic Farm and through delivery services – as well as is offering to transport and is transporting to multiple pickup locations throughout the United States -- meat and poultry products that may require federal inspection . Flanagan Declaration, ¶ 12.

8. Unpasteurized milk and milk products contain a wide variety of harmful bacteria, including *Listeria monocytogenes*. Epidemiological studies have established a direct link between the consumption of unpasteurized milk (also known as “raw milk”) and gastrointestinal illness. Federal and state agencies have documented a long history of the risks to human health associated with the consumption of unpasteurized milk and have expressly advised consumers about the dangers of drinking unpasteurized milk. In the words of one court, “[i]t is undisputed that all types of raw milk are unsafe for human consumption and pose a significant health risk.”

Public Citizen v. Heckler, 653 F. Supp. 1229, 1241 (D.D.C. 1986), cited in United States v. Allgyer, 2012 WL 355261, at \*3 (E.D. Pa. Feb. 3, 2012).

9. *Listeria monocytogenes* (“*L. mono*”) is the bacterium that causes the disease listeriosis. Listeriosis is most commonly contracted by eating food contaminated with *L. mono*. Listeriosis can be serious, even fatal, for high-risk groups such as unborn babies, newborns, and those with impaired immune systems. The most serious forms of listeriosis can result in meningitis and septicemia. Pregnant women may contract flu-like symptoms from listeriosis, and complications from the disease can result in miscarriage, or septicemia in the newborn. Unlike many other foodborne microbes, *L. mono* bacteria are capable of adapting and growing even at refrigerator temperatures. *L. mono* is also capable of surviving and growing under other adverse conditions, such as high salt or high acid (low pH) conditions. Thus, the presence of *L. mono* in ready-to-eat foods is a particularly significant public health risk.

10. In 2011, the United States filed an action in this Court seeking an “Administrative Warrant for Inspection” of Miller’s Organic Farm. See In the Matter of Miller’s Organic Farm, EDPA No. 11-mj-586 (Magistrate Judge Wells). In that action, the United States sought the inspection warrant on behalf of a different federal agency (the federal Food and Drug Administration, or “FDA”) and under a different statute (the federal Food Drug & Cosmetic Act, or “FDCA”) from those that are involved in this action. The United States brought the action because: (1) Amos Miller had denied an FDA investigator access to the farm (Mr. Miller had told FDA both that “only . . . members of [his] ‘food club’ [were allowed] to inspect his farm” and that he would not allow inspection without a warrant or judge’s order); and (2) the FDA had “reason to believe” that the farm was “engaged in the processing, packaging, holding and

shipment of milk in interstate commerce.” See Id. at Dkt. Entry No. 1 (Declaration attached thereto at ¶¶ 1, 6-7). Inspection later occurred after the Court issued the requested warrant. See, e.g., Id. at Dkt. Entry No. 2.

11. In March 2016, FSIS learned from the Commonwealth of Pennsylvania’s Department of Agriculture that the federal Centers for Disease Control and Prevention (“CDC”) had issued a March 18, 2016 internet posting about Miller’s Organic Farm. In that posting, the CDC stated that:

a. In 2014, an individual in Florida and an individual in California became infected with *L. mono* (listeriosis). Their ages ranged from 73 to 81. Both were hospitalized as a result, and the Florida individual died from the infection.

b. The FDA and CDC then investigated those incidents. In interviews with family members, the investigators learned that both individuals drank raw milk before getting sick, and that the Florida individual’s family purchased raw milk from Miller’s Organic Farm.

c. The FDA collected *Listeria* bacteria from the two infected individuals and, in November 2015, obtained samples of raw chocolate milk from Miller’s Organic Farm. (The samples were purchased at a raw milk conference in California.) Those raw milk samples contained *Listeria* bacteria.

d. The FDA then compared, through whole genome sequencing: (i) the *Listeria* bacteria from the two infected individuals from Florida and California; to (b) the *Listeria* bacteria found in the November 2015 raw milk samples.

f. In late January 2016, the FDA reported to CDC that: (i) the bacteria from the two individuals were “closely related genetically” to the November 2015 Miller’s Organic Farm

raw milk samples; and (ii) Miller's Organic Farm is the "likely source" of the listeriosis infections that the two individuals suffered in 2014. Flanagan Decl. ¶ 13.

12. The CDC web posting also stated: (a) "CDC is concerned that conditions may exist at [Miller's Organic Farm] that may cause further contamination of raw milk and raw dairy products distributed by this company and make people sick"; and (b) "This investigation is ongoing. CDC and state and local public health partners are continuing laboratory surveillance . . . to identify additional ill people and to interview them." Flanagan Decl. ¶ 13.

13. The CDC web post was concerning to FSIS because, at approximately the time that FSIS learned about it, FSIS also learned that Miller's Organic Farm was slaughtering, processing, and selling meat, meat food products, poultry, and poultry food products. All of this raised public health risk concerns for FSIS about possible bacterial cross-contamination from raw milk to poultry and meat and related products that are produced and sold at the farm. Flanagan Decl. ¶ 14.

14. FSIS is seeking to review and assess Miller's Organic Farm's compliance with the Meat Act and the Poultry Act.

15. Congress enacted the Meat Act and the Poultry Act to protect the health and welfare of consumers by assuring that meat and poultry products that are intended for human consumption, and that are sold, transported, or distributed in interstate commerce, are wholesome, unadulterated, and properly marked, labeled, and packaged. See 21 U.S.C. § 602 (Congressional statement of findings for Meat Act); 21 U.S.C. §§ 451, 452 (Congressional statement of findings and declaration of policy for Poultry Act). The Acts empower the

Secretary of Agriculture to regulate and inspect meat and poultry products that are intended for human consumption and that are prepared for distribution in interstate commerce.

16. The Meat Act prohibits the transportation, sale, and offering for sale, in interstate commerce, of meat and meat food products capable of use as human food unless they have been inspected and passed by the USDA.

17. Under 21 U.S.C. § 661(c) and 9 C.F.R. § 331.2, the Commonwealth of Pennsylvania has been designated as a state to which Titles I and IV of the Meat Act apply. These titles are codified at 21 U.S.C. §§ 601 to 624 and 671 to 680. Titles I and IV apply even to meat slaughter and processing operations and transactions that occur wholly *intrastate* within the Commonwealth of Pennsylvania – and to the persons engaged in them – to the same extent and in the same manner as if the operations and transactions were conducted in or for interstate commerce.

18. Among the provisions of Title I and Title IV of the Meat Act that apply even to *intrastate* operations and transactions in the Commonwealth of Pennsylvania are provisions:

- a. authorizing federal inspectors to conduct ante-mortem inspection of livestock and post-mortem inspection of their carcasses and the meat food products produced therefrom, to prevent the entry into, or flow of movement within, commerce of – or the burdening of commerce by – any adulterated meat or meat food product capable of use as a human food, 21 U.S.C. §§ 604, 606;
- b. restricting persons from selling, transporting, offering for sale or transportation, or receiving for transportation, in commerce, any meat

products required to be inspected under the Meat Act unless they have been so inspected and passed inspection, 21 U.S.C. § 610(c)(2);

- c. requiring compliance with Meat Act requirements such as maintaining a sanitary facility -- even by entities that are exempt from federal inspection under certain circumstances (such as slaughter for “custom use”), 21 U.S.C. § 623(a);
- d. authorizing USDA: (i) to have access, at all reasonable times, to places of business; (ii) to have the opportunity to examine the business facilities, inventory and records; (iii) to copy all such records documenting the processing, sale, and transport of meat and meat food products; and (iv) to take reasonable samples of inventory upon payment of fair market value, 21 U.S.C. § 642; and
- e. requiring each business subject to the Meat Act to provide USDA inspectors with access to facilities and records documenting the processing, sale, and transport of meat and meat food products. 21 U.S.C. § 642.

19. The Poultry Act prohibits the transportation, selling, and offering for sale, in interstate commerce, of poultry and poultry products capable of use as human food unless they have been inspected and passed by the USDA. 21 U.S.C. § 458(a)(2).

20. Under 21 U.S.C. § 454(c)(1) and 9 C.F.R. § 381.221, the Commonwealth of Pennsylvania has been designated as a state to which Sections 451-453, 455-459, and 461-467d of the Poultry Act apply. These sections of the Poultry Act apply even to poultry operations and transactions that occur wholly *intrastate* within the Commonwealth of Pennsylvania – and to the

persons engaged in them – to the same extent and in the same manner as if such operations and transactions were conducted in or for interstate commerce.

21. Among Sections 451-453, 455-459, and 461-467d of the Poultry Act, which apply even to *intrastate* operations and transactions in the Commonwealth of Pennsylvania, are provisions:

- a. authorizing federal inspectors to conduct ante-mortem inspection of poultry and post-mortem inspection of their carcasses and the poultry food products produced therefrom, to prevent the entry into, or flow of movement within, commerce of – or the burdening of commerce by – any adulterated poultry product capable of use as a human food, 21 U.S.C. §§ 455(a), (b);
- b. restricting persons from selling, transporting, offering for sale or transportation, or receiving for transportation, in commerce, any poultry food products required to be inspected under the Poultry Act unless they have been so inspected and passed inspection, 21 U.S.C. § 458(a)(2)(B);
- c. requiring compliance with Poultry Act requirements such as maintaining a sanitary facility -- even by entities that are exempt from federal inspection under certain circumstances (such as slaughter for “custom use” or retail sale), 21 U.S.C. § 465;
- d. authorizing USDA: (i) to have access, at all reasonable times, to places of business; (ii) to have the opportunity to examine the business facilities, inventory and records; (iii) to copy all such records documenting the processing, sale, and transport of poultry and poultry food products; and



(iv) to take reasonable samples of inventory upon payment of fair market value, 21 U.S.C. § 460(b); and

- e. requiring each business subject to the Poultry Act to provide USDA inspectors with access to facilities and records documenting the processing, sale, and transport of poultry and poultry products. 21 U.S.C. § 460.

22. Defendants Miller's Organic Farm and Amos Miller are in possession, custody, or control of books, records, and other documents – and/or have knowledge -- relating to whether meat and poultry food products being offered for sale at Miller's Organic Farm were:

(a) required to be federally inspected because not produced in accordance with statutory requirements for custom exemption; and (b) produced, stored, and transported in a manner to prevent adulteration. The Meat Act and the Poultry Act require Miller's Organic Farm to maintain these records and to give FSIS access to them and to the Miller's Organic Farm facilities. Flanagan Declaration, ¶¶ 5-9, 18, 23.

23. From March 22, 2016 through May 2016, FSIS unsuccessfully tried to obtain access to Miller's Organic Farm's facilities and business records without having to issue a subpoena. FSIS sought such access in order to conduct a verification review. A verification review seeks to ensure that subject facilities are in compliance with the Meat Act, the Poultry Act, and the regulations under those statutes that relate to sanitation, recordkeeping, labeling, custom exemption, retail exemption, and other requirements. Verification reviews may:

(a) involve FSIS veterinarians, consumer safety officers, investigators, and other program employees; and (b) include an examination of sanitation and facilities; water supply; sewage and waste disposal; pest control; inedible material control; marking and labeling; recordkeeping; and

compliance with custom exemption requirements. Such reviews fulfill the agency's mission to ensure that meat and poultry products intended for human consumption and sale and distribution in commerce are safe, wholesome, not adulterated, and correctly marked, labeled, and packaged. Flanagan Decl. ¶¶ 8-9, 15-29.

24. Mr. Miller denied FSIS' requested access to Miller's Organic Farm's facilities and business records. Mr. Miller stated that he would not provide such access absent a court warrant or order. Flanagan Decl. ¶ 16, 19-21, 24-30.

25. The USDA-FSIS Administrator issued the Subpoena on April 4, 2016, and FSIS Investigator Flanagan served the Subpoena by personal delivery to Amos Miller at Miller's Organic Farm on April 13, 2016. Flanagan Decl. ¶¶ 17-19, 22.

26. The Subpoena required Mr. Miller and Miller's Organic Farm to provide FSIS with access to: (a) Miller's Organic Farm's facilities, particularly buildings and facilities "used for the slaughter of livestock, or the handling, storage, transportation of meat or poultry products, including all compartments, rooms and spaces, including trailers, product containers, outbuildings of any kind, and/or storage area(s) located thereon"; and (b) certain documents, particularly "business records . . . pertaining to meat and poultry products produced, received, handled, transported and sold, for the period January 1, 2016 to present," including categories of documents that the subpoena described in greater detail. Flanagan Decl. ¶ 17 & Exhibit "A" hereto (Subpoena).

27. Invoking protection under the United States Constitution, on grounds that Miller's Organic Farm sells its meat and poultry products as a private membership association that is not subject to the Meat Act, the Poultry Act, and USDA-FSIS jurisdiction, Mr. Miller refused to

comply with the Subpoena and to provide FSIS with access to Miller's Organic Farm's facilities and documents absent a court warrant or order requiring compliance. Flanagan Decl. ¶¶ 19-21, 24-30 & Exhibits "3," "4," and "5" thereto.

28. The books, papers, records, and other data and information that the Subpoena seeks are not in the USDA's possession, custody, or control. Flanagan Decl. ¶ 33.

29. The access to Miller's Organic Farm's facilities and documents that the Subpoena seeks is for a legitimate purpose because such access is relevant to, and can reasonably be expected to aid, FSIS' review and surveillance of Miller's Organic Farm's compliance with the Meat Act and the Poultry Act. Flanagan Decl. ¶ 32.

30. The Subpoena was issued and served in accordance with FSIS administrative procedures and 7 C.F.R. § 1.29. Flanagan Decl. ¶¶ 18, 22 & Exhibit "A" hereto (Subpoena) at p. 3.

31. The United States has not previously applied to the Court to enforce the Subpoena.

32. It is the practice of this Court to proceed by Complaint and Order to Show Cause in procedurally related Internal Revenue Service administrative summons enforcement matters. See Local Rule of Civil Procedure 4.1.2 (E.D. Pa.).

33. Concurrently with the filing of this Complaint, the United States is filing a memorandum of law setting forth the legal grounds supporting enforcement of the Subpoena.

WHEREFORE, plaintiff United States of America respectfully asks this Court to:

Enter an Order directing defendants Amos Miller and Miller's Organic Farm to show cause why they should not be required to comply with and obey the Subpoena;

Enter an Order directing defendants Amos Miller and Miller's Organic Farm to obey the Subpoena by: (a) producing to FSIS the records requested in the Subpoena, at such time and place as FSIS may fix; and (b) granting FSIS, as requested in the Subpoena, access to Miller's Organic Farm's buildings and facilities; and

Render such other and further relief as is just and proper.

ZANE DAVID MEMEGER  
UNITED STATES ATTORNEY

  
MARGARET L. HUTCHINSON  
Assistant United States Attorney  
Chief, Civil Division

Dated: June 3, 2016

  
GBS3408  
GERALD B. SULLIVAN  
Assistant United States Attorney  
PA I.D. No. 57300  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
(215) 861-8786  
(215) 861-8618 (fax)

**OF COUNSEL:**

Tracey Manoff, Attorney  
Office of the General Counsel  
U.S. Department of Agriculture  
14<sup>th</sup> & Independence Ave., S.W.  
South Building  
Washington, D.C. 20250-1400

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: Amos Miller )  
 )  
 )  
 )  
 )  
 In re: Miller's Organic Farm )  
 648 Millcreek School Road )  
 Bird-in-Hand, Pennsylvania 17505 )  
 )  
 )  
 )

SUBPOENA DUCES TECUM  
  
Original Service by Hand

You are hereby required to appear before Paul J. Flanagan Investigator, Food Safety and Inspection Service ("FSIS"), United States Department of Agriculture, and/or other authorized representatives of the Secretary of Agriculture, at the above place of business, 648 Millcreek School Road, Bird-in-Hand, Pennsylvania 17505 on this 13<sup>th</sup> day of April, 2016, on or about 9 o'clock ~~am~~ pm local time and/or at a reasonable time thereafter to produce and to give access to for examination, inspection, photographing, copying, by said authorized representative(s) of the Secretary of Agriculture, the following:

1. Access to the facility/building located at 648 Millcreek School Road, Bird-in-Hand, Pennsylvania 17505, and any other associated buildings and/or other facilities used for the slaughter of livestock, or the handling, storage, transportation of meat or poultry products, including all compartments, rooms and spaces, including trailers, product containers, outbuildings of any kind, and/or storage area(s) located thereon;
2. Any and all business records in the possession, custody, or control of Miller's Organic Farm ("Miller's"), pertaining to meat and poultry products produced, received, handled.



transported and sold, for the period from January 1, 2016 to present, including, but not limited to:

- (1) Any records showing the numbers and kinds of livestock slaughtered on a custom basis, the quantities and types of products prepared on a custom basis, and the names and addresses of the owners of the livestock and products;
- (2) Any records, invoices, and bills of lading related to live animal purchases and deliveries;
- (3) Any such records related to custom operations, including but not limited to processing work sheets, etc.;
- (4) Slaughter records, including disposition records of all animals;
- (5) Any and all records related to dead animals in the pens and/or upon arrival to the facility;

---

- (6) Any and all records related to rendering and dead on arrival pick-ups;
- (7) Purchasing contracts and journals, and receipts for payments for meat, meat food products, poultry and/or poultry food products.
- (8) Any other meat, meat food product, poultry and/or poultry food product purchasing information from any and all vendors;
- (9) Sales journals, invoices, and all other sales information for any and all meat, meat food product, poultry and/or poultry food product;
- (10) Computer generated documents, including records related to internet sales;
- (11) Federal, State, County and city /town/township business licenses and/or permits.

Such records are essential in connection with an investigation and inquiry by the Secretary of Agriculture concerning the preparation, handling, distribution and slaughter of meat, meat food products, poultry, and/or poultry products pursuant to the Federal Meat Inspection Act (FMIA),

as amended (21 U.S.C. §§ 601 et seq.), and the Poultry Products Inspection Act (PPIA), as amended (21 U.S.C. 451 et seq.), and the regulations issued thereunder to determine whether said establishment is in conformity with the requirements of the FMIA, PPIA and the regulations.

The records described herein must be maintained and made available pursuant to Section 202 of the Federal Meat Inspection Act, as amended (7 U.S.C. § 642) and Section 11 of the PPIA, as amended (21 U.S.C. 460).

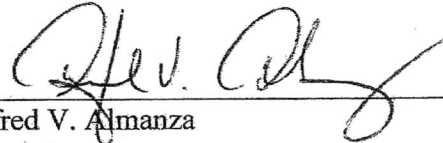
This subpoena duces tecum is issued pursuant to Section 9 of the Federal Trade Commission Act (15 U.S.C. § 49), which provision, by virtue of Section 407 of the FMIA, as amended (21 U.S.C. § 677), and Section 22 of the PPIA, as amended (21 U.S.C. 467d), are made applicable to the jurisdiction, powers, and duties of the Secretary of Agriculture in enforcing the provisions of the FMIA and PPIA and to any person subject to the provisions of such Acts, whether or not a corporation.

Please be advised, the FMIA and PPIA authorize FSIS or any authorized representative(s) of the Secretary of Agriculture, to access and examine the Miller's facilities located at 648 Millcreek School Road, Bird-in-Hand, Pennsylvania 17505, and any other Miller's facilities used for the handling, storage, and transportation, and slaughter of meat products, including all compartments, rooms and spaces, including trailers, product containers, outbuildings of any kind, and/or storage area(s) located thereon, to ensure Miller's is in compliance with the statutory and regulatory requirements for custom exempt businesses. (21 U.S.C. §§ 623, 642) (21 U.S.C. §§ 464, 460).

FAIL NOT, AT YOUR PERIL

Done in Washington, D.C.

This 4<sup>th</sup> day of Apr. 1, 2016



---

Alfred V. Almanza  
Administrator  
Food Safety and Inspection Service



**RETURN OF SERVICE**

I hereby certify that the original letter regarding the matter identified below was duly served (a) in person, (b) ~~by registered mail,~~ (c) ~~by leaving a copy at the principal or place of business:~~ (Strike out methods not employed)

IN RE: Miller's Organic Farm

---

By: Paul J. Flanagan Investigator  
Name and Title

On the 13<sup>th</sup> day of April, 2016.

Received by: Amos Miller Signature Refused  
Name and Title

**DECLARATION OF PAUL FLANAGAN**

I, Paul Flanagan, under 28 U.S.C. § 1746, declare as follows:

1. I am a Compliance Investigator with the Compliance and Investigations Division (CID), Office of Investigation, Enforcement and Audit (OIEA), Food Safety and Inspection Service (FSIS), which is a public health agency within the United States Department of Agriculture (USDA). I have been employed by the USDA-FSIS since July 1992, and have held my current position since October 2004. I am currently assigned to the Philadelphia Compliance Sub-Office, Northeast Region.

2. I make this declaration in support of the United States' Complaint in the United States District Court for the Eastern District of Pennsylvania. In its Complaint, the United States seeks judicial enforcement of a subpoena *duces tecum* that USDA-FSIS issued on April 4, 2016 and that I served on Amos Miller of Miller's Organic Farm on April 13, 2016. A true and correct copy of that subpoena is attached as Exhibit "A" to the United States' Complaint.

3. This declaration is based upon:

- a. my personal knowledge and experience;
- b. information provided to me orally and in writing -- during the course of my investigation of Miller's Organic Farm -- by (i) Mrs. Nichole Martz, Regional Supervisor, Pennsylvania Department of Agriculture, (ii) Mr. Anthony Nardella, Food Sanitarian, Pennsylvania Department of Agriculture, (iii) Troy Hambright, Lead Compliance Specialist, Enforcement and Litigation Division, Office of Investigation, Enforcement & Audit, FSIS; and (iv) other State and Federal government officials; and
- c. facts made known to me in my capacity as an FSIS Investigator.



4. In 7 C.F.R. §§ 2.53(a)(2)(i) through (iii), the Secretary of Agriculture (“the Secretary”) has delegated to FSIS the authority to administer and enforce: (a) the Federal Meat Inspection Act, as amended, 21 U.S.C. § 601 *et seq.* (“FMIA”); (b) the Poultry Products Inspection Act, as amended, 21 U.S.C. § 451, *et seq.* (“PPIA”); and (c) the Egg Products Inspection Act, as amended, 21 U.S.C. § 1031, *et seq.* These laws were enacted to ensure that meat, poultry, and egg products that are intended for human consumption -- and that are sold, transported, or distributed in interstate commerce -- are safe, wholesome, not adulterated, and correctly marked, labeled, and packaged.

5. The FMIA and the PPIA require FSIS to conduct daily monitoring and inspection activities at facilities that slaughter livestock or poultry and process meat or poultry food products for sale or distribution in interstate commerce. FSIS does this to ensure that products at such facilities are produced in a sanitary environment and that potential food safety hazards are identified and eliminated. Once these products are USDA-inspected and USDA-passed, they are labeled with the official USDA mark of inspection and can be sold in interstate commerce.

6. The FMIA and PPIA provide limited exemptions from inspection requirements for certain operations. These include: (a) traditional and usual retail and restaurant operations; (b) slaughtering and preparing of animals for personal use; and (c) “custom” slaughtering and preparing of livestock, carcasses, parts, and meat and poultry products. See 21 U.S.C. §§ 454, 464, 623, 661. These limited exemptions must be conducted in strict compliance with statutory and regulatory requirements (including, but not limited to, sanitation and facility standards and recordkeeping, product packaging, and labeling requirements). These requirements ensure, among other things, that articles that are exempted from inspection or not required to be

inspected are not adulterated or misbranded. See 21 U.S.C. §§ 464, 623; 9 C.F.R. §§ 303.1, 381.10, 416.1-416.6.

7. A “custom exempt” facility is a facility that is exempt from federal inspection requirements if it slaughters livestock or poultry that are delivered to the facility by the owner of the livestock or poultry -- and/or if the facility processes the carcasses and parts thereof into meat and poultry products -- exclusively for use, in the household of such owner, by the owner, the owner’s household members, and the owner’s nonpaying guests and employees. But even for and at a “custom exempt” facility:

a. all articles prepared on a custom basis and all containers or packages containing such articles, must be: (i) plainly marked “Not for Sale” immediately after being prepared; and (ii) kept so identified until delivered to the owner;

b. operators are required to keep records (in addition to the records required generally for compliance with the FMIA and PPIA) showing the numbers and kinds of livestock slaughtered on a custom basis, the quantities and types of products prepared, and the names and addresses of the owners of livestock and products; and

c. operations must be maintained and conducted in accordance with FMIA and PPIA sanitation and facility standards, and must meet other requirements – addressing, for example, the facility grounds; pest control; water potability; cleanliness of equipment and utensils; and hygiene -- to ensure that custom-prepared product is not adulterated.

See 9 C.F.R. §§ 303.1, 381.10, 416.1-416.6.

8. Although exempt from daily inspection, custom exempt facilities are still subject to periodic FSIS inspection and records reviews – known as “verification reviews” – and

inquiries to ensure that they are in compliance with the FMIA, the PPIA, and the regulations described above relating to sanitation, recordkeeping, labeling, custom exemption, retail exemption, and other requirements. See 21 U.S.C. § 642 (facilities must “upon notice by a duly authorized representative of the Secretary, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof”); 9 C.F.R. § 320.4. These reviews may: (a) involve FSIS veterinarians, consumer safety officers, investigators, and other program employees; and (b) include an examination of sanitation and facilities; water supply; sewage and waste disposal; pest control; inedible material control; marking and labeling; recordkeeping; and compliance with custom exemption requirements.

9. When verification reviews at custom facilities show unsanitary conditions or other noncompliance, FSIS, under its FMIA and PPIA authority, may: (a) control and detain adulterated and misbranded product, 21 U.S.C. §§ 467A, 672; and (b) withdraw custom exempt privileges from owners and operators that demonstrate the inability or unwillingness to operate in accordance with FSIS sanitation and other standards. 21 U.S.C. §§ 464(f), 623.

10. As an FSIS Investigator, my duties and responsibilities include, in accordance with the FMIA and PPIA, surveiling the transportation, storage, and distribution of meat and poultry products for intentional and non-intentional chemical, biological, and physical abuse. I do this to ensure that these products are: (a) stored in a sanitary environment; and (b) correctly marked, labeled, and packaged, as required by law.

11. To verify compliance with FSIS sanitation, facility, recordkeeping, labeling and other requirements, I also conduct inquiries relating, among other things, to: (a) food defense (i.e., reducing the risks of tampering or other malicious, criminal, or terrorist actions on the food

supply); and (b) verification reviews. I conduct these not only at federally inspected establishments but also at custom exempt facilities. I thus perform a key role in addressing the complex public health and food defense issues associated with the handling of meat and poultry products in commerce.

12. Based on the information that has been made available and supplied to me to date, I believe and understand that Miller's Organic Farm, which is located at 648 Millcreek School Road, Bird-in-Hand, Lancaster County, Pennsylvania 17505:

- a. is owned and operated by Amos Miller, who resides at the farm;
- b. operates -- as a self-described "private membership association" -- a dairy and a retail store at that location, with retail sales (including of raw milk, meat, and poultry products) being made to purchasers not only in-person at the farm store but also from the farm by means of the farm's telephone and web site (<http://www.myhealthyfoodclub.com/assets/images/Docs/farm-food-price-list.pdf>) (a copy of Miller's Organic Farm's June 2016 web ordering page, which I downloaded on June 1, 2016, is attached hereto as Exhibit "1");
- c. ships meat and poultry products that are ordered and sold by telephone or internet either directly to purchasers' addresses or to multiple pick-up locations throughout the United States;
- d. conducts custom slaughter and processing operations at the farm; and
- e. is thus processing, storing, offering for sale, selling, offering for transportation, and transporting throughout the United States meat and poultry products that may require federal inspection.

13. I became aware of Miller's Organic Farm in March 2016 when the Pennsylvania

Department of Agriculture's Regional Supervisor (Ms. Martz) and Food Sanitarian (Mr. Nardella) advised me about a March 18, 2016 internet posting by the Federal Centers for Disease Control and Prevention (CDC). That posting, a copy of which I attach to this Declaration as Exhibit "2," remains available at <http://www.cdc.gov/listeria/outbreaks/raw-milk-03-16/> and states in part that:

a. In 2014 an individual in Florida and an individual in California became infected with *Listeria monocytogenes* (listeriosis). Their ages ranged from 73 to 81. Both were hospitalized as a result, and the Florida individual died from the infection.

b. The Federal Food and Drug Administration (FDA) and CDC then investigated the two incidents. In interviews with family members, the investigators learned that both individuals drank raw milk before getting sick, and that the Florida individual's family purchased raw milk from Miller's Organic Farm.

c. The FDA collected *Listeria* bacteria from the two infected individuals and, in November 2015, obtained samples of raw chocolate milk from Miller's Organic Farm. (The samples were purchased at a raw milk conference in California.) Those raw milk samples contained *Listeria* bacteria.

d. Raw milk is milk from cows or other animals that has not been pasteurized to kill harmful bacteria. Raw milk can carry dangerous bacteria such as *Listeria*, *Salmonella*, *E. coli*, and *Campylobacter*, which are responsible for causing numerous foodborne illnesses and outbreaks. *Listeria* can cause a serious, life-threatening illness.

e. The FDA compared, through whole genome sequencing, the *Listeria* bacteria from the two infected individuals from California and Florida to the *Listeria* bacteria found in

the November 2015 raw milk samples.

f. In late January 2016, the FDA reported to CDC that: (i) the bacteria from the two individuals were “closely related genetically” to the November 2015 Miller’s Organic Farm raw milk samples; and (ii) Miller’s Organic Farm is the “likely source” of the listeriosis infections that the two individuals suffered in 2014.

g. The CDC’s March 18, 2016 internet posting stated, “CDC is concerned that conditions may exist at [Miller’s Organic Farm] that may cause further contamination of raw milk and raw dairy products distributed by this company and make people sick.”

h. The CDC’s internet posting further stated, “This investigation is ongoing. CDC and state and local public health partners are continuing laboratory surveillance . . . to identify additional ill people and to interview them.”

14. The CDC web posting was concerning because, at approximately the same time that I learned about the web posting, I also learned that Miller’s Organic Farm was slaughtering, processing and selling meat, meat food products, poultry, and poultry food products. This raised public health risk concerns about possible cross-contamination from raw milk to poultry and meat and related products that are produced and sold at the farm.

15. On March 22, 2016, I accompanied fellow FSIS Investigator Thomas Urban, as well as Ms. Martz and Mr. Nardella from the Pennsylvania Department of Agriculture, on a visit to Miller’s Organic Farm. The purpose of the visit was to review the farm’s facilities to determine if the meat and poultry products being offered for sale were: (a) required to be federally inspected because not produced in accordance with statutory requirements for custom exemption; and (b) being produced, stored, and transported in a manner to prevent adulteration.



When we arrived, we met Amos Miller, and I presented my credentials and business card to him. I explained to Mr. Miller that I was seeking to conduct surveillance activities at the farm in connection with its sales of meat and poultry products. I also provided him with a copy of the FMIA and PPIA, on which I had highlighted provisions authorizing the requested FSIS access and examination.

16. During that meeting, Mr. Miller asked if Mr. Urban and I were at his farm “for the public or private citizens.” I responded that, as FSIS representatives, we were there to protect the health of individuals who consume meat and poultry products that his farm sells. Mr. Miller then asked us to step outside while he contacted his lawyer. A few minutes later, Mr. Miller asked Mr. Urban and me if we had a warrant, and I replied that we did not and that we were at his farm because he sells -- and possibly produces, processes, labels, and distributes -- meat and poultry products to his retail and mail order customers. Again, Mr. Miller asked if we were “there for the private citizens or the public,” and I replied that we were there for both. When I asked Mr. Miller if he was denying FSIS access, he stated that he was and that we should return only with a warrant. We then left the farm property, because Mr. Miller had refused to allow us to observe the farm’s facilities or to review its business operation records related to meat and poultry.

17. On April 4, 2016, the FSIS Administrator issued a subpoena *duces tecum* requiring Miller’s Organic Farm to provide FSIS with access to the farm’s facilities and business records. The subpoena stated that physical access was particularly required for buildings and facilities “used for the slaughter of livestock, or the handling, storage, transportation of meat or poultry products, including all compartments, rooms and spaces, including trailers, product

containers, outbuildings of any kind, and/or storage area(s) located thereon[.]” The subpoena further stated that document access was particularly required for “business records . . . pertaining to meat and poultry products produced, received, handled, transported and sold, for the period January 1, 2016 to present,” including categories of documents that the subpoena described in greater detail.

18. As stated in the subpoena *duces tecum*, the subpoena was issued under the authority of Section 9 of the Federal Trade Commission Act (15 U.S.C. § 49). That statute applies to the Secretary’s jurisdiction, powers, and duties in enforcing the provisions of the FMIA and PPIA against any person subject to those Acts. See 21 U.S.C. § 677; 21 U.S.C. § 467d. The subpoena further stated: (a) why the sought records were “essential in connection with [a USDA] investigation” under the FMIA and PPIA; (b) that the FMIA and PPIA require the sought records to be maintained and made available to USDA; and (c) that the FMIA and PPIA authorized FSIS to access and examine the Miller’s Organic Farm facilities “to ensure Miller’s is in compliance with the statutory and regulatory requirements for custom exempt businesses.”

19. On April 13, 2016, FSIS Investigator Urban and I returned to Miller’s Organic Farm. I again presented my credentials and business card to Mr. Miller and explained my official capacity. I then handed him the subpoena *duces tecum* and asked him to read it. When Mr. Miller responded by asking whether I was “there for the public or private people,” I replied that I was there to protect the public health. I explained to him, as previously, that: (a) his farm was apparently engaged in the production, processing, storing, selling, and transportation of meat and poultry products: (b) he is therefore required, as described in the subpoena, to give FSIS

access to his facilities and to allow FSIS to examine his business records; and (c) I was focused on the receiving, slaughtering, storage, processing, and distribution to his customers, of beef, pork, lamb, goat, and poultry products.

20. During that April 13, 2016 meeting, when I asked Mr. Miller if he had read the access and examination provisions of the FMIA and PPIA that I had handed to him during my March 22, 2016 visit to his farm, he responded that, though he had read them, his “business is private.” When I asked Mr. Miller if he would be allowing Investigator Urban and me to enter his facility, he noted that his attorney was not present, and he handed me a written “Notice” document. He said that I should read the “Notice” and that he was not permitting us to enter. I explained to him that he should have his attorney review the subpoena and respond in a timely manner. He refused to sign an accompanying return of service.

21. The “Notice” that Mr. Miller handed to me on April 13, 2016 states, in part:

(a) “Miller Organic Farm is a 1<sup>st</sup> and 14<sup>th</sup> Amendment Private Association that contracts for services and benefits with private members only, not the public”; (b) “Generally, our Association is outside the jurisdiction and authority of Federal and State Regulatory and Licensing Agencies *except in the case where there is direct evidence of some activity that rises to a level of clear and present danger of substantive evil*”; (c) “Otherwise, we claim and exercise our Right of Privacy of Association affairs, documents, records and membership lists unless a valid order exists”; (d) “If there is a valid court order, we will respectfully object and resist on the grounds of the provisions of the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments to the U.S. Constitution and several Supreme Court decisions upholding our objections to the threat of contempt sanctions”; and (e) “we would request that any further communications be in writing. Any violations of our Private Association

rights will be dealt with using appropriate legal actions against the responsible parties in a Federal and/or State Court.”

22. The FSIS Administrator issued the subpoena on April 4, 2016 – and I served it on April 13, 2016 -- in accordance with administrative regulations governing subpoenas related to investigations under the FMIA and PPIA. 7 C.F.R. § 1.29.

23. As owner of Miller’s Organic Farm, Mr. Miller was and is required to provide FSIS access to his facilities in order to allow FSIS to examine and assess: (a) the farm’s meat and poultry products; (b) whether relevant conditions of the farm facilities are sanitary; (c) any marking and labeling of meat and poultry products at the farm; and (d) business records that the farm maintains as part of its operations. See 21 U.S.C. §§ 460, 642.

24. On April 14, 2016, Mr. Miller and his “legal counsel,” identified as Karl Dahlstrom, telephoned me. Mr. Dahlstrom inquired about my “investigation.” I responded that FSIS wished to examine Miller’s Organic Farm because: (a) Mr. Miller is in the business of processing, storing, and selling meat and poultry products; and (b) FSIS sought to protect public health by ensuring that those products are not misbranded or adulterated. Mr. Dahlstrom commented that I used the word “public” and contended that Mr. Miller has a right to a hearing before a tribunal before being subjected to any FSIS surveillance.

25. I later received correspondence from Mr. Miller that is dated April 20, 2016 and that he signed as “Trustee” for Miller’s Organic Farm. (See Exhibit “3” hereto.) In that correspondence, Mr. Miller stated, in part:

a. “This . . . is our official notice to your agency concerning our First and Fourteenth Amendment Private Health Membership Association. This association will be

marketing products to our private members only in the private domain. The U.S. Supreme Court has mandated and ruled in numerous cases that there exists a public domain and a private domain in the United States. Again, our private association and members have decided to operate also in the private domain only under the liberty clause of the right to due process of law under the Fifth Amendment of the U.S. Constitution.”

b. “Please be informed that Miller’s Organic Farm is a 1<sup>st</sup> and 14<sup>th</sup> Amendment private health association that only has private contract members and does not involve public persons in any manner. Your Agency and others do not have jurisdiction or authority to even investigate our private health association unless you have some reasonable suspicion or evidence that our private members are being subjected to a clear and present danger of substantive evil within our private health association. We assure you that our private members are not being harmed in any manner. Your mandate from the Federal legislature is only to protect the public, not private members. . . . [Y]ou are hereby put on notice that any interference with our private association activities may result in a Federal Civil and Constitutional Rights lawsuit under Title 42 U.S.C. § 1983 by suing the persons involved in their ‘individual capacities[.]’

c. “Our intent is to operate under our First and Fourteenth Amendment private membership association to private members only unless you furnish us legal and valid objections to same within ten . . . days from the receipt of this letter.”

d. “Notice to . . . Investigators[:] **You may not enter the premises unless you:** 1.) Provide a copy of the official complaint founded upon probable cause. 2.) Provide a pre-administrative hearing. 3.) Provide proper answers to the Privacy Act and other required questions that must be responded to before the investigation begins. 4.) Declare this

investigation to be quasi-criminal, not civil and the standard of review is clear and convincing evidence; not preponderance of evidence. 5.) Provide copies of oath of office and proof of filing for all officers and investigators involved in this case.”

26. On or about April 20, 2016, I was contacted by Lydia Johnson, who is Director of the Bureau of Food Safety and Laboratory Services for the Commonwealth of Pennsylvania’s Department of Agriculture. Ms. Johnson told me that Mr. Miller had: (a) invited her to take a tour of Miller’s Organic Farm; and (b) arranged with her a date and time for the farm visit. Ms. Johnson later informed me that, on April 21, 2016, Mr. Miller advised her that: (a) he would not allow any government agency on his property; (b) he would be willing to meet Ms. Johnson at her office; (c) he viewed Miller’s Organic Farm as “a private medical facility” to which he could refuse access; and (d) any government attempt to enter his facility would be a violation of his rights under the First and Fourteenth Amendments to the United States Constitution.

27. On information and belief, on May 6, 2016, Mr. Miller called Troy Hambricht, a Lead Compliance Specialist within the Enforcement and Litigation Division of FSIS’ Office of Investigation, Enforcement & Audit. This was shortly after Mr. Miller received correspondence from the Office of the U.S. Attorney for the Eastern District of Pennsylvania regarding his non-compliance with the April 2016 subpoena *duces tecum*. On that occasion, Mr. Miller, among other things, reiterated that he would not allow FSIS to examine his facilities and records without a court order or warrant.

28. On May 24, 2016, I received correspondence from Mr. Miller (signed as “Private Farmer”) dated May 23, 2016 and addressed to “Dr. Lydia Johnson [of the Pennsylvania Department of Agriculture] or to Whom It May Concern.” I attach a copy of this

correspondence to this Declaration as Exhibit "4." In this correspondence, Mr. Miller stated, in part:

a. "You . . . threatened the use of force if we did not comply with your inspection of this Private Association that you have no authority over."

b. "[Y]ou threaten force by stating that you will once again return for this illegal inspection. We suspect . . . you intend on an illegal forceful entry, search, and seizure. It is unfortunate that you have not allowed us to communicate with the Private Members of this Association and respond peacefully as we intended."

c. "Miller's Organic Farm is a privately owned farm, which serves members of a Private Member Association. The members sign and adhere to a contractual agreement. We have provided you with that agreement previously, and we are attaching it once again . . . . Our products are not sold in any public facility or available via any public arrangements, in any capacity."

d. "The agenc[ies] both state and federal in this case have obstructed justice by Misrepresentation for even serving this SUBPOENA [duces tecum]."

e. "These Agencies, both State and Federal, can no longer continue the illegal investigations of the Private Association known as Miller's Organic Farm as jurisdiction is totally lacking."

f. "We demand this administrative hearing [required under 2 Pa. Cons. Stat. Ann. § 504] before any court . . . in Pennsylvania can have jurisdiction in which is clearly an agency claim involving registration and such, as we are not public, in any capacity, but 'Private' by Nature."

g. “If any of the Federal agencies would like to move, they must first overcome 5 U.S.[C]. § 554, (a)[.] This [Privacy Act] section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record ‘after’ opportunity for an agency hearing. [Under 5 U.S.C. § 554(b),] [p]ersons entitled to notice of an agency hearing shall be timely informed of – (1) the time, place, and nature of the hearing; (2) the legal authority and jurisdiction under which the hearing is to be held. The FDA specifically under 5 U.S.C. as a federal agency and by their own rules under 21 U.S.C. § 335[:] ‘*Before any violation of this chapter is reported by the Secretary to any United States Attorney for institution of a Criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and opportunity to present his views, either orally or in writing with regard to such contemplated proceeding.*’ Notice it clearly states ‘BEFORE’, so they cannot move the federal court, either without the agency hearing. In fact, the UNITED STATES ATTORNEY should have never even been notified according to 21 U.S.C. § 335 and they cannot legally move this action anywhere either. No Administrative hearing. No compliance.”

h. “For a Pennsylvania, Federal or any court . . . to move, at this point, with any search warrant or injunction would constitute a huge violation of the Due Process of Law. Any office or officer thereof would subject himself or herself to litigation in where there will be no valid immunity or claim of desecration, for their actions, to hide behind, because you have been forewarned with this document, meaning, you do so knowingly and willingly and with Malice and forethought, judge your actions accordingly.”

i. “[In closing] might we remind all involved, ‘*our system, fostered by the Commerce Clause, is that every farmer and every craftsmen shall be encouraged to produce by*



*the certainty that he will have free access to every market in the Nation, that no home embargos will withhold his exports; and no foreign state will by customs, duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the founders; such has been the Doctrine of this court which has given it reality.* ' H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525 . . . (1940)."

29. Attached to this correspondence was a "Membership Contract" for Miller's Organic Farm, a copy of which is attached to this Declaration as Exhibit "5." This includes both a "Declaration of Purpose from Article 1 of Miller's Organic Farm Articles of Association" and a "Memorandum of Understanding." By its terms, the document requires signature and payment of a \$35 lifetime fee. Among the document's provisions are statements of reliance on the Bill of Rights of the United States Constitution and the following:

a. "4. We proclaim the freedom to choose and decide for ourselves the types of products, services and methods that we think best for healthy eating and preventing illness and disease of our minds and bodies and for achieving and maintaining optimum wellness."

b. "5. . . . [T]he Association specializes in raw milk products and grass-fed meats and demands access to foods of our choice."

c. "I understand that the fellow members of the Association that provide products and services, do so in the capacity of a fellow member and not in the capacity of a licensed wholesaler, retailer or provider. I further understand that within the association no wholesale/retailer-customer relationship exists but only a contract member-member Association relationship. In addition, I have freely chosen to change my legal status as a public

consumer/customer to a private member of the Association. I further understand that it is entirely my own responsibility to consider the recommendations and product offered to me by my fellow members and to educate myself as to the efficacy, risks, and desirability of same and the acceptance of the offered or recommended products and it is my own carefully considered decision.”

d. “The Trustee and members have chosen Amos Miller as the person best qualified to perform services to members of the Association and entrust them to select other members to assist them in carrying out the service.”

e. “In addition, I understand that, since the Association is protected by the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution, it is outside the jurisdiction and authority of Federal and State Agencies and Authorities concerning any and all complaints or grievances against the Association, any Trustee(s), members or other staff persons. All rights of complaint or grievances will be settled by an Association Committee . . . .”

f. “My activities within the Association are a private matter that I refuse to share with State Medical Board(s), the FDA, FTC, State Milk Board(s), USDA, Agriculture Board(s) and any other governmental agency without my expressed specific permission. All records and documents remain as property of the Association, even if I receive a copy of them.”

g. “I affirm that I do not represent any State or Federal agency whose purpose is to regulate and approve products.”

30. I viewed Miller’s Organic Farm’s website on June 1, 2016, at <http://www.myhealthyfoodclub.com/assets/images/Docs/farm-food-price-list.pdf> -- the contents of which I attach to this Declaration as Exhibit “1” The site states in part:

a. “Despite what the CDC said in their press release about us, we have not had a single customer complain of illness from our product.”

b. “In the past 5 weeks, we have had many public officials knocking on the door hoping we would surrender our private association and to comply with their rules, which would limit us in supplying you with the raw butter, cream yogurt and kefir because they do not issue a permit for those items. The reason we have a private association set up is so that you have access to all these wonderful products. The Pennsylvania Department of Agriculture does not issue a permit for the value-added products we make. By signing the membership form, you agree that it is a private sale. Private membership associations for raw dairy products and other farm products have been held up in court before, most notably the case of Vernon Hershberger in [Wisconsin] in 2013[.]”

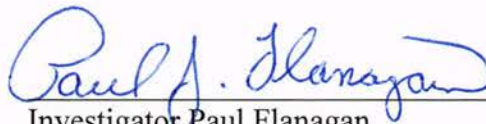
31. Based on Mr. Miller’s continued failure to cooperate with FSIS’ subpoena *duces tecum*, FSIS believes that, absent a legal enforcement proceeding and an appropriate order by the United States District Court for the Eastern District of Pennsylvania, Mr. Miller will continue to deny FSIS officials access to his facility and records, and will thereby continue to prevent FSIS from fulfilling its public safety mission to ensure that meat and poultry products are wholesome and unadulterated and that appropriate statutory and regulatory requirements are met.

32. The records and access that FSIS’ subpoena *duces tecum* has demanded from Mr. Miller are relevant to (and will reasonably aid) an FSIS assessment of whether Miller’s Organic Farm is in compliance with the FMIA and PPIA and the relevant regulations promulgated thereunder.

33. USDA-FSIS has not obtained from other sources the records demanded by the subpoena.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on this 3<sup>rd</sup> day of June, 2016.



Investigator Paul Flanagan  
Compliance and Investigations Division  
Office of Investigation, Enforcement and Audit  
Food Safety and Inspection Service  
United States Department of Agriculture

Miller's Organic Farm  
A Private Membership Association  
648 Mill Creek School Rd.  
Bird-in-Hand, PA 17505

**May 2016 Specials**

AVAILABLE ONLY WHILE EXCESS SUPPLY LASTS  
To receive specials, please mention May Specials.

**Inventory Reduction Blowout**

*Salted Sharp Cheddar - \$2.00 off/lb.*

*Salted Cheddar - \$2.00 off/lb.*

*(Must mention to receive discount)*

**Fresh Camel Milk**

**1-10 pt - \$15.00/pt.**

**11-30 pt - \$12.50/pt.**

**31 or more - \$11.00/pt.**

**Inventory Reduction Blowout**

**Camel milk frozen before  
April 1, 2016 - \$2.00 off/pt.**

**\$1.00 off per pound or container:**

- Homemade Super Tonic
- Homemade Noodles – Sprouted and Regular
- Ground Ham & Bacon
- Sheep Tallow – pt.
- Camel Soap
- Bread & Butter Pickles – pt. & qt.
- London Broil – frozen
- Fmt. Daikon Radish – qt.
- Eye Round Roast – frozen
- Zucchini Relish
- Fmt. Pickle Relish – pt. & qt.
- Tallow – qt.
- Brisket – frozen
- Daikon Radish Juice – pt.

*Pickle Relish*

*SPECIAL for MAY*

*\$1.00 off /container*

*\$3.50/pt, \$6.50/qt.*

**\$2.00 off per pound or container:**

- Soy Free Duck Eggs
- Fmt. Cabbage Juice – qt.
- Salted Sharp Cheddar
- Salted Cheddar
- Camel Milk – frozen before April 1, 2016

**50% off per pound**

- All infused Virgin Coconut Oil
- Regular Colostrum – frozen – qt only

**NEW ITEMS**

- Water Buffalo Ice Cream - \$25.00/qt. – vanilla flavor
- Water Buffalo Broth - \$8.50/pt, \$12.75/qt.
- Ground Water Buffalo - \$10.00/lb
- Smoked Cheddar - \$10.50/lb
- Duck Broth - \$5.50/pt

**PRICE CHANGES**

- Goat Chevre – Garlic & Plain - \$6.75/8 oz.
- Skirt Steak - \$18.50/lb

**Homemade  
Super Tonic**

**\$18.50/ 4 oz.**

**Soy-Free  
Duck Eggs**

**\$8.00/doz.**

**Homemade Noodles**

**Sprouted - \$8.50/lb  
Regular - \$6.50/lb**



**Miller's Organic Farm  
Private Membership Association**

**648 Mill Creek School Road**

**Bird-in-Hand, PA 17505**

**Phone: (717) 556-0672**

Leave message with order.

**No Sunday Sales**

**May 2016**

**When placing an order, please allow 24-36 hrs. for shipping to avoid a rush order fee.**

**GRASSFED FARM FRESH FOODS**

Our cows are on a high forage diet and are fed no grain to ensure a higher quality, more nourishing and better tasting food.

Farm Store Hours

**Mon. – Fri. 8:00am – 4:30pm EST**

**Saturday by appointment**

**Shipping options** include FedEx Ground and FedEx Overnight.

**Handling charges** are \$8 - \$16 per box, depending on size and content (shipping not included)

When **shipping eggs** with FedEx, please add \$1.00 per dozen eggs ordered.

We use insulated boxes with ice-packs accordingly. Prices subject to change without notice. When placing an order, it is your responsibility to clearly specify exactly what you want as we have quite a few options such as: salted or unsalted cheese, frozen or unfrozen meats, washed or unwashed & unrefrigerated eggs, so please be aware of such options. We are not liable for any unclear orders but will use our best judgment. Thank you kindly for your support, and we look forward to providing you with healthy food.

**RAW COW'S MILK & DAIRY**

Milk - \$4.50/hf gal, (\$8.00/gal co-ops only)

Milk in glass bottle - \$7.00/hf gal w/ handle,

\$11.00/gal no handle – co-ops only

Cream, heavy in glass bottle - \$8.50/pt, \$14.50/qt,

\$28.50/half gal

Cream, heavy - \$7.50/pt, \$13.50/qt, \$26.50/3 ½ lb,

\$32.00/5lb

Cream, light in glass bottle - \$7.50/pt, \$13.00/qt,

\$24.00/half gal

Cream, light - \$6.50/pt, \$12.00/qt, \$20.00/hf gal

Sour Cream - \$8.00/pt, \$14.50/qt

Crème fraiche - \$8.00/pt, \$14.50/qt

Buttermilk - \$2.00/quart

Buttermilk, cultured - \$2.50/quart

Colostrum, first - \$10.50/pt, \$19.50/qt

Colostrum, regular - \$4.00/pt, \$7.50/qt

Whey - \$2.00/qt, \$2.75/hf gal

Mild kefir - \$3.00/pt, \$5.50/qt

Regular kefir (mixed mild-strong) - \$3.00/pt,

\$5.50/qt

Strong kefir - \$3.00/pt, \$5.50/qt

Kefir grains – strong \$2.50/tsp, mild \$4.50/tsp

Yogurt - \$2.50/pt, \$4.50/qt

Greek Style Cow Yogurt (plain, maple) - \$5.00/pt,

\$8.50/qt

Cottage cheese – w/o cream \$4.00/pt, w/ cream

\$4.50/pt

Cottage Cheese in glass bottle – w/o cream

\$5.50/pt, w/ cream \$6.00/pt

Cream Cheese – \$5.00/8oz, \$9.00/lb

Cheese Spread - \$5.00/8oz, \$8.50/lb

Eggnog - \$6.50/qt

Butter, unsalted - \$7.75/8oz, \$12.50/lb

Butter, salted - \$8.00/8oz, \$13.00/lb

Butter, cultured, unsalted- \$8.50/8oz, \$14.50/lb

Butter, cultured, salted- \$8.75/8oz, \$15.00/lb

Chocolate Milk - \$6.50/ ½ gal., \$12.00/gal.

Cinnamon Milk - \$4.00/qt., \$6.50/ ½ gal.

**RAW HARD COW CHEESE**

(specify salted or no-salt)

Cheddar, Sharp Cheddar, -\$7.25/lb,

\$6.50/lb for 5-6 lb

Swiss, Colby, Monterey Jack, Pepper Jack, Herbal

Jack, – \$6.75/lb or \$6.00/lb for 5-6 lb block

Colby Dill(salt only)- \$6.75/lb or \$6 for 5-6 lb block

Farmers (salt only) - \$6.75/lb or \$6.00 for 5-6lb block

Havarti(salt only)-\$8.50/lb.

Garlic Cheddar (salted only)-\$7.25/lb or \$6.50/lb for

5-6 lb block

Mushroom Leek (salted only) - ,– \$6.75/lb or

\$6.00/lb for 5-6 lb block

Mozzarella Cheese(salted only)(not raw) - \$8.50/lb

Old World Flavored, Cheddar, Asaigo (salted only)

– \$14.50/lb, \$13.75/lb for 5 lb block

Raw Gouda Cow Cheese-(salted only)-\$8.50/lb

(1 lb or 5 lb block)

Raw Cow Blue Cheese (soft) ( salted only) –

\$13.75/lb

Smoked Cheddar (salted only) - \$10.50/lb

**ICE CREAM**

Ice Cream: Butter Pecan, Chocolate, Strawberry, Vanilla,

Mint, Raspberry, Ginger, Chocolate Peanut Butter

(specify flavor) -- \$12.00/qt, 6+ qt - \$11.00/qt

**RAW SHEEP MILK & DAIRY**

Milk - \$7.00/pt, \$12.00/qt (loaded w/Vita C)  
 Butter (salted & no salt) - \$18.00 / 6oz.  
 Yogurt - \$9.00/pt, \$15.00/qt  
 Kefir - \$9.00/pt, \$15.00/qt  
 Cream - \$18.00/8 oz.  
 Cottage Cheese - \$18.00/ 16 oz.  
 Cheese (Cave aged): Ewes Dream &  
 Mild Shepherd's Delight - \$16.50/lb  
 Cheese (soft) – Feta (salted or unsalted) - \$16.50/lb  
 Tallow - \$8.00/pt.

**WATER BUFFALO DAIRY**

Milk - \$7.00/pt, \$12.00/qt  
 Yogurt - \$9.00/pt, \$15.00/qt  
 Mozzarella - \$12.50/ ½ lb. ball(not raw)  
 Buffeta - \$12.50/ ½ lb block  
 Camenbuff - \$12.00/6 oz. wheel  
 \*Ice Cream – (van.) - \$25.00/qt.  
 Whey - \$6.00/qt.  
 Cottage Cheese - \$12.50/pt.  
 \*Ground Water Buffalo - \$10.00/lb  
 \*Broth - \$8.50/pt, \$12.75/qt.

**RAW CAMEL DAIRY**

Camel Milk – 1-10 pt - \$15.00/pt,  
 11-30 pt - \$12.50/pt, 31 or more – \$11.00/pt  
 Camel Kefir - \$17.00/pt.  
 Camel Yogurt - \$17.00/pt.  
 Camel Milk Soap - \$6.50/bar

**RAW GOAT MILK & DAIRY**

Milk - , \$6.00/qt, \$10.00/hf gal  
 Milk in glass bottle - \$12.00/hf gal  
 Cream - \$14.00/8oz, \$26.00/pt  
 Kefir - \$9.50/qt  
 Yogurt - \$9.50/qt  
 Whey - \$6.00/qt  
 Cottage Cheese - \$11.00/lb  
**Cheese (soft):** Feta(spec salt or no-salt) - \$7.50/hf lb,  
 \$13.50/lb  
**\*Chevre Cheese (soft):** garlic, plain –\$6.75/8oz  
**Cheese (hard):** cheddar(no salt or salted)– \$13.50/lb  
 Butter (specify salted or unsalted) - \$10.50/4oz  
 Goat 11 Strain Probiotic Drink - \$7.50/pt  
 Goat Milk Soap - \$3.50/bar  
 Liquid Goat Soap - \$6.75/8 oz.

**Poultry & Meats**

**CHICKEN - Soy-FREE**

Whole Fryers (avg. 4-6 lb) - \$ 4.95/lb  
 Breasts, boneless (1/pk, avg. 1lb) - \$13.00/lb  
 Breasts, bone-in (1/pk, avg 1 ½ lb) - \$10.50/lb  
 Tenderloin ( no bone or skin) - \$22.50/lb  
 Legs & Thighs (2/pk, avg 1 ½-2lb) - \$ 5.75/lb  
 Wings - \$ 5.75/lb  
 Necks & Backs (1/pk, avg 2 lb) - \$ 3.75/lb  
 Hearts - \$ 14.50/lb  
 Whole Bird for Stock (avg 3 lb) - \$4.00/lb  
 Heads for Stock - \$2.00/ea  
 Feet for Stock - \$ 1.50/ea  
 Fertile Eggs - \$7.00/doz  
 Pet Food: Ground - \$5.75/lb (Out of Stock)  
 Chicken Fat Rendered - \$3.75/pt.  
 Chicken Fat Raw - \$3.50/lb  
 Liver Soup - \$10.25/pt, \$18.00/qt  
 Chicken Pie - \$11.00/6 in., \$16.00/9 in  
 Ground Chicken (soy free) - \$11.50/lb  
 Chicken Broth - \$5.50/pt, \$8.75/qt

**TURKEY – Soy-FREE**

Wh Turkey - \$4.75/lb  
 Wh. Smoked Turkey - \$5.75/lb  
 Breast - \$11.50/lb  
 Thighs - \$11.50/lb  
 Legs - \$7.00/lb  
 Wings - \$6.75/lb

Ground Turkey - \$11.50/lb  
 Turkey Sausage – \$12.00/lb  
 Turkey Heart - \$9.50/lb  
 Turkey Scrapple - \$6.50/lb  
 Turkey Pet Food - \$5.75/lb  
 Turkey Broth - \$5.50/pt, \$8.75/qt.

**DUCK - Soy FREE**

Duck (appx. 4-5lbs) - \$7.50/lb  
 Half Duck - \$8.00/lb,  
 \*Broth - \$5.50/pt.  
 Eggs - \$10.00/doz.

**GOOSE – Soy FREE**

Whole Goose - \$11.00/lb (avg. wt. 7 lb.)  
 Goose Breast - \$17.00/lb  
 Goose Leg & Thigh - \$12.00/lb  
 Goose Gizzard – 15.50/lb  
 Goose Neck & Back - \$5.50/lb  
 Goose Liver - \$28.50/lb  
 Goose Heart - \$28.50/lb  
 Goose Broth - \$5.50/pt., \$8.75/qt.

**LAMB –**

Ground Lamb - \$10.00/lb  
 Lamb cubes - \$14.00/lb  
 Lamb chops - \$22.50/lb  
 Lamb Broth - \$5.50/pt, \$8.75/qt  
 Lamb Roast - \$16.50/lb  
 Ground Lamb w/ organs - \$14.50/lb  
 Ground Mutton - \$8.50/lb

**SEAFOOD**

Alaska Wild Salmon-\$16.50/1lb, \$14.50/2lb  
 Icelandic Haddock - \$9.50/lb  
 Fish Broth - \$9.50/pt, \$12.75/qt

**GRASSFED BEEF**

Ground Beef \$7.00/lb, 2lb fam.Pk - \$6.00/lb  
 Ground Beef w/ organs - \$11.00/lb  
 Beef Cubes - \$7.50/lb  
 Beef Sausage - \$7.00/lb  
 Round Steak - \$8.00/lb  
 Shoulder Steak w/ small marrow bone- \$7/lb  
 London Broil - \$10.50/lb  
 Delmonico - \$13.00/lb  
 Beef Chip Steak - \$9.50/lb  
 \*Skirt Steak - \$18.50/lb  
 Sirloin Steak - \$9.50/lb  
 Sirloin Tip - \$9.50/lb  
 New York Steak - \$16.50/lb  
 Rib Eye Steak - \$16.50/lb  
 T-bone Steak - \$18.50/lb  
 Beef Tenderloin - \$28.50/lb  
 Beef Ribs - \$4.50/lb  
 Brisket - \$11.50/lb  
 Flank Steak - \$18.50/lb  
 Chuck Roast - \$6.50/lb  
 Round Roast - \$7.50/lb  
 Eye Round Roast - \$8.50/lb  
 Rump Roast - \$9.50/lb  
 Ox tail, avg wt 1-3lbs @ \$13.50/lb  
 Ox tongue - \$8.50/lb  
 Soup bones - \$8.75/lb  
 Marrow bones - \$14.50/lb (Out of Stock)  
 Knuckle bones - \$3.00/lb  
 Regular bones (large)- \$2.00/lb  
 Regular bones (small) - \$2.50/lb  
 Beef heart - \$8.50/lb  
 Beef kidney - \$6.50/lb  
 Beef liver - \$9.50/lb  
 Beef brains - \$12.50/lb  
 Glands, adrenal, thymus,thyroid - \$18.50/lb  
 Pet Food: ground beef & organs - \$4.75/lb  
 Beef Broth - \$5.50/pt, \$8.75/qt  
 All Beef Bologna - \$7.50/lb  
 All Beef Hotdogs - \$8.50/lb  
 Tallow - \$3.25/pt, \$5.75/qt  
 Beef Fat - \$2.50/lb  
 Beef Jerky - \$6.75/4 oz

**VEAL**

Will sub. w/ beef if not in stock, all veal is frozen  
 Ground veal - \$9.50/lb  
 Veal cubes - \$10.50/lb  
 Veal Broth - \$5.50/pt, \$8.75/qt  
 Veal Round Steak - \$9.50/lb  
 Veal Flank - \$16.50/lb  
 Veal Liver - \$29.50/lb  
 Veal Chuck Roast - \$7.50/lb  
 Veal New York Steak - \$18.50/lb  
 Veal Heart - \$12.00/lb

**MILK-FED PORK**

Tenderloin Steak - \$19.50/lb  
 Loin Roast, avg wt 2-3lb - \$8.50/lb  
 Pork Chops - \$8.25/lb  
 Spare Ribs - \$7.50/lb  
 Steak - \$6.50/lb  
 Roast, avg wt 2-4lbs @ \$6.50/lb  
 Ground Pork - \$6.00/lb  
 Ground Pork w/ organs - \$6.25/lb  
 Sausage (rope) - \$6.50/lb  
 Pork Sausage (loose) - \$6.50/lb  
 Breakfast Sausage (links) - \$7.50/lb  
 Scrapple - \$5.00/lb  
 Ham Hock, raw & unsalted - \$5.50/lb  
 Ham Hock, cured & salted - \$6.50/lb  
 Raw Ham sliced - \$5.00/lb  
 Cured and Salted Sliced Ham - \$6.50/lb  
 Wh Ham cured-salt, avg wt 7-10 lbs @\$6/lb  
 Cured/ Salted Ham Steak (3/4" th) - \$6/lb  
 Pork Shoulder, bone in (8-12 lb.) - \$6.50/lb  
 Bacon (raw & unsalted) - \$12.50/lb  
 Bacon (cured & salted) - \$14.50/lb  
 Country Bacon (cured-salted) - \$11.50/lb  
 Country Bacon (raw & unsalted) - \$10.50/lb  
 Canadian Bacon(cured & salted)- \$11.50/lb  
 Canadian Bacon(raw & unsalt) - \$10.50/lb  
 Spare Ribs (cured, salted) - \$9.50/lb  
 Ground Ham & Bacon (cured, salt) - \$8.50/lb  
 Hot Dogs (pork & beef, no nitrates)-\$7.50/lb  
 Lard - \$4.00/pt, \$6.50/qt  
 Pork Organs - \$5.50/lb  
 Pet Food (ground pork w/organs) - \$4.25/lb  
 Pork Broth - \$3.00/pt, \$5.50/qt  
 Pork Liverwurst - \$5.50/lb

**Nuts & Veggies****ORGANIC CRISPY NUTS** (12 oz bag)

Almonds - \$15.00  
 Brazil Nuts - \$11.00  
 Pecans - \$16.00  
 Sunflower Seeds - \$7.00  
 English Walnuts - \$16.00  
 Pumpkin Seeds - \$7.00

Black Walnuts - \$15.00  
 Cashews - \$12.00  
 Seasoned Mix - \$16.00  
 Trail Mix - \$16.00  
 Sweet & Spicy Nut Mix - \$16.00



**VEGGIES**

Pickled Beets - \$4.00/pt, \$7.00/qt  
 Garlic Dill Pickles - \$3.75/pt, \$6.50/qt  
 Zucchini Relish-\$3.75/pt  
 Okra - \$5.00/pt., \$9.50/qt  
 Green Peas(freshly frozen) - \$10.50/lb.

**FERMENTED VEGGIES**

Fermented Kimchee - \$6.00/pt, \$10.50/qt  
 Fermented Kimchee Juice - \$6.00/qt  
 Fermented Ketchup - \$3.75/8oz, \$6.50/pt  
 Fermented Amos Ketchup - \$5.00/8oz, \$8.00/pt  
 Fermented Daikon Radish - \$4.50/pt., \$8.50/qt.  
 Fmtd. Daikon Radish Juice - \$3.50/pt  
 Fermented Dill Pickles - \$3.75/pt, \$6.50/qt

Fermented Pickle Relish - \$4.50/pt, \$7.50/qt  
 Fmtd. Bread & Butter Pickles - \$4.00/pt, \$7.50/qt  
 Fermented Cabbage Juice - \$7.50/qt  
 Fermented Sauerkraut - \$4.50/pt, \$8.00/qt  
 Fermented Tomato Salsa - \$4.75/pt  
 Fermented Hot Salsa - \$4.75/pt  
 Fermented Vege Chow Chow - \$4.75/pt., \$8.50/qt  
 Fermented Carrots-Onions - \$4.75/pt  
 Fermented Vege Mix - \$5.50/pt  
 Fermented Onions - \$4.75/pt  
 Fermented Garlic - \$8.00/8 oz.  
 Beet Kvass - \$6.00/qt  
 Horseradish - \$4.75/8oz

**Bakery, Staples, Treats, Drinks**

**BAKERY**

Soaked Breads: Spelt, Wheat, Cinn-Raisin Wheat  
 (spec)- \$6.00/loaf  
 Sourdough Breads:Rye,Wheat, 7-grain (spec) \$6/lf  
 Sprouted Spelt Bread - \$8.00/loaf  
 Sourdough Heritage Wheat Bread - \$7.00/loaf  
 Sliced Bread, any type – add \$2.00/loaf  
 Angel Food Cake (half) - \$6.50  
 Shoofly Pie (8”) - \$8.00  
 Apple Pie (8”) - \$9.00  
 Pumpkin or Zucchini Bread – \$6.00/loaf  
 Muffins Gluten-free:Lemon-Poppy, Vanilla-Pecan,  
 Coconut, Blueberry(specify flavor)\$7.50/hf doz  
 Coco. Choc.ChipCookies(gluten free)–  
 \$5.00/hf.doz., \$9.50/doz.

**STAPLES**

Celtic Sea Salt- coarse\$6.75/lb, fine \$10.25/lb  
 Honey(Orange Bloss.,Wild Flower) - \$23.50/5lbs, \$8.00/17oz  
 Really Raw Honey - \$12.00/16 oz., \$39.50/5lb.  
 Maple Syrup (Grade A) - \$14.50/qt.  
 Maple Syrup (Grade B) – \$16.50/qt  
 Ghee - \$16.50/pt  
 Noodles, Spelt - \$7.50/lb  
 Noodles, Sprouted Spelt - \$9.50/lb  
 Best Salad Vinegar – \$4.50/pt  
 Olive Oil - \$15.50/12oz, \$79.50/gal. tin  
 Homemade Supertonic - \$19.50/4 oz.  
 Vanilla Extract - \$11.00/4 oz.  
 Coconut Oil –\$19.50/qt., \$56.00/gal (raw, cold-  
 pressed,Philippine)  
 Fmtd. Coconut Oil - \$16.50/pt., \$29.00/qt.

**DRINKS**

Fermented Lemonade - \$6.00/qt  
 Ginger Ale – \$6.00/qt  
 Fermented Grape Juice - \$9.50/qt  
 Kombucha Tea – \$5.00/qt  
 Cranberry Kombucha - \$6.00/qt  
 Fermented Sourdough Kvass – \$5.50/2liters  
 Raw Pear Cider - \$6.00/qt., \$10.50/ ½ gal.  
 Raw Apple Cider - \$6.00/qt, \$8.00/ ½ gal

**TREATS**

Applesauce - \$4.50/pt  
 Apple Butter – \$3.50/ 8 oz., \$6.50/pt  
 Apple Cider Vinegar - \$6.75/qt.  
 Egg Custard - \$7.50/pt  
 Homemade Mayonnaise – \$4.50/pt  
 Honey Mustard – \$3.50/8oz  
 Kombucha Mushroom - \$4.50  
 Homemade Granola - \$9.00/16 oz.  
 Granola Bars - \$3.00/bar  
 Chemical Free Sm. Popcorn Kernels - \$6.50/lb  
 Potato Chips non-organic Zerbe – \$8/2lb  
 Pot. Chips organic Amos brand –\$6.50/hf lb, \$11.00/lb  
 Sweet Potato Chips - \$7.75/ ½ lb  
 RawAlmondButter-\$14.50/8oz, \$22.50/16oz  
 Cashew Butter - \$14.50/8oz., \$22.50/pt  
 Garlic Spread - \$4.75/5oz

**GREEN PASTURES BLUE ICE**

Butter Oil (plain, rasp., butter pecan) 8oz - \$56.00  
 Butter Oil Capsules(120 caps) - \$39.90  
 Royal Blend Fermented Cod Liver Oil & Butter Oil  
 (chocolate, plain, cinnamon)(8oz) - \$43.50  
 Royal Blend Fermented Cod Liver Oil & Butter Oil  
 Capsules (120 caps) - \$40.50  
 Blue Ice Fermented Cod Liver Oil (cinnamon,  
 orange, mint, plain)(8oz)-\$37.50  
 Blue Ice Fermented Cod Liver Oil Capsules  
 (120 caps) – \$32.00  
 Fermented Skate Liver Oil (orange)(8oz) - \$36.50  
 Fermented Skate Liver Oil Capsules  
 (120 caps) – \$28.50  
 Infused Org. Virgin Coconut Oil(plain, cinn., carob  
 ban., carmel) - \$29.00/13.7oz., \$49.00/27.5oz.  
 Coconut Ghee –\$22.00/27oz, \$56.00/gal

**ROSITA REAL FOODS**

Extra Virgin Cod Liver Oil - \$42.00/5 oz.

## May 2016 Newsletter

First of all we want to thank God our Master Creator who made things so well. The grass is now turned green again, and it's springtime in the air. Our cow's milk, including cream and butter, is showing a nice orange color, including the eggs from our pastured chickens. We hope you get to taste and feel the benefits of our nutrient-dense foods.

Thank you for continuing to put your trust in us. We are making every effort to keep that trust there. Despite what the CDC said in their press release about us, we have not had a single customer complain of illness from our product. We work every day to improve our methods to ensure the safest, most nutrient dense foods possible for you and your family.

In the past 5 weeks, we have many public officials knocking on the door hoping we would surrender our private association and to comply with their rules, which would limit us in supplying you with the raw butter, cream yogurt and kefir because they do not issue a permit for those items.

The reason we have a private association set up is so that you have access to all these wonderful products. The Pennsylvania Department of Agriculture does not issue a permit for the value-added products we make. By you signing the membership form, you agree that it is a private sale. Private membership associations for raw dairy products and other farm products have held up in court before, most notably the case of Vernon Hershberger in WI in 2013 <http://modernfarmer.com/2013/05/amish-raw-milk-farmer-vernon-hershberger-wins-big-in-court/>

We know that many of you depend on these foods for your health. We would like to continue to supply these for you.

Many of you have called or written to ask how you can help. We want to hear your stories of healing and your stories of why this food is important to you and your family. You can send it to one of our off-farm admins at [WriteToMillers@gmail.com](mailto:WriteToMillers@gmail.com) We are grateful to everyone who takes the time to do this. If you live near the farm, please contact us at the above email address. We need local support.

Legal help—Many of you have approached us about helping with legal fees. We are so grateful for each inquiry and expression of kindness. Right now, your membership fee helps to cover that expense.

Lord willing, we would like to invite members of the private association to the farm one afternoon this summer for a picnic and tour of the farm. In the next newsletter, we will share with you about dates and planning.

To have a glimpse of the farm, here is a story written by a private member who visited the farm a couple weeks ago.

<http://nourishingliberty.com/millers-organic-farm-gifts-spring/>

### **Spring on Miller's Organic Farm**

We have plenty of duck eggs from ducks that are out on the green grass. Pastured duck eggs are a good source of natural vitamin D. A nutritious food is duck eggs. We are offering them for \$2.00 off per dozen through May or while excess supplies last.

New items for May are ground water buffalo, water buffalo broth and duck broth.

We have a price decrease on goat chevre. Goat chevre sells in garlic and plain flavors.

We still have plenty of camel milk (fresh or frozen). It is sold in pints only. Camel milk is used for Autism, Chrohn's disease, tuberculosis, and various other diseases. Camel milk may contain 3 times more vitamin C than cow's milk. Camel milk can be easily digested by lactose-intolerant individuals. We also sell camel yogurt, kefir and soap.

We sell delicious tomato salsa in pints only. We have either mild or hot. Please specify.

We will be out of fermented beets until June 2016. We only have pickled beets left in pints and quarts.

The Bread & Butter Pickles and pickle relish are on sale through May or while excess supply lasts. Both are sold in pints and quarts.

We sell 2 kinds of homemade noodles (soaked spelt or regular spelt) in one pound bags.

Sauerkraut is good for the digestive system. Sauerkraut sells in pints and quarts. We also sell fermented cabbage juice in quarts only. The cabbage juice is on sale at \$2.00 off per quart in May.

In May and June, butter will be the darkest yellow-orange color, and then again in the fall, approximately September & October, depending on rainfall and weather conditions.

With strawberry season just around the corner, don't forget to try some of our grassfed heavy or light cream. Light cream is ideal for making whipping cream sweetened with Grade A or B maple syrup. Then serve with your favorite berries or fruit.

If you have any questions, please give us a call @ (717) 556-0672.

Miller's Organic Farm



---

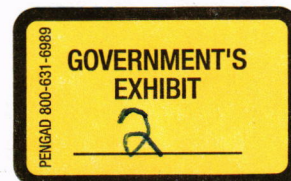
## Multistate Outbreak of Listeriosis Linked to Raw Milk Produced by Miller's Organic Farm in Pennsylvania

---

Posted March 18, 2016 2:00 PM ET

### Highlights

- **Read the Advice to Consumers>>**
- Collaborative investigative efforts of state, local, and federal public health and regulatory officials indicate that raw milk produced by Miller's Organic Farm in Bird-In-Hand, Pennsylvania, is the likely source of this outbreak.
  - Two people infected with the outbreak strain of *Listeria* were reported from California (1) and Florida (1). Both illnesses occurred in 2014.
  - Both people were hospitalized, and the ill person in Florida died as a result of listeriosis.
- Although the two illnesses occurred in 2014, the source of these illnesses wasn't known until January 29, 2016, when the U.S. Food and Drug Administration informed CDC that whole genome sequencing of *Listeria* bacteria from raw chocolate milk produced by Miller's Organic Farm showed that it was closely related genetically to *Listeria* bacteria from the two ill people described above.
- Because *Listeria* was recently found in raw milk produced by Miller's Organic Farm, CDC is concerned that conditions may exist at the farm that may cause further contamination of raw milk and raw dairy products distributed by this company and make people sick.
- Raw milk is milk from cows or other animals that has not been pasteurized to kill harmful bacteria. This raw, unpasteurized milk can carry dangerous bacteria such as *Listeria*, *Salmonella*, *E. coli*, and *Campylobacter*, which are responsible for causing numerous foodborne illnesses and outbreaks.
- We recommend that people drink and eat only pasteurized dairy products (including soft cheese, ice cream, and yogurt).
  - Pasteurization is the process of heating milk to a high enough temperature for a long enough time to kill dangerous bacteria.
  - This is especially important for people at higher risk for foodborne illness: children younger than 5, pregnant women, adults 65 and older, and people with weakened immune systems.



March 17, 2016

#### Initial Announcement

CDC and several states are investigating an outbreak of *Listeria monocytogenes* infections (listeriosis). *Listeria* can cause a serious, life-threatening illness.

Public health investigators are using the PulseNet system to identify illnesses that may be part of this outbreak. PulseNet, coordinated by CDC, is the national subtyping network of public health and food regulatory agency laboratories. PulseNet performs DNA fingerprinting on *Listeria* bacteria isolated from ill people by using techniques called pulsed-field gel electrophoresis (PFGE) and whole genome sequencing (WGS). CDC PulseNet manages a national database of these DNA fingerprints to identify possible outbreaks.

#### Investigation of the Outbreak

Collaborative investigative efforts of state, local, and federal public health and regulatory officials indicate that raw milk produced by Miller's Organic Farm in Bird-In-Hand, Pennsylvania is the likely source of this outbreak. Raw milk is milk from cows or other animals that has not been pasteurized to kill harmful bacteria. This raw, unpasteurized milk can carry dangerous bacteria such as *Listeria*, *Salmonella*, *E. coli*, and *Campylobacter*, which are responsible for causing numerous foodborne illnesses and outbreaks.

In November 2015, samples of raw chocolate milk were collected from a raw milk conference held in Anaheim, California. The raw chocolate milk was produced by Miller's Organic Farm. The U.S. Food and Drug Administration (FDA) isolated *Listeria* from the raw chocolate milk and conducted WGS testing on the isolate to get more genetic information about the bacteria. On January 29, 2016, FDA informed CDC that WGS determined that the *Listeria* bacteria from the raw chocolate milk was closely related genetically to *Listeria* bacteria from two people in two states who got sick in 2014, one from California and one from Florida.

The age of ill people from California and Florida ranged from 73 to 81 years. Both ill people were hospitalized, and the ill person from Florida died as a result of listeriosis.

Once the two illnesses were identified in late January, public health officials worked over several weeks to interview them or their family members about the foods they may have eaten and other exposures in the month before their illness started. Interviews were conducted with the ill person from California and family members for both ill people. It was reported that both ill people drank raw milk before they got sick. The family of the deceased person in Florida reported purchasing raw milk from Miller's Organic Farm.

Raw milk and raw dairy products can pose severe health risks, including death, especially for people at higher risk for foodborne illness, including children younger than 5, pregnant women, adults 65 and older, and people with weakened immune systems. We recommend that people drink and eat only pasteurized dairy products. Learn more about the dangers of drinking raw milk at the [CDC Food Safety and Raw Milk website](#).

Because *Listeria* was recently found in raw milk produced by Miller's Organic Farm, we are concerned that contaminated raw milk and other raw dairy products from this company could still be on the market and make people sick.

This investigation is ongoing. CDC and state and local public health partners are continuing laboratory surveillance through PulseNet to identify additional ill people and to interview them. Updates will be provided when more information is available.

#### At a Glance:

- **Case Count: 2**
- **States: 2**
- **Deaths: 1**
- **Hospitalizations: 2**
- **Recall: No**

Miller's Organic Farm  
648 Mill Creek School Road  
Bird In Hand, PA 17505

US Department of Agriculture  
Paul J Flanagan  
Mellon Independence Center  
701 Market St. Suite 4100-C  
Philadelphia PA 19106

4-20-16

Re: Notice of Miller's Organic Farm to Sell and Market Products to Private Members Only in the Private Domain

Dear ~~Investigator~~ Paul Flanagan

This letter is our official notice to your agency concerning our First and Fourteenth Amendment Private Health Membership Association. This association will be marketing products to our private members only in the private domain. The U.S. Supreme Court has mandated and ruled in numerous cases that there exists a public domain and a private domain in the United States. Again, our private association and members have decided to operate also in the private domain only under the liberty clause of the right to due process of law under the Fifth Amendment of the U.S. Constitution.

As in N.A.A.C.P. v. Button, 371 U.S. 415 at 421, in the public domain, a person who advises another that his legal rights have been infringed and refers him to a particular attorney has committed a mala prohibita felony crime in the State of Virginia. But in the private domain of a First Amendment legal membership association, the state, "...in the domain of these indispensable liberties, whether of...association, the decisions of this Court recognize that abridgment of such rights." N.A.A.C.P. v. Button, supra at 421. The "modes of...association protected by the First and Fourteenth (are modes)



which Virginia may not prohibit. N.A.A.C.P. v. Button, supra at 415. In other words, a private mode or domain is protected and is a different domain than a public domain. What was a mala prohibita felony criminal act in the public domain became a legally protected act in the private domain or private association. A mala in se crime is not legally protected in the private domain or private association.

Also, the private domain is referred to as a "sanctuary from unjustified interference by the State" in Pierce v. Society of Sisters, 268 U.S. 510 at 534-535. And as a "constitutional shelter" in Roberts v. United States, 82 L.Ed.2d 462 at 472. And again as a "shield" in Roberts v. United States, supra at 474.

In addition, the U.S. Supreme Court in Thomas v. Collins, 323 U.S. 516 at 531, specifically refers to the "Domains set apart...for free assembly." The First Amendment right to association creates a "preserve" in Baird v. Arizona, 401 U.S. 1.

The private domain of an association is a sanctuary, constitutional shelter, shield, and domain set apart and a preserve according to a number of U.S. Supreme Court decisions.

Please be informed that Miller's Organic Farm is a 1<sup>st</sup> and 14<sup>th</sup> Amendment private health association that only has private contract members and does not involve public persons in any manner. Your Agency and others do not have jurisdiction or authority to even investigate our private health association unless you have some reasonable suspicion or evidence that our private members are being subjected to a clear and present danger of substantive evil within our private health association. We assure you that our private members are not being harmed in any manner. Your mandate from the Federal legislature is only to protect the public, not private members. Our right to set up a 1<sup>st</sup> and



14<sup>th</sup> Amendment private health association and the public member's right to change himself or herself into a legal private contract member of our associations has been upheld by numerous U.S. Supreme Court decisions. Also, you are hereby put on notice that any interference with our private association activities may result in a Federal Civil and Constitutional Rights lawsuit under Title 42 U.S.C. § 1983 by suing the persons involved in their "individual capacities" under Hafer v. Melo, 502 U.S. 25.

If your agency decides to defy the Supreme Law of the Land and U.S. Supreme Court as was done did in the case of Cooper v. Aaron, 358 U.S. 1. In Cooper v. Aaron, supra, the U.S. Supreme Court stated that,

'It follows that the interpretation of the Fourteenth Amendment enunciated by this Court...is the supreme law of the land and Art. 6 of the Constitution makes it of binding effect on the States "anything in the Constitution or Laws of any State to the contrary notwithstanding."

"Every state legislator and executive and judicial officer is solemnly committed by oath pursuant to Art. 6, cl. 3 to support this Constitution."

"No state legislator or executive or judicial officer can war against the Constitution without violating his (or her) undertaking to support it."  
The same principles also apply to federal.

Again, the U.S. Supreme Court has upheld First and Fourteenth Amendment association rights.

"This Court has repeatedly held that rights of association are within the ambit of the constitutional protections afforded by the First and Fourteenth Amendments. NAACP v. Alabama, 357 U.S. 449, 2 L.Ed.2d 1488, 78 S.Ct. 1163; Bates v. Little Rock, 361 U.S. 516, 4 L.Ed.2d 480, 80 S.Ct. 412; Shelton v. Tucker, 364 U.S. 479, 5 L.Ed.2d 231, 81 S.Ct. 247; NAACP v. Button, 371 U.S. 415, 9 L.Ed.2d 405, 83 S.Ct. 328. The respondent Committee does not contend otherwise, nor could it, for, as was said in NAACP v. Alabama (US) supra, 'It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.'" 357 U.S., at 460. Gibson v. Florida Investigation Committee, 9 L.Ed.2d 929.

Although most of these U.S. Supreme cases dealt with private legal membership associations, we know that this principle applies to private health and medical membership associations. In United Mine Workers v. Illinois State Bar Assoc., 389 U.S. 217, a private association case, the court stated that,

“And the rights of free speech and a free press are not confined to any field of human interest.” Thomas v. Collins, 323 U.S. 516 at 531, 65 S.Ct. 315, 89 L.Ed. at 441.”

“It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the “liberty” assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” 357 U.S. at 460. Gibson v. Florida Investigation Committee, supra.

“The First and Fourteenth Amendment rights of free speech and free association are fundamental and highly prized, and “need breathing space to survive.” NAACP v. Button, 371 U.S. 415, 433, 9 L.Ed.2d 405, 418, 83 S.Ct. 328. Gibson v. Florida Investigation Committee, supra.

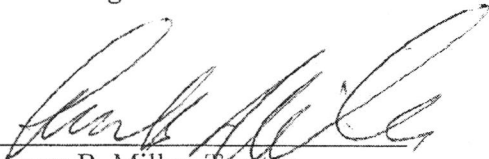
“It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. De Jonge v. Oregon, 299 U.S. 353, 364, 81 L.Ed. 278, 282, 57 S.Ct. 255, and therefore are united in the First Article’s assurance. Cf. 1 Annals of Congress, 759, 760. Thomas v. Collins, supra.

It is evident that free speech and association rights are similarly treated as the same. If your agency allows free speech, then it must allow freedom of association concerning this field of human interest.

Our intent is to operate under our First and Fourteenth Amendment private membership association to private members only unless you furnish us legal and valid objections to same within ten (ten) days from the receipt of this letter.

Sincerely,

**Miller's Organic Farm**

By   
Amos B. Miller, Trustee

Miller's Organic Farm  
648 Mill Creek School Road  
Bird In Hand, PA 17505

Notice to FDA Investigators

USDA, PDA,

You may not enter the premises unless you:

- 1.) Provide a copy of the official complaint founded upon probable cause.
- 2.) Provide a pre-administrative hearing.
- 3.) Provide proper answers to the Privacy Act and other required questions that must be responded to before the investigation begins.
- 4.) Declare this investigation to be quasi-criminal, not civil and the standard of review is clear and convincing evidence; not preponderance of evidence.
- 5.) Provide copies of oath of office and proof of filing for all officers and investigators involved in this case.

4-20-16

Date



Amos B. Miller, Trustee

## Notice of Cease and Desist

Dr. Lydia Johnson or to Whom It May Concern;

On May 11<sup>th</sup> 2016, you had a man deliver a crude copy of a facsimile titled "RE: Food Establishment".

In said letter you make the claim that I, Amos Miller, requested a meeting at the Pennsylvania Department of Agriculture (herein, PDA) building. You know this not to be true. On multiple occasions, the PDA employees have shown up on my private property unannounced, demanding that we give personal and private information directly related to this family and the families of our Private Membership Association.

You then threatened the use of force if we did not comply with your inspection of this Private Association that you have no authority over. It was only under these conditions, threats and harassment that we agreed to peacefully meet at your office.

In that meeting, we asked to audio record the conversation, to better understand the situation and for clarity of our discussion. You refused, stating that you did not trust us with what should have been a transparent honest dialogue and required by Pennsylvania Law. Trust goes both ways. You then threatened to bring your senior attorney to emphasize your position of concealment with regard to our meeting.

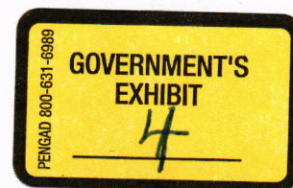
In your May 11<sup>th</sup> 2016 letter you stated that you answered all our questions. Once again, you know this not to be true. You answered only the questions that reinforced your position of enforcement against this Private Member Association, and when asked about the documentation regarding your reasons for illegal, forced, searches and seizures, your responses were always that you could not share that information with us.

Inside the letter you claimed that you provided us with applications for permit to obtain license permits required by the state of Pennsylvania, once again, you know this not to be true. You in fact gave said documents to a man that asked to see them for his personal reasons. We have not seen those documents, nor do we have or want them in our possession, ever.

Again, you threaten force by stating that you will once again return for this illegal inspection. We suspect, as you stated, in the meeting, you intend on an illegal forceful entry, search, and seizure. It is unfortunate that you have not allowed us to communicate with the Private Members of this Association and respond peacefully as we intended. If you would like to enter into a peaceful dialogue, where you will not refuse to answer legitimate questions, allow audio recordings of the proceedings for the Private members to listen and decide the best course of action, as required by Law. Stop threatening our Private Member Association with illegal force of your alleged Law that does not apply in reality. We would be willing to work towards an amicable strategy to ensure that our Private Member Association members are healthy, happy and safe.

We also object to your subject line in the May 11<sup>th</sup> letter "RE. Food Establishment". we are not a "Food Establishment" in your use of term, or described within your jurisdiction, which are licensed public facilities.

Miller's Organic Farm is a privately owned farm, which serves members of a Private Member Association. The members sign and adhere to a contractual agreement. We have provided you with that agreement previously, and we are attaching it once again, so you can review it and understand that we are a private entity. Our products are not sold in any public facility or available via any public arrangements, in any capacity.



Furthermore, you and your agency should be made aware of certain facts that may or may not be known to you.

First, we demand to record any hearing, and you are required make your own recordings. Due process requires the safeguard of the right to make a record of proceedings. Esteban V. Central Missouri State Collage, 277 F.Supp. 649; Mathews V. Eldridge, 424 U.S.319. The Supreme Court demands that your agency allow a record of the proceedings as does Pennsylvania Statutes,

Pa Title 2 § 504. Hearing and record.

No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be stenographically recorded and a full and complete record shall be kept of the proceedings.

How did Alfred V. Almanza of the UNITED STATES DEPARTMENT OF AGRICULTURE put that quote in their threatening SUBPOENA DUCES TECUM, we think it was, FAIL NOT, AT YOUR PERIL? No hearing, No valid SUBPOENA.

Moving right along, during the meeting, you and your agency refused to disclose the identity of any complaints and the Nature of the complaint with no legal or Lawful basis for this refusal. Your procedures require disclosure of a complaint, the right to face ones accusers come to mind.

*"A public official is a fiduciary toward the public where the person who appears before him or her has been subject to deliberately concealment material information from them; he or she is guilty of fraud."* US. V. Holzer, 816 F. 2d 304.

*"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior by the IRS. Our revenue system is based on the good faith of the taxpayer and the taxpayers should be able to expect the same from the government in its enforcement and collection activities. If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately."* U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

The agency's both state and federal in this case have obstructed justice by Misrepresentation for even serving this SUBPOENA.

*"Misrepresentation may consist of concealment of what is true as well as the assertion of what is false.... Disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what was disclosed is the whole truth."* State V. Coddington, 662 P.2d 155 (Ariz. Ct. App. (1983).

Because these agencies, both state and federal, have refused to respond to or answer certain questions concerning complaints any decision and orders made under the fraudulent agencies alleged investigation cannot stand. One cannot break the Law in an attempt to uphold the Law.

*"An agency of the government must scrupulously observe rules, regulations or procedures, which it has established. When it fails to do so, its action cannot stand and courts will strike it down."* United States ex rel. Accardi V. Shaughnessy, 347 U.S. 260, 74 S.Ct. 499, 98 L. Ed. 681; United States V. Heffner, 420 F. Ed.2d. 809; Service V. Dulles, 1 L.Ed. 2d 1403; Nelson V. I.N.S., 232 F. 3d 258.

These Agencies, both State and Federal, can no longer continue the illegal investigations of the Private Association known as Miller's Organic Farm as jurisdiction is totally lacking.

As Stated earlier;

Pa. Title 2 § 504. Hearing and record.

No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be stenographically recorded and a full and complete record shall be kept of the proceedings.

We demand this administrative hearing, before any court, real or imaginary, in Pennsylvania can have jurisdiction in what is clearly an agency claim involving registration and such, as we are not public, in any capacity, but, "Private" by Nature. This is what the agency hearing is to determine, before wasting the precious resources that being the courts time. Please provide the records and recordings. After this has been accomplished, only then will the court have jurisdiction and appellant jurisdiction, only.

Pa. Title 2 § 704. Disposition of appeal.

The court shall hear the appeal without a jury on the record certified by the Commonwealth agency. After hearing, the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter A of Chapter 5 (relating to practice and procedure of Commonwealth agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence. If the adjudication is not affirmed, the court may enter any order authorized by 42 Pa.C.S. § 706 (relating to disposition of appeals).

If any of the Federal agencies would like to move, they must first overcome; 5 U.S.c. § 554, (a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record "**after**" opportunity for an agency hearing, (b) Persons entitled to notice of an agency hearing shall be timely informed of—

- (1) the time, place, and nature of the hearing;
- (2) the legal authority and jurisdiction under which the hearing is to be held;

The FDA specifically under 5 U.S.C. as a federal agency and by their own rules under 21 U.S.C. § 335; "*Before any violation of this chapter is reported by the Secretary to any United States Attorney for institution of a Criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and opportunity to present his views, either orally or in writing with regard to such contemplated proceeding.*"

Notice it clearly states "BEFORE", so they cannot move the federal court, either without the agency hearing. In fact, the UNITED STATES ATTORNEY should have never even been Notified according to 21 U.S.C. § 335 and they cannot legally move this action anywhere either. No Administrative hearing, No compliance.

For a Pennsylvania, Federal or any court, real or imaginary, to move, at this point, with any search warrant or injunction would constitute a huge violation of Due Process of Law. Any office or officer thereof would subject himself or herself to litigation in where there will be no valid immunity or claim of desecration, for their actions, to hide behind, because you have been forewarned with this document, meaning, you do so knowingly and willingly and with Malice and forethought, judge your actions accordingly.

***"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but rather, should dismiss the action."*** Melo v. US, 505 F2d 1026

***"When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost."*** Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326

***"There is no discretion to ignore lack of jurisdiction."*** Joyce v. U.S. 474 2D 215

***"The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings."*** Hagans v. Lavine, 415 U. S. 533.

Judge your actions accordingly or FAIL NOT, AT YOUR PERIL.

Enclosing might we remind all involved; ***"Our system, fostered by the Commerce Clause, is that every farmer and every craftsmen shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargos will withhold his exports; and no foreign state will by customs, duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the founders; such has been the Doctrine of this court which has given it reality."*** H.P. Hood & Sons, Inc. V. Du Mond, 336 U.S. 525,, 539; 69 S. Ct. 657, 665; 93 L.Ed. 865 (1949); Dennis v. Higgins, 439; 11 S. Ct. U.S. Neb., (1991)

We have done no wrong to make right; however, we have been wronged. We are very forgiving People, to a point. Nevertheless, make no illusions of our intent to continue to do exactly what we are doing and we have every Lawful right to do so, again judge your actions accordingly. From this point forward anything that needs to be said, needs to be in writing or on a recorded record.

By my hand on this 23<sup>rd</sup> day of May 2016.

Private Farmer, 

Amos Miller



**Miller's Organic Farm 648 Millcreek School Rd, Bird-In-Hand PA. 17505 Ph.# (717) 556-0672**  
**( A Private Membership Association)**  
**Membership Contract**

I, \_\_\_\_\_, for membership fee paid in hand, do hereby apply for membership in Miller's Organic Farm, a private membership organization. With the signing of this membership agreement, I/we accept the offer made to become a member of Miller's Organic Farm and have read and agree with the following Declaration of Purpose from Article 1 of Miller's Organic Farm Articles of Association.

1. This association of members hereby declares that our main objective is to maintain and improve the civil rights, constitutional guarantees, and political freedom of every member and citizen of the United States of America. We believe that the Constitution of the United States is one of the best documents ever devised by man, and the signers of the Declaration of Independence did so out of love for their country.
2. We believe that the first Amendment of the Constitution of the United States of America guarantees our members the rights of free speech, petition, assembly, and the right to gather together for the lawful purpose of advising and helping one another in asserting our rights under the Federal and State Constitutions and Statutes.

IT IS HEREBY Declared that we are exercising our right of "freedom of association" as guaranteed by the 1<sup>st</sup> and 14<sup>th</sup> Amendment of the U. S. Constitution and equivalent provisions of the various State Constitutions. This means that our association activities are restricted to the private domain only.

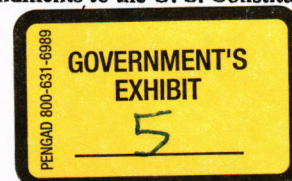
3. We declare the basic right of all of our members to select spokesmen from our number who could be expected to give wise counsel and advice concerning the need for and availability and access to food and to select from our number those members who are the most skilled to assist and facilitate the actual performance and delivery of products.
4. We proclaim the freedom to choose and decide for ourselves the types of products, services and methods that we think best for healthy eating and preventing illness and disease of our minds and bodies and for achieving and maintaining optimum wellness. We proclaim and reserve the right to include healthy food options that included but are not limited to cutting edge discoveries and farming practiced or used by any types of healers or therapists or practitioners the world over whether traditional or non-traditional, conventional or unconventional.
5. More specifically, the mission of our Association is to provide members with the highest level of food quality and most effective methods of producing said foods. We offer members these food options. Our Association understands that wellness has many dimensions and strives every day to stay on the leading edge of new technology that lead to better wholesome foods. The Association strives and provides the healthy food choices in the most effective means of delivery of these foods at an affordable fee. More specifically, the Association specializes in raw milk products and grass-fed meats and demands access to foods of our choice. The Association offers to members alternates to other type foods and as a service and benefit to members.
6. The Association will recognize any person ( irrespective of race, color, or religion ) who is in accordance with these principles and policies as a member, and will provide a medium through which its individual members may associate for actuating and bringing to fruition the purposes heretofore declared.

**MEMORANDUM OF UNDERSTANDING**

I understand that the fellow members of the Association that provide products and services, do so in the capacity of a fellow member and not in the capacity as a licensed wholesaler, retailer or provider. I further understand that within the association no wholesale/ retailer-customer relationship exists but only a contract member-member Association relationship. In addition, I have freely chosen to change my legal status as a public consumer/customer to a private member of the Association. I further understand that it is entirely my own responsibility to consider the recommendations and products offered to me by my fellow members and to educate myself as to the efficacy, risks, and desirability of same and the acceptance of the offered or recommended products and is my own carefully considered decision. Any request by me to a fellow member to assist me or provide me with the aforementioned recommendations or products is my own free decision in an exercise of my own rights and made by me for my own benefit, and I agree to hold the Trustee(s), staff and other worker members and the Association harmless from any unintentional liability for the results of such recommendations and products, except for harm that results from instances of a clear and present danger of substantive civil as determined by the Association, as stated and defined by the United States Supreme Court.

The Trustee and members have chosen Amos Miller as the person best qualified to perform services to members of the Association and entrust them to select other members to assist them in carrying out the service.

In addition, I understand that, since the Association is protected by the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the U. S. Constitution,



it is outside the jurisdiction and authority of Federal and State Agencies and Authorities concerning any and all complaints or grievances against the Association, any Trustee(s), members or other staff persons. All rights of complaints or grievances will be settled by an Association Committee and will be waived by the member for the benefit of the Association and its members. Because the privacy and security of membership records maintained within the Association, which have been held to be inviolate by the U.S. Supreme Court, the undersigned member waives complaint process. Any customer/consumer records kept by the Association will be strictly and **only** released upon written request of the member. I agree that violation of any waivers in this membership contract will result in a no contest legal proceeding against me. In addition, the Association does not participate in any insurance plans.

I agree to join the Association, a private membership association under common law, whose members seek to help each other achieve better health and live longer with good quality products.

I understand that the providers who are fellow members of the Association are offering me products, services and benefits that do not necessarily conform to conventional products on the market.

As a member, I accept the goals of helping my body function better and choosing food products that are very safe, realizing that no product testing is foolproof. Other aspects of informed consent will take place in my discussions with the providers and my fellow members of the Association.

My activities within the Association are a private matter that I refuse to share with State Medical Board(s), the FDA, FTC, State Milk Board(s), USDA, Agriculture Board(s) and any other governmental agency without my expressed specific permission. All records and documents remain as property of the Association, even if I receive a copy of them. I fully agree not to file a liability lawsuit against a fellow member of the Association, unless that member has exposed me to a clear and present danger of substantive evil. I acknowledge that the members of the Association do not carry liability insurance.

The Trustee(s) shall have the right to sanction a member upon unanimous vote of the Trustee(s), after a hearing of the facts where the member may be present after notification. The sanctions include removal from active membership or imposing any other special and necessary conditions upon any member who shall discredit or bring harm to the Association in any manner.

I enter into this agreement of my own free will or on behalf of my dependent without any pressure or promise of products. I affirm that I do not represent any State or Federal agency whose purpose is to regulate and approve products. I have read and understand this document, and my question have been answered fully to my satisfaction. I understand that I can withdraw from this agreement and terminate my membership in this association at any time. These pages and Article 1 of the article of association of the Association consist of the entire agreement for my in the Association and they supersede any previous agreement.

I understand that the membership fee entitles me to receive those benefits declared by the Trustee(s) to be "general benefits" free of further charge. I agree to pay as levied those benefits that I receive that are declared by the Trustee(s) to be "special assessments", per fee schedule.

**I enclose the sum of \$ 35.00 (non-refundable) as consideration for my lifetime membership contract, "lifetime" meaning the lifetime of the membership association, said term beginning with the date of the signing of this contract, and by these presents do hereby certify, attest and warrant that I have carefully read the above and foregoing Miller's Organic Farm Contractual Application for membership, and I fully understand and agree with the same. Return signed contract along with the \$35.00 membership fee payable to; Miller's Organic Farm 648 Mill Creek School Rd. Bird-In-Hand PA. 17505 and wait one week for a phone call to welcome you to the club.**

IN WITNESS WHEREOF I set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016

**Member's Name** ( please print legibly) (and name of legal guardian if applicant under 18 years)

X \_\_\_\_\_

**Member's Signature** (and name of legal guardian if applicant under 18 years)

X \_\_\_\_\_

**Members address and contact**

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip code \_\_\_\_\_

Phone \_\_\_\_\_ email address \_\_\_\_\_

Miller's Organic Farm fills in below information.

By \_\_\_\_\_ Method of payment \_\_\_\_\_

Approved and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2016

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA,</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	<b>NO. 16-cv-</b>
<b>v.</b>	:	
	:	
<b>MILLER’S ORGANIC FARM and AMOS MILLER,</b>	:	
	:	
<b>Defendants.</b>	:	

**MEMORANDUM OF LAW SUPPORTING COMPLAINT  
TO ENFORCE ADMINISTRATIVE SUBPOENA *DUCES TECUM***

Plaintiff United States of America, on behalf of the United States Department of Agriculture (“USDA”), respectfully submits this memorandum of law in support of its Complaint in this action. The Complaint seeks to enforce the USDA’s April 2016 administrative subpoena to Miller’s Organic Farm and its owner and operator, Amos Miller, because these defendants refused to comply with the subpoena. Authority to enforce the subpoena in this action exists under Section 9 of the Federal Trade Commission Act, 15 U.S.C. § 49, as incorporated by Section 407 of the Federal Meat Inspection Act (the “Meat Act”), 21 U.S.C. § 677, and Section 22 of the Poultry Products Inspection Act (the “Poultry Act”), 21 U.S.C. § 467d.

**BACKGROUND**

As set forth more fully in the Complaint, the Secretary of Agriculture (the “Secretary”) is reviewing Miller’s Organic Farm and Mr. Miller to assess and ensure their compliance with USDA laws and regulations. See Complaint, Exhibit “B” (Declaration of Paul Flanagan), at ¶ 13-33. The Food Safety and Inspection Service (“FSIS”), a public health agency within the USDA that is charged with ensuring compliance with the Meat Act and the Poultry Act, is

performing that review for the Secretary. Id. ¶¶ 1, 4, 12-33. The review particularly concerns whether meat, meat products, poultry, and poultry products are being handled at -- and distributed from -- Miller's Organic Farm in compliance with the Meat Act, as amended, 21 U.S.C. § 601 et seq.; the Poultry Act, as amended, 21 U.S.C. § 451, et seq.; and the regulations issued under those statutes, 9 C.F.R. §§ 301 et seq. and 381 et seq.<sup>1</sup> Flanagan Decl. ¶¶ 4-11, 14-19, 23, 31-32.

Miller's Organic Farm is a Lancaster County, Pennsylvania farm that includes: (1) a dairy; (2) meat and poultry slaughtering operations; and (3) a retail store. Retail sales (including of raw milk, meat, and poultry products) are made to purchasers at and from the farm store not only in-person but also by telephone and through a web site. See Flanagan Decl. ¶ 12; see also, e.g.: (1) <http://www.millersorganicfarm.com/> (Miller's Organic Farm website); (2) <http://www.myhealthyfoodclub.com/assets/images/Docs/farm-food-price-list.pdf> (May 2016 farm price list and ordering information) (downloaded on June 1, 2016 and attached to Flanagan Decl. as Exhibit "1"). The farm ships the meat, poultry, and other products that are ordered and sold by telephone or internet either directly to purchasers' addresses through FedEx or to multiple pick-up locations throughout the United States. Flanagan Dec. ¶ 12 & Exhibit "1" thereto (May 2016 farm price list, at p. 2).

---

<sup>1</sup> Congress enacted the Meat Act and the Poultry Act to protect the health and welfare of consumers by assuring that meat and poultry food products that are intended for human consumption -- and that are sold, transported, or distributed in interstate commerce -- are wholesome, not adulterated, and properly marked, labeled, and packaged. See 21 U.S.C. §§ 451, 602. The statutes contain prohibited acts provisions that strictly proscribe, among other things: (1) the slaughter or preparation of cattle, sheep, swine, goats, poultry, and other species, carcasses, and parts except in strict compliance with USDA laws; and (2) the sale, transport, or offer for sale or transportation adulterated or misbranded carcasses, parts, or meat or poultry products. See 21 U.S.C. §§ 458, 610. The Meat Act and Poultry Act authorize civil sanctions to enforce, prevent, and restrain violations of the Acts, and also provide for criminal penalties. See 21 U.S.C. §§ 461, 467c, 674, 676.

In his discussions and correspondence with FSIS, and consistent with publications on his farm's website, Mr. Miller has stated that Miller's Organic Farm operates as a "private membership association" and that all of its sales are made only: (1) to its members; and (2) after they pay a one-time \$35 membership fee and sign a membership agreement. See Flanagan Decl. ¶¶ 16, 19-21, 24-25, 28-30 & Exhibits "1," "3," "4," and "5" thereto; see also <http://www.myhealthyfoodclub.com/assets/images/Docs/MillersOrganicFarmMembershipContract.pdf> (internet version of Miller's Organic Farm membership agreement). The terms of that agreement include the following:

I understand that, since the Association is protected by the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution, it is outside the jurisdiction and authority of Federal and State Agencies and Authorities concerning any and all complaints or grievances against the Association, any Trustee(s), members or other staff persons. All rights of complaint or grievances will be settled by an Association Committee . . . . My activities within the Association are a private matter that I refuse to share with State Medical Board(s), the FDA, FTC, State Milk Board(s), USDA, Agriculture Board(s) and any other governmental agency without my expressed specific permission. All records and documents remain as property of the Association, even if I receive a copy of them.

See Flanagan Decl. ¶ 29 and Exhibit "5" thereto at p. 1-2.

Unpasteurized milk and milk products contain a wide variety of harmful bacteria, including *Listeria monocytogenes* ("*L. mono*"). Epidemiological studies have established a direct link between the consumption of unpasteurized milk and gastrointestinal illness. Federal and state agencies have documented a long history of the risks to human health associated with the consumption of unpasteurized milk and have expressly advised consumers about the dangers of drinking unpasteurized milk. In the words of one court, "[i]t is undisputed that all types of raw milk are unsafe for human consumption and pose a significant health risk." Public Citizen v.

Heckler, 653 F. Supp. 1229, 1241 (D.D.C. 1986), cited in United States v. Allgyer, 2012 WL 355261, at \*3 (E.D. Pa. Feb. 3, 2012).

*L. mono* is the bacterium that causes the disease listeriosis. Listeriosis is most commonly contracted by eating food contaminated with *L. mono*. Listeriosis can be serious, even fatal, for high-risk groups such as unborn babies, newborns, and those with impaired immune systems. The most serious forms of listeriosis can result in meningitis and septicemia. Pregnant women may contract flu-like symptoms from listeriosis, and complications from the disease can result in miscarriage, or septicemia in the newborn. Unlike many other foodborne microbes, *L. mono* bacteria are capable of adapting and growing even at refrigerator temperatures. *L. mono* is also capable of surviving and growing under other adverse conditions, such as high salt or high acid (low pH) conditions. Thus, the presence of *L. mono* in ready-to-eat foods is a particularly significant public health risk. See, e.g., <http://vm.cfsan.fda.gov/~mow/chap6.html> (FDA's Center for Food Safety & Applied Nutrition, Foodborne Pathogenic Microorganisms and Natural Toxins Handbook, Section on "*Listeria monocytogenes*").

In 2011, the United States filed an action in this Court seeking an "Administrative Warrant for Inspection" of Miller's Organic Farm. See In the Matter of Miller's Organic Farm, EDPA No. 11-mj-586 (Magistrate Judge Wells). The United States sought the inspection warrant on behalf of a different federal agency (the Food and Drug Administration, or "FDA") and under a different statute (the federal Food Drug & Cosmetic Act, or "FDCA") from those that are at issue in this case. The United States did so because: (1) Amos Miller had denied an FDA investigator access to his farm (Mr. Miller had told FDA both that "only . . . members of [his] 'food club' [were allowed] to inspect his farm" and that he would not allow inspection without a warrant or judge's order); and (2) the FDA had "reason to believe" that the farm was

“engaged in the processing, packaging, holding and shipment of milk in interstate commerce.”

See Id. at Dkt. Entry No. 1 (attached Declaration at ¶¶ 1, 6-7). Inspection later occurred after Magistrate Judge Wells issued the requested warrant. See, e.g., Id., Dkt. Entry No. 2.

FSIS began to focus on Miller’s Organic Farm in March 2016 based on a March 18, 2016 internet posting by the federal Centers for Disease Control and Prevention (“CDC”). Flanagan Decl. ¶ 13 & Exhibit “2” thereto. That CDC posting stated in part that:

a. In 2014 an individual in Florida and an individual in California became infected with *L. mono* (listeriosis). Their ages ranged from 73 to 81. Both were hospitalized as a result, and the Florida individual died from the infection.

b. The FDA and the CDC then investigated the two incidents. In interviews with family members, the investigators learned that both individuals drank raw milk before getting sick, and that the Florida individual’s family purchased raw milk from Miller’s Organic Farm.

c. The FDA collected *Listeria* bacteria from the two infected individuals and, in November 2015, obtained samples of raw chocolate milk from Miller’s Organic Farm. (The samples were purchased at a raw milk conference in California.) Those raw milk samples contained *Listeria* bacteria.

e. The FDA compared, through whole genome sequencing: (i) the *Listeria* bacteria from the two infected individuals from California and Florida; to (ii) the *Listeria* bacteria found in the November 2015 raw milk samples.

f. In late January 2016, the FDA reported to CDC that: (i) the bacteria from the two individuals were “closely related genetically” to the November 2015 Miller’s Organic Farm raw milk samples; and (ii) Miller’s Organic Farm is the “likely source” of the listeriosis

infections that the two individuals suffered in 2014. See Flanagan Decl. ¶ 13 & Exhibit “2” thereto; see also <http://www.cdc.gov/listeria/outbreaks/raw-milk-03-16/> (March 18, 2016 CDC web notice).

The CDC’s web post added that: (1) “CDC is concerned that conditions may exist at [Miller’s Organic Farm] that may cause further contamination of raw milk and raw dairy products distributed by this company and make people sick”; and (2) “This investigation is ongoing. CDC and state and local public health partners are continuing laboratory surveillance . . . to identify additional ill people and to interview them.” Id.

The CDC’s web post raised concerns for FSIS -- in light of the agency’s mission under the Meat Act and the Poultry Act -- when, at about the same time, FSIS also learned that Miller’s Organic Farm was slaughtering, processing and selling meat, meat food products, poultry, and poultry food products. All of this raised public health risk concerns for FSIS about possible bacterial cross-contamination from raw milk to poultry and meat and related products that are produced and sold at the farm. Flanagan Decl. ¶ 14.

In follow-up, FSIS attempted to conduct what is known as a “verification review” at Miller’s Organic Farm. By way of legal background, even if Miller’s Organic Farm were somehow able to establish that it should be exempt from USDA daily inspection and approval requirements that apply to what are known “federal establishments,” the farm’s facilities that are involved with slaughtering and processing of meat, meat products, poultry, and poultry products would still be (and are) subject to periodic FSIS inspection and records reviews and inquiries. These verification reviews seek to ensure that subject facilities are in compliance with the Meat Act, the Poultry Act, and the regulations under those statutes that relate to sanitation, recordkeeping, labeling, custom exemption, retail exemption, and other requirements. See



Flanagan Decl. ¶¶ 5-9, 15; see also 21 U.S.C. § 642 (providing that facilities must “upon notice by a duly authorized representative of the Secretary, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof”); 21 U.S.C. § 460; 9 C.F.R. § 320.4.

Verification reviews may involve FSIS veterinarians, consumer safety officers, investigators, and other program employees. Further, the reviews may include an examination of sanitation and facilities; water supply; sewage and waste disposal; pest control; inedible material control; marking and labeling; recordkeeping; and compliance with custom exemption requirements. Flanagan Decl. ¶ 8. Such reviews fulfill the agency’s mission to ensure that meat and poultry food products that are intended for human consumption -- and for sale, transportation, or distribution in interstate commerce -- are safe, wholesome, not adulterated, and correctly marked, labeled, and packaged.<sup>2</sup> Id. ¶¶ 4, 9-11. Congress has authorized such reviews even for wholly Pennsylvania intrastate meat and poultry slaughtering and processing operations (i.e., where the resulting meat and poultry products never leave the Commonwealth of Pennsylvania). See Complaint, ¶¶ 17-21 (summarizing law).

When FSIS attempted to conduct a verification review at Miller’s Organic Farm on March 22, 2016, Mr. Miller denied FSIS access to his farm facilities and records because he characterized the farm as being a “private membership association” and thus non-public in nature. He directed FSIS to return only with a warrant. Flanagan Decl. ¶¶ 15-16.

On April 4, 2016, the FSIS Administrator issued a subpoena *duces tecum* under Section 406 of the Meat Act, 21 U.S.C. § 677, and Section 22 of the Poultry Act, 21 U.S.C. § 467d.

---

<sup>2</sup> When verification reviews show unsanitary conditions or other noncompliance, FSIS applies its authorities under the Meat Act and the Poultry Act to control and detain adulterated and misbranded product. See 21 U.S.C. §§ 467A, 672. See also Flanagan Decl. ¶ 9.

Flanagan Decl. ¶¶ 17, 18, 22; see also Complaint, Exhibit “A” thereto (Subpoena) at p. 3. The subpoena commanded Mr. Miller and Miller’s Organic Farm to provide FSIS access to relevant farm facilities and business records, as required by Section 202 of the Meat Act, 21 U.S.C. § 642, and Section 11 of the Poultry Act, 21 U.S.C. § 460.

On April 13, 2016, an FSIS investigator, Mr. Flanagan, served the subpoena on Mr. Miller by hand delivery. Flanagan Decl., ¶¶ 19-20, 22. In stating to the investigator on that date that he would not comply with the subpoena, Mr. Miller again invoked his farm’s “private,” non-public character as a shield against FSIS enforcement of the Meat Act and the Poultry Act. Id. ¶¶ 19-21. He made similar arguments in follow-up written and oral communications with FSIS in April and May 2016, and he continued to deny access to FSIS absent: (1) a court order or warrant; and (2) FSIS investigators signing a copy of his farm’s private membership agreement. Flanagan Decl. ¶¶ 24-25, 27-29 & Exhibits “3,” “4,” and “5” thereto.

As a result of this history, and Mr. Miller’s contentions that the USDA lacks any jurisdictional and constitutional basis to review the Miller’s Organic Farm facilities and records, FSIS concluded that, without a court order, Mr. Miller would not permit FSIS to enter his property to conduct a verification review. FSIS was therefore forced to initiate this enforcement action. Flanagan Decl. ¶ 31.

### ARGUMENT

#### **DEFENDANTS SHOULD BE ORDERED TO COMPLY WITH THE SUBPOENA.**

##### **A. The USDA’s administrative subpoena should be enforced.**

Subpoenas that FSIS issues to enforce the Meat Act and the Poultry Act are not self-enforcing. Rather, FSIS must obtain authority to enforce them from the federal district court. Such an enforcement action, as here, is a summary proceeding in which the Court plays a

“strictly limited role.” See 21 U.S.C. §§ 467c, 467d, 674, 677; United States v. O’Neill, 619 F.2d 222, 228 (3d Cir. 1980); United States v. Philadelphia Hous. Auth., 2011 WL 382765, at \*1 (E.D. Pa. Feb. 4, 2011); EEOC v. Sunoco, Inc., 2009 WL 197555, at \*2 (E.D. Pa. Jan. 26, 2009); United States v. Nour Halal Meat Distrib., 505 F. Supp. 2d 275, 279 (W.D. Pa. 2007).

In determining whether to enforce administrative subpoenas, the courts have generally reviewed the criteria that apply to judicial enforcement of Internal Revenue Service summonses, as set forth in United States v. Powell, 379 U.S. 48, 57-58 (1964). See EEOC v. Kronos, Inc., 620 F.2d 287 (3d Cir. 2010); U.S. v. Philadelphia Hous. Auth., 2011 WL 382765, at \*1. Under these criteria, which are embodied in this Court’s Local Rule of Civil Procedure 4.1.2, the USDA here “must show [1] that the investigation will be conducted pursuant to a legitimate purpose, [2] that the inquiry may be relevant to the purpose, [3] that the information sought is not already within the . . . [Secretary’s] possession, and [4] that the administrative steps required . . . have been followed[.]” Powell, 379 U.S. at 57-58; U.S. v. Philadelphia Hous. Auth., 2011 WL 382765, at \*1 (rephrasing these criteria as “(1) the subpoena is within the statutory authority of the agency; (2) the information sought is reasonably relevant to the inquiry; and (3) the demand is not unreasonably broad or burdensome”), quoting United States v. Westinghouse Elec. Corp., 788 F.2d 164, 166 (3d Cir. 1986); accord Chao v. Community Trust Co., 474 F.3d 75, 79 (3d Cir. Mar. 7, 2007) (characterizing this last criterion as: “the demand for production must not be too indefinite”). Such a government showing constitutes a *prima facie* case for enforcement of the subpoena. See Nour Halal Meat Distrib., 505 F. Supp. 2d at 279.

Once the government makes this showing, the opposing party bears the burden of establishing that the subpoena should not be enforced. See Powell, 379 U.S. at 58; United States v. LaSalle Nat’l Bank, 437 U.S. 298, 315 (1978); U.S. v. Philadelphia Hous. Auth., 2011 WL

382765, at \*3 (“The burden of demonstrating that a demand is unreasonable falls upon the subpoenaed party. The burden is not easily met when the agency inquiry ‘is authorized by law and the materials sought are relevant to the inquiry’” because “[a]gencies are accorded ‘extreme breadth’ in conducting their investigation”) (citations omitted); Nour Halal Meat Distrib., 505 F. Supp. 2d at 280-81 (a “heavy” “burden . . . shifts to Defendants to show” by affidavit rather than merely by legal conclusions and memoranda “that the Subpoena is overly broad, burdensome, or that its enforcement would constitute an abuse of the court’s process” such as “to harass the respondent or to put pressure on him to settle a collateral dispute”) (also stating that “[i]f Defendants fail to carry their burden, it is the Court’s duty to enforce the terms of the Subpoena”), citing FTC v. Standard Am., Inc., 306 F.2d 231, 234-35 (3d Cir. 1962).

Each of the Powell criteria is satisfied here.

First, FSIS seeks the records and access for a legitimate purpose. That purpose is FSIS’ effort to ascertain whether Miller’s Organic Farm is in compliance with the Meat Act, the Poultry Act, and applicable related regulations governing the safe handling of poultry and meat products. Flanagan Decl., ¶¶ 14-15, 17-19, 32. FSIS issued the subpoena within its statutory and regulatory authority. As the subpoena states, it was issued under Section 9 of the Federal Trade Commission Act, 15 U.S.C. § 49, which also authorizes enforcement by this Court. Section 9 applies to the Secretary’s jurisdiction, powers, and duties in enforcing the provisions of the Meat Act and the Poultry Act. See 21 U.S.C. § 677; 21 U.S.C. § 467d; see also Flanagan Decl. ¶¶ 18, 22; Complaint, Exhibit “A” thereto (Subpoena) at p. 3. This includes USDA authority to issue administrative subpoenas to obtain information and records that are necessary to the efficient administration and enforcement of the Acts. See 21 U.S.C. §§ 467d, 677.

Second, the kinds of records and access that FSIS seeks are “relevant” to the agency’s legitimate purpose in seeking them. As discussed above, even “custom exempt” slaughtering and meat processing facilities must comply with sanitation, recordkeeping, and other USDA regulations. FSIS is charged with enforcing these requirements, and as part of its mission is entitled to inspect Miller’s Organic Farm and its records to ensure compliance. Defendants’ refusal to permit access to Miller’s Organic Farm or to provide the requested records necessitated the April 4, 2016 issuance of the subpoena and the initiation of this proceeding to enforce it. Flanagan Decl. ¶¶ 15-31. Access to Miller’s Organic Farm will enable FSIS to examine the farm’s facilities to ensure that they are in compliance with sanitation, custom exempt, and other requirements, and to examine the farm’s records to determine whether Miller’s is in compliance with recordkeeping, custom exempt, and other requirements and applicable regulations. Flanagan Dec. ¶¶ 8, 17-19, 23, 31-32.

Third, FSIS has never been afforded access to Miller’s Organic Farm and is not in possession of the documents that that the subpoena seeks and that defendants have failed to make available to FSIS. Flanagan Decl. ¶ 33.

Fourth, FSIS has taken all administrative steps necessary for the issuance of the subpoena. Investigator Flanagan served the subpoena on Amos Miller by hand on April 13, 2016, under 7 C.F.R. § 1.29. Flanagan Decl. ¶ 22.

Additionally, the subpoena request for access to Miller’s Organic Farm’s facilities and records is not unreasonably broad or burdensome. Rather, consistent with FSIS’ public health and safety mission, and the concerns that came to the agency’s attention in March 2016, the subpoena states that: (1) physical access is required for buildings and facilities “used for the slaughter of livestock, or the handling, storage, transportation of meat or poultry products,

including all compartments, rooms and spaces, including trailers, product containers, outbuildings of any kind, and/or storage area(s) located thereon”; and (2) document access is required for “business records . . . pertaining to meat and poultry products produced, received, handled, transported and sold, for the period January 1, 2016 to present,” including categories of documents that the subpoena described in greater detail. See Flanagan Decl. ¶¶ 17-18; Complaint, Exh. “A” (Subpoena) at pp. 1-3.

Because the government has satisfied the Powell criteria and thus made out a *prima facie* case for subpoena enforcement, defendants bear the burden of establishing that enforcement would constitute an abuse of the Court’s process. Powell, 379 U.S. at 58. To date, defendants have offered no defensible reason for their failure to comply with the subpoena, and they are not able to meet their burden.

**B. Defendants cannot meet their Powell burden.**

**1. “Private membership association” status does not shield defendants from FSIS oversight.**

Based on his various communications with the government and the information published on his farm’s website, Mr. Miller will likely contend that Miller’s Organic Farm’s status as a private membership association places the farm, and him, beyond the jurisdiction of the Meat Act, the Poultry Act, the USDA, FSIS, and the Court. See Flanagan Decl. ¶¶ 16, 19-21, 24-30 & Exhibits “3,” “4,” and “5” thereto.

For several reasons, however, Mr. Miller and his farm cannot evade the law by forming a contractual relationship with members of his private membership association.

First, the Meat Act and the Poultry Act do not recognize an exception -- based on the nature of the contractual relationship between producer and end user -- either to the USDA’s/FSIS’ inspection and review authority or to these Acts’ clear prohibitions on the sale of

adulterated or misbranded meat and poultry products. See generally Wedgewood Village Pharmacy, Inc. v. United States, 421 F.3d 263, 273 (3d Cir. 2005) (holding that FDA has authority to inspect to determine if it has jurisdiction over establishment, and finding that FDA does not need to rely on firm's claim that it is excepted from FDA's inspection authority). Arguments for such an exception in the context of the FDCA have been advanced and rejected by several district courts.

For example, in United States v. Allgyer, 2012 WL 355261 (E.D. Pa. Feb. 3, 2012), Judge Lawrence Stengel of this Court granted summary judgment in favor of the government against the owner of a Lancaster County farm that distributed raw milk in interstate commerce and had resisted FDA inspection. Although the owner invoked constitutional protections based on his milk buyers being limited to members of his private membership cow sharing group, Judge Stengel rejected this defense and stressed:

The contract between [the owner] and persons entering into a cow sharing agreement is merely a subterfuge to create a transaction disguised as a sale of raw milk to consumers. The practical result of the arrangement is that consumers pay money to [the owner] and receive raw milk, which is transported across state lines and left at a 'drop point.' As such, despite any artful language, the agreement involves the transfer of raw milk for consideration, which constitutes a sale and is lawfully regulated by the FDA.

Allgyer, 2012 WL 355261, at \*1, 4-5 & n. 15. See also, e.g. United States v. Cole, 84 F. Supp. 3d 1159, 1170 (D. Or. 2015) (characterizing "private membership association" as an attempt to "flout any injunction" to enforce the FDCA); United States v. Travia, 180 F. Supp. 2d 115, 120-21 (D.D.C. 2001) (rejecting argument that the FDCA did not apply to "private behavior"). Accord Lytle v. HHS, 612 Fed. Appx. 861 (8th Cir. Aug. 21, 2015) ("That a product is sold

through a PMA [private membership association] does not exempt it from the application of this [FDCA] provision”).<sup>3</sup>

Second, an individual cannot exempt himself from the reach of federal law through the use of private contracts. Such attempts run afoul of well-established law that a contract entered in violation of federal statutory or regulatory law is unenforceable. See, e.g., United Paperworkers Int’l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 42 (1987).

Third, wholly without merit or foundation is any argument that Mr. Miller’s or his farm’s conduct is: (1) “non-commercial” or otherwise exempt from regulation under the Meat Act and the Poultry Act because the conduct has a *de minimis* impact on interstate commerce or is wholly intrastate (as noted in the Complaint at ¶¶ 17-21, the Meat Act and Poultry Act in relevant part apply even to wholly Pennsylvania intrastate slaughtering and processing activity); and (2) somehow outside the reach of the federal government’s Commerce Clause authority.

The Constitution grants Congress broad authority to “regulate Commerce . . . among the several States,” U.S. Const. art. I, § 8, cl. 3. Congress may “regulate the *channels* of interstate commerce”; it may “regulate and protect the *instrumentalities* of interstate commerce, and persons or things in interstate commerce”; and it may “regulate activities that substantially affect interstate commerce.” Gonzales v. Raich, 545 U.S. 1, 16-17 (2005) (italics added); United States v. Regenerative Sciences, LLC, 741 F.3d 1314, 1320 (D.C. Cir. 2014). The Supreme Court has instructed that courts “need not determine whether [the] activities, taken in the aggregate,

---

<sup>3</sup> See generally Farm-to-Consumer Legal Def. Fund v. Wisconsin Dep’t of Agric., Trade and Consumer Prot., 855 N.W.2d 720, ¶ 41 (Wis. Ct. App. 2014) (finding that contractual arrangement via private membership association “was created for the sole purpose of producing and selling unpasteurized milk to members [of the association], in violation of [state law]” and was thus invalid attempt to facilitate illegal sale of unpasteurized milk to consumers); Meadowsweet Dairy, LLC v. Hooker, 71 A.D.3d 1266, 1269 (N.Y. App. Div. 2010) (private membership association created to provide members with shares in daily farm in order to receive unpasteurized milk as “dividends” held subject to regulations over adulterated and misbranded food because it was “purposely designed to avoid cash sales of dairy products in an attempt to circumvent” state law).



substantially affect interstate commerce in fact, but only whether a ‘rational basis’ exists for so concluding” that there is a substantial effect. Gonzales, 545 U.S. at 22. Indeed, “when a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence.” Id. at 17 (internal quotations and citations omitted).

There is no exception to the commerce power for the sorts of transactions between “private” individuals that Mr. Miller has described to FSIS. Nor is there an exception for activities that only incidentally affect commerce. Rather, Congress’ commerce power is expansive, even permitting government regulation of products that are produced and consumed wholly within one’s home -- as long as there is some nexus to interstate commerce. See generally Wickard v. Filburn, 317 U.S. 111 (1942) (holding commerce power authorizes Congress to regulate farmer’s production of wheat intended solely for his own consumption and not placed into interstate commerce); see also United States v. Regenerative Sciences, LLC, 741 F.3d 1314, 1320-21 (D.C. Cir. 2014) (use of single component shipped in interstate commerce is sufficient to trigger FDCA provisions). Indeed, even the “transportation of one’s own goods from state to state is interstate commerce.” United States v. Hill, 248 U.S. 420, 424 (1919). See generally Daily v. Veneman, 2002 WL 31780191, at \*4 (6th Cir. Dec. 3, 2002) (affirming dismissal of State of Ohio’s Commerce Clause challenge to Meat Act and Poultry Act, and stating: “Congress’s power to regulate things in interstate commerce surely includes the power to ensure that a commodity does not become a thing in interstate commerce; and meat and poultry products that are sold in intrastate commerce, when considered in the aggregate, have a substantial [e]ffect on interstate commerce”)

The Meat Act and the Poultry Act are proper exercises of Congress' commerce power.<sup>4</sup> See, e.g., Pittsburgh Melting Co. v. Totten, 248 U.S. 1, 8 (1918) (“The enactment of the [Meat Act] was within the power of Congress in order to prevent interstate or foreign shipments of impure or adulterated meat food products”). In amending the Meat Act and the Poultry Act, Congress expressly found that -- because of the nature of meat, meat food products, poultry, and poultry products -- “all articles and” animals/poultry “which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce, and that regulation by the Secretary [of Agriculture]. . . as contemplated by this chapter [is] appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers.” 21 U.S.C. § 451, 602. See generally United States v. Mullens, 583 F.2d 134, 139 (5th Cir. 1978) (“The purpose of the Meat Act . . . as amended . . . is to ensure a high level of cleanliness and safety in meat products. Such a purpose is certainly legitimate and within the power of the federal Government under the commerce clause”).

The at-issue conduct of Mr. Miller and Miller's Organic Farm is indisputably commercial, is connected to commerce (both intrastate and interstate), and falls squarely under the Meat Act and the Poultry Act. For example:

- in addition to in-person sales at Miller's Organic Farm, the farm's web page provides instructions on how the farm's raw milk, poultry, and meat products can

---

<sup>4</sup> See generally 35A Am. Jur. Food § 5 & nn. 1-2, 4-5, 8-9 (Feb. 2016) (“The authority of the federal government to regulate food rests upon the power of Congress to regulate interstate commerce. Congress may enact federal legislation to keep interstate commerce free from deleterious, adulterated, and misbranded articles of specified types to advance the public health and safety and has done so by such legislation as the [Poultry Act and the Meat Act]. . . . These acts and similar legislation insure that products desired by consumers are made available to them in a form and manner consistent with the public health and welfare. . . . The Secretary of Agriculture is authorized to promulgate regulations pursuant to these [Acts].”) (footnotes and citations omitted).

be ordered by telephone, paid for, and then shipped by FedEx to purchasers' addresses. See Flanagan Decl. ¶ 12 and Exhibit "1" thereto.

- Miller's Organic Farm transports such products for sale to pick-up locations throughout the United States. See Flanagan Decl. ¶ 12 and Exhibit "1" thereto.
- As the March 18, 2016 CDC web posting stated, Miller's raw milk samples were purchased in 2015 at a raw milk conference in California. See Flanagan Decl. ¶ 13 & Exhibit "2" thereto.

Any Miller's Organic Farm misbranded or adulterated meat or poultry products would be illicit products that the Meat Act and the Poultry Act would prohibit from moving through commerce. See, e.g., Hipolite Egg Co. v. United States, 220 U.S. 45, 57 (1911) ("We are dealing, it must be remembered with illicit articles, -- articles which the law seeks to keep out of commerce"). See generally Allgyer, 2012 WL 355261, at \*1, 4-5 & n. 15 ("The practical result of the [private membership] arrangement is that consumers pay money to [the owner] and receive raw milk, which is transported across state lines and left at a 'drop point.' As such, despite any artful language, the agreement involves the transfer of raw milk for consideration, which constitutes a sale and is lawfully regulated by the FDA").

In sum, because Mr. Miller has chosen to operate in a pervasively regulated industry (selling meat and poultry products), he is subject to the Meat Act and the Poultry Act, including their inspection and record-keeping requirements. See United States v. Pine Valley Poultry Distributors Corp., 187 F. Supp. 455, 456-57 (S.D.N.Y. 1960) (in Poultry Act proceeding, stating that: "The power of Congress to require those engaged in a business affected with a public interest to keep records subject to inspection by an administrator in order to secure enforcement

of the law is not open to constitutional objection. Thus, the books and records so kept are not private papers or records, but assume the characteristics of public or quasi-public documents”).

**2. Enforcement of FSIS’ subpoena does not infringe defendants’ Constitutional rights.**

Mr. Miller has suggested that subpoena enforcement would violate his First Amendment rights to association and free speech, as well as possibly his Fourth Amendment rights protecting him from unreasonable searches and seizures. See Flanagan Decl. ¶¶ 20-21, 25, 28-29 & Exhibits “3,” “4,” and “5” thereto.

Mr. Miller and his farm have no such First Amendment rights. Freedom of speech and association does not include freedom to violate the USDA facility and document review provisions of the Meat Act and the Poultry Act. To the extent that Mr. Miller complains that these Acts impair his private membership association contract, such a result is constitutionally permissible because “Congress . . . undeniably[] has authority to pass legislation pertinent to any of the powers conferred by the Constitution however it may operate collaterally or incidentally to impair or destroy the obligation of private contracts.” Cont’l Illinois Nat’l Bank & Trust Co. of Chicago v. Chicago, R.I. & P. Ry. Co., 294 U.S. 648, 680 (1935).

This is not to say that the First Amendment does not provide protection to Mr. Miller for embracing and advocating alternative food. To the contrary, and subject to limitations on commercial speech that is untruthful or misleading, “[t]he First Amendment protects expression, be it of the popular variety or not. . . . And the fact that an idea may be embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view.” Boy Scouts of America v. Dale, 530 U.S. 640, 660 (2000), cited in United States v. 2035 Inc., 2015 WL 213170, at \*2 (D.S.D. Jan. 14, 2015).

But by placing food products into the stream of commerce, Mr. Miller and his farm go beyond the protection that the First Amendment ensures. “Hiding behind a curtain of a private membership association[] . . . does not shield” Mr. Miller and his farm from the authority of the Meat Act and the Poultry Act and the jurisdiction of the court. 2035 Inc., 2015 WL 213170, at \*2.

Regarding any Fourth Amendment argument Mr. Miller may make, this case does not involve an application to the Court for an *ex parte* administrative warrant seeking a search or seizure of Mr. Miller’s property. To the contrary, the government requests that, after Mr. Miller is notified of this action and is provided a reasonable opportunity to be heard, the Court enter an order enforcing FSIS’ administrative subpoena. As various federal circuit courts of appeals have recognized, an administrative subpoena, unlike a warrant, “does not need to be supported by probable cause and is analyzed under the Fourth Amendment’s general reasonableness standard” -- that is, under the Powell criteria discussed above. United States v. Whispering Oaks Residential Care Facility, LLC, 673 F.3d 813, 817 (8th Cir. 2012); Doe v. United States, 253 F.3d 256, 262-264 (6th Cir. 2001) (“One primary reason for this distinction is that, unlike ‘the immediacy and intrusiveness of a search and seizure conducted pursuant to a warrant[,]’ the reasonableness of an administrative subpoena’s command can be contested in federal court before being enforced”), quoting In re Subpoena Duces Tecum, 228 F.3d 341, 348 (4th Cir. 2000).

**3. Any suggestions by Miller that this is a quasi-criminal action or that the Privacy Act limits it are legally baseless.**

FSIS’ interactions with Mr. Miller since March 2016 suggest that he will make additional arguments against subpoena enforcement, including that: (1) this is a quasi-criminal action rather than a civil action and thus requires probable cause; (2) FSIS must answer Privacy Act questions

before pursuing enforcement; and (3) the action cannot proceed because he has not received FSIS investigators' oaths of office. In Allgyer, Judge Stengel rejected all of these arguments -- made on behalf of a farm owner who similarly relied on his buyers' private membership association status -- because, as here, the arguments are legally baseless. See Allgyer, 2012 WL 355261, at \*1, 4-5 & n. 17 (also noting that "The Privacy Act simply does not apply under these circumstances. The Purpose of the Privacy Act (5 U.S.C. § 552a) is to protect privacy of individuals identified in computerized information systems maintained by federal agencies by enabling individuals to obtain their personal records and permitting the agency to retain information relevant to a specific and legal purpose"). So too should the arguments be rejected in this action.

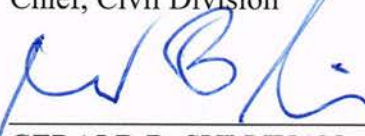
**CONCLUSION**

For all of the foregoing reasons, the Court should direct defendants Miller's Organic Farm and its owner, Amos Miller, to comply with FSIS' administrative subpoena without further delay.

Respectfully submitted,

ZANE DAVID MEMEGER  
United States Attorney

  
MARGARET L. HUTCHINSON  
Assistant United States Attorney  
Chief, Civil Division

  
GBS3408  
GERALD B. SULLIVAN  
Assistant United States Attorney  
Attorney I.D. No. 57300  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
(215) 861-8786  
(215) 861-8618 (fax)

Attorneys for the United States of America

Dated: June 3, 2016

**OF COUNSEL:**

Tracey Manoff, Attorney  
Office of the General Counsel  
U.S. Department of Agriculture  
14<sup>th</sup> & Independence Ave., S.W.  
South Building  
Washington, D.C. 20250-1400





Miller's Organic Farm shall file and serve an answer, motion, or other responsive pleading, together with an affidavit in support. Service shall be upon Gerald B. Sullivan, Assistant United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106-4476.

4. On the above return date, the Court will consider only those issues that are raised in the pleadings or motions and that are supported by affidavit. For purposes of this enforcement proceeding, the Court will take as admitted any uncontested allegation(s) of the Complaint.

BY THE COURT:

---

Judge, United States District Court

**CIVIL COVER SHEET**

JS 44 (Rev. 12/12)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 UNITED STATES OF AMERICA

**(b)** County of Residence of First Listed Plaintiff \_\_\_\_\_  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 Gerald B. Sullivan, Assistant U.S. Attorney  
 U.S. Attorney's Office  
 615 Chestnut Street, Suite 1250  
 Philadelphia, PA 19106-4476  
 (215) 861-8786

**DEFENDANTS**  
 MILLER'S ORGANIC FARM and AMOS MILLER  
 648 Millcreek School Road  
 Bird-in-Hand, PA 17505

County of Residence of First Listed Defendant Lancaster  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff       3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant       4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input checked="" type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding       2 Removed from State Court       3 Remanded from Appellate Court       4 Reinstated or Reopened       5 Transferred from Another District (specify)       6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 21 U.S.C. § 601, et seq.; 21 U.S.C. § 451, et seq.; 15 U.S.C. § 49


Brief description of cause:  
 Action to enforce U.S. Dept. of Agriculture (Food Safety & Inspection Service) subpoena duces tecum to organic farm

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.      **DEMAND \$** \_\_\_\_\_      CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes       No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 06/03/2016      SIGNATURE OF ATTORNEY OF RECORD:       /s/ Gerald B. Sullivan, AUSA

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

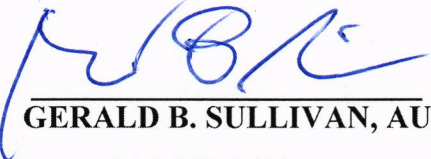
**CASE MANAGEMENT TRACK DESIGNATION FORM**

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	NO.
MILLER'S ORGANIC FARM and	:	
AMOS MILLER,	:	
	:	
Defendants.	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

June 3, 2016		United States of America
Date	GERALD B. SULLIVAN, AUSA	Attorney for Plaintiff
215-861-8786	215-861-8618	Gerald.Sullivan@usdoj.gov

<b>Telephone</b> <small>(Civ. 660) 10/02</small>	<b>FAX Number</b>	<b>E-Mail Address</b>
---	-------------------	-----------------------

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 615 Chestnut St., Suite 1250, Philadelphia, PA 19106-4476

Address of Defendant: 648 Millcreek School Road

Place of Accident, Incident or Transaction: Bird-in-Hand, PA 17505  
 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
 (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes  No

Does this case involve multidistrict litigation possibilities? Yes  No

RELATED CASE, IF ANY: Case Number: 11-mj-586 Judge Sandra Moore Wells Date Terminated: 4/28/11 (last dkt. entry)

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
 (Property is related; but action older than 1 year) Yes  No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? (Same farm; similar concerns; different agency)  
 Yes  No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
 Yes  No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
 Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. Federal Question Cases:

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11.  All other Federal Question Cases

(Please specify) 21 U.S.C. Sec. 601, et seq. (Federal Meat Inspection Act);  
21 U.S.C. Sec. 451, et seq. (Poultry Products Inspect. Act).

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Gerald B. Sullivan, AUSA, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: June 3, 2016

Gerald B. Sullivan, AUSA  
 Attorney-at-Law (Gerald B. Sullivan)

57300

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: June 3, 2016

Gerald B. Sullivan, AUSA  
 Attorney-at-Law (Gerald B. Sullivan)

57300

Attorney I.D.#