

Reducing Federal Barriers for the Sale of Meat

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KEY TAKEAWAYS

Meat-supply disruptions caused by the coronavirus have helped expose the federal barriers to the sale of meat.

The federal meat inspection system generally prohibits interstate sale of state-inspected meat and intrastate sale of custom-slaughtered meat.

Congress should remove these barriers to give farmers and consumers more options and mitigate potential meat-supply shortages if there is a second wave of COVID-19.

Due to worker illnesses and even deaths, there is a bottleneck at meat-processing plants impacting the entire meat supply. Livestock and poultry farmers have been faced with the problem of not having a destination for their animals. Unfortunately, this has led to farmers euthanizing animals. In addition, consumers have been seeing fewer meat and poultry options—and higher prices.¹ While it remains a fluid situation, some plants have reopened,² and there is a proactive effort, both within the government and the private sector, to address this problem.³ This bottleneck problem, though, has put the meat supply chain in the public spotlight.⁴

In examining the meat supply chain, one of the most glaring issues is the federal meat-inspection system. Federal meat-inspection laws have created significant obstacles for farmers to find meat-processing plants⁵ whose products can be sold in interstate and

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foreign commerce, and—in some instances—even in *intrastate* commerce. This *Issue Brief* examines these barriers and provides recommendations that would free up the market to offer additional meat-processing options for farmers.

Three Types of Meat-Processing Facilities

There are three different types of meat-processing facilities,⁶ all of which are regulated by federal law:⁷

1. **Federally inspected facilities.** The animals can be processed at a U.S. Department of Agriculture (USDA)–inspected facility. The meat from these facilities can then be sold in interstate and foreign commerce.⁸
2. **State-inspected facilities.** There are 27 states that operate USDA-approved state meat and poultry inspection programs.⁹ As explained by the USDA, this means the state programs meet and enforce requirements “at least equal to” those imposed under the Federal Meat Inspection Act, Poultry Products Inspection Act, and Humane Methods of Slaughter Act of 1978.¹⁰ However, despite this equivalency, meat from these state-inspected facilities may only be sold in *intrastate* commerce (i.e., within the state).¹¹ The USDA runs the Cooperative Interstate Shipment Program that allows some facilities in participating states to sell their meat in interstate and foreign commerce.¹² This program, however, is very narrow in scope, covering employers with fewer than 25 employees.¹³ Only seven states participate, and there are fewer than 70 plants within those states. (On May 20, 2020, Iowa became the seventh state.)¹⁴
3. **Custom slaughterhouses.** These are facilities that are not subject to the same level of inspection as the federal and state facilities. Nonetheless, they do have to meet federal sanitation and facility maintenance requirements, along with the federal law on humane slaughter.¹⁵ Currently, custom slaughter facilities offer services to those who want an animal slaughtered or processed for their own personal use.¹⁶ Meat cannot be sold commercially from these facilities, even in *intra*-state commerce.

As can be seen, farmers have no choice but to get their animals slaughtered at a federally inspected facility for the meat to be sold beyond state

lines. Even getting meat sold intrastate can be a challenge, since federally inspected facilities and state-inspected facilities can be several hours away from some farmers.¹⁷ This long-distance traveling can be costly, time-consuming, and stressful for the animals.¹⁸ Further, there are 23 states that do not have state-inspected facilities.¹⁹

State-Inspected Meat Reform

The USDA deems state-inspected facilities to have equivalent inspection schemes to federally inspected facilities.²⁰ Therefore, there should be no prohibition on the sale of state-inspected meat and poultry products in interstate commerce.

On May 11, 2020, a bipartisan group of Senators sent a letter²¹ to Senate Majority Leader Mitch McConnell (R-KY) and Senate Minority Leader Chuck Schumer (D-NY) in support of legislation introduced by Senator Mike Rounds (R-SD), the New Markets for State-Inspected Meat and Poultry Act, which would allow for the interstate sale of state-inspected meat.²²

Additionally, some state and federal policymakers are asking for temporary pandemic-related exemptions from the USDA to allow state-inspected meat to be sold or donated across state lines. Recently, Wisconsin Interim Agriculture Secretary Randy Romanski sent a letter to USDA Regional Director Joseph Priore asking for a temporary waiver on the restriction that prohibits the sale of state-inspected meat across state lines.²³ Similarly, the South Dakota congressional delegation wrote Agriculture Secretary Sonny Perdue, urging him to “consider allowing state-inspected meat and poultry products to be donated or sold across state lines during this crisis.”²⁴

Custom-Slaughtered Meat Reform

This congressional session, even before the pandemic, Representative Thomas Massie (R-KY) and Representative Chellie Pingree (D-ME) reintroduced the Processing Revival and Intrastate Meat Exemption Act (PRIME Act).²⁵ This bill would allow farmers to use custom slaughterhouses as a way to sell their meat in intrastate commerce.²⁶

Critics of this reform make general allegations that it would threaten food safety.²⁷ There are different ways to effectively protect food safety, and it could vary depending on the size and nature of the facility. These differences are something the current system does not take into account.²⁸ There also should not be an underlying assumption that once custom-slaughtered meat is allowed to be sold commercially, the same regulatory regime within

the state would still remain in place. In fact, many states would likely make regulatory changes to address any health and safety concerns regarding custom slaughterhouses.²⁹ In addition, beyond regulation, private businesses have significant incentive to ensure meat safety due to liability concerns and potential long-term damage to a company's reputation and profitability.³⁰

One of the major responsibilities of states is to protect the health and safety of its citizens. There is no reason to assume that the federal government is the only way to protect the health and safety of in-state residents engaged in intrastate commerce.³¹ States are more than capable of taking appropriate action. For those legislators who believe even slightly in principles of federalism, the commercial intrastate sale of custom-slaughtered meat should be easy to support.

Recommendations

It is not clear whether allowing state-inspected meat to be sold across state lines or allowing custom-slaughtered meat to be sold in intrastate commerce would significantly increase the meat-processing capacity in the U.S. during the pandemic. However, over time, these reforms would likely change market dynamics, create more options for farmers, and increase meat-processing capacity.

Specific recommendations include:

- **Congress should examine how existing federal regulations limit meat-processing capacity, hurting both farmers and consumers.** This will help to address any meat-supply problems connected to a possible second wave of COVID-19 or future pandemics and to develop sound policy regardless of pandemics.
- **Congress should allow meat from state-inspected facilities to be sold in interstate commerce.** This reform has already been included in the New Markets for State-Inspected Meat and Poultry Act.
- **Congress should allow custom-slaughtered meat to be sold in intrastate commerce.** This is a reform made in the PRIME Act.
- **Ideally, Congress should revisit the entire meat-inspection system.** In doing so, Congress should develop a regulatory system

that accounts for the different types of processing plants. Regulations should not inherently favor large processing facilities and serve as barriers to entry for smaller facilities. Further, Congress should provide much greater respect for states.

Conclusion

The federal meat inspection system has created an inflexible system that makes it unnecessarily costly and burdensome for some farmers—and severely limits how meat can be processed for interstate and intrastate sale. If meat and poultry products from state-inspected facilities and custom slaughterhouses are allowed to be sold more widely, this will make a real difference for American consumers. Regardless, the structure of the meat-processing industry would better reflect a response to market forces—not to federally imposed restrictions.

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Endnotes

1. See, e.g., Daren Bakst, "How COVID-19 Is Affecting the Nation's Meat Supply," Daily Signal, April 30, 2020, <https://www.dailysignal.com/2020/04/30/how-covid-19-is-affecting-the-nations-meat-supply/> (accessed May 22, 2020), and Daren Bakst, "Dispelling 2 Myths About the Meat Supply Amid COVID-19," Daily Signal, May 6, 2020, <https://www.dailysignal.com/2020/05/06/dispelling-2-myths-about-the-meat-supply-amid-covid-19/> (accessed May 22, 2020).
2. Michael Hirtzer and Jen Skerritt, "U.S. Meat Squeeze Eases on Slaughterhouse Revival, Slack Demand," Bloomberg News, May 20, 2020, <https://www.bloomberg.com/news/articles/2020-05-20/u-s-meat-squeeze-eases-on-slaughterhouse-revival-dull-demand?sref=q8selhDd> (accessed May 22, 2020).
3. For example, on April 28, 2020, President Donald Trump issued an executive order to help meat-processing plants to remain open. See Donald Trump, "Delegating Authority Under the DPA With Respect to Food Chain Supply Resources During the National Emergency Caused by the Outbreak of COVID-19," Executive Order No. 13,917, April 28, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-delegating-authority-dpa-respect-food-supply-chain-resources-national-emergency-caused-outbreak-covid-19/> (accessed May 22, 2020).
4. For purposes of this *Issue Brief*, unless specifically stated otherwise or when included with "poultry," "meat" refers to both meat and poultry.
5. For this *Issue Brief*, and as used in the cited USDA report, "processing" refers to "all the steps involved in turning a live animal into meat for sale." This includes slaughter, "cut and wrap," and value-added processing. See Lauren Gwin, Arion Thiboumery, and Richard Stillman, *Local Meat and Poultry Processing: The Importance of Business Commitments for Long-Term Viability*, U.S. Department of Agriculture *Economic Research Report* No. 150, June 2013, https://www.ers.usda.gov/webdocs/publications/45094/37949_err-150.pdf?v=0 (accessed May 22, 2020).
6. This does not include personal slaughter of animals or the slaughter of non-amenable species (i.e., species not covered under the Federal Meat Inspection Act or Poultry Products Inspection Act). Kristen Ploetz, "Dear Modern Farmer: Is It Legal to Slaughter a Pig in My Backyard?" *Modern Farmer*, March 11, 2014, <https://modernfarmer.com/2014/03/dear-modern-farmer-legal-slaughter-pig-backyard/> (accessed May 22, 2020). To learn more about amenable species, see U.S. Department of Agriculture, "What Animals Are Inspected by the United States Department of Agriculture?" July 17, 2019, <https://ask.usda.gov/s/article/What-animals-are-inspected-by-USDA> (accessed May 22, 2020).
7. Federal Meat Inspection Act of 1906, Public Law 59–242; Poultry Products Inspection Act of 1957, Public Law 85–172; Wholesome Meat Act of 1967, Public Law 90–201; Wholesome Poultry Products Act of 1968, Public Law 90–492; Humane Methods of Slaughter Act of 1978, Public Law No. 85–765; and U.S. Department of Agriculture, "Overview: Celebrating 100 Years of FMIA," Food Safety and Inspection Service, February 21, 2014, https://www.fsis.usda.gov/wps/wcm/connect/fsis-content/fsis-questionable-content/celebrating-100-years-of-fmia/overview/ct_index (accessed May 22, 2020).
8. There are specific plants known as Talmadge–Aiken Plants in which state employees conduct the federal inspection. As explained by the USDA, "these plants are considered to be federally-inspected." U.S. Department of Agriculture, "Overview of the United States Slaughter Industry," October 27, 2016, <https://downloads.usda.library.cornell.edu/usda-esmis/files/b5644r52v/d473028z/7w62fc23r/SlauOverview-10-27-2016.pdf> at 20
9. U.S. Department of Agriculture, "States Operating Their Own MPI Programs," Food Safety and Inspection Service, March 23, 2015, <https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs/state-inspection-and-cooperative-agreements/states-operating-their-own-mpi-programs> (accessed May 22, 2020).
10. U.S. Department of Agriculture, "State Inspection Programs," Food Safety and Inspection Service, February 12, 2016, <https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs> (accessed May 22, 2020).
11. In the 2008 Farm Bill, Congress amended the Federal Meat Inspection Act and the Poultry Products Inspection Act to create the Cooperative Interstate Shipment Program. Food, Conservation, and Energy Act of 2008, Public Law 110–234.
12. U.S. Department of Agriculture, "Backgrounder," Food Safety and Inspection Service, October 27, 2017, <https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs/cis/backgrounder> (accessed May 22, 2020).
13. U.S. Department of Agriculture, "State-Inspected Establishments Interested in Applying," Food Safety and Inspection Service, June 2, 2015, <https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs/cis/state-establishments-participation> (accessed May 22, 2020).
14. Chris Clayton, "Calls to Allow More State-Inspected Meat Plants to Sell Across State Lines," *Progressive Farmer*, May 13, 2020, <https://www.dtnpf.com/agriculture/web/ag/blogs/ag-policy-blog/post/2020/05/13/calls-allow-state-inspected-meat-2> (accessed May 22, 2020). Recently, Iowa Secretary of Agriculture Mike Naig finalized a Cooperative Interstate Shipment agreement with the USDA; however, at the time of publication no plants have been approved. See Katie James, "Iowa Ag Secretary Signs Cooperative Interstate Shipment Agreement," *Farm Journal*, May 20, 2020, <https://www.porkbusiness.com/article/iowa-ag-secretary-signs-cooperative-interstate-shipment-agreement> (accessed May 22, 2020)).
15. Dena Jones, "Custom-Exempt Slaughter Should Not Be Expanded," *Food Safety News*, January 15, 2016, <https://www.foodsafetynews.com/2016/01/custom-exempt-slaughter-should-not-be-expanded/> (accessed May 22, 2020); U.S. Department of Agriculture, "Custom Exempt Review Process," Food Safety and Inspection Service, Directive No. 5930.1, Rev. 4, July 15, 2009, <https://www.fsis.usda.gov/wps/wcm/connect/84727a9f-cc80-482a-8725-0956524353e8/5930.1Rev4.pdf?MOD=AJPERES> (accessed May 22, 2020); Oregon State University Extension Service, "Frequently Asked Questions: Using Custom-Exempt Slaughter and Processing Facilities in Oregon for Beef, Pork, Lamb & Goat," December 2016, <https://extension.oregonstate.edu/business-economics/management/frequently-asked-questions-using-custom-exempt-slaughter-processing> (accessed May 22, 2020); and Indiana State Board of Animal Health, "Types of Inspection," <https://www.in.gov/boah/2504.htm> (accessed May 22, 2020).

16. 21 U.S. Code § 623, <https://www.law.cornell.edu/uscode/text/21/623> (accessed May 22, 2020), and Niche Meat Processor Assistance Network, “What Is a ‘Custom Slaughter’ Facility?” <https://www.nichemeatprocessing.org/what-is-a-custom-slaughter-facility/> (accessed May 22, 2020).
17. Lauren Gwin, Arion Thiboumery, and Richard Stillman, *Local Meat and Poultry Processing: The Importance of Business Commitments for Long-Term Viability*, USDA Economic Research Service Report No. 150, June 2013, p. 5, https://www.ers.usda.gov/webdocs/publications/45094/37949_err150.pdf?v=0 (accessed May 22, 2020); news release, “Sens. Paul, King Introduce Legislation to Support Local Meat Processing,” Office of Rand Paul, March 8, 2016, <https://www.paul.senate.gov/news/sens-paul-king-introduce-legislation-support-local-meat-processing> (accessed May 22, 2020); “PRIME Act Passage Would Help Small Meat Producers Compete, Advocates Say,” Food Tank, June 2018, <https://foodtank.com/news/2018/06/prime-act-passage-farm-bill/> (accessed May 22, 2020).
18. See, e.g., News release, “Sens. Paul, King Introduce Legislation to Support Local Meat Processing.”
19. U.S. Department of Agriculture, “States Operating Their Own MPI Programs.”
20. U.S. Department of Agriculture, “State Inspection Programs.”
21. News release, “Rounds, King Lead Colleagues in Letter to Senate Leaders Urging Inclusion of New Markets for State-Inspected Meat and Poultry Act in Next COVID-19 Relief Bill,” Office of Mike Rounds, May 11, 2020, <https://www.rounds.senate.gov/newsroom/press-releases/rounds-king-lead-colleagues-in-letter-to-senate-leaders-urging-inclusion-of-new-markets-for-state-inspected-meat-and-poultry-act-in-next-covid-19-relief-bill> (accessed May 22, 2020). From the letter regarding state-inspected meat and poultry products:

These products are safe for consumption and should be allowed to be sold nationwide. Don’t just take our word for it, listen to Dr. Dustin Oedekoven, DVM, DACVPM, State Veterinarian and Executive Secretary of the South Dakota Animal Industry Board.

https://www.congress.gov/bill/116th-congress/senate-bill/1720 (accessed May 22, 2020).
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25. PRIME Act, H.R. 2859, 116th Congress, 2nd Sess., <https://www.congress.gov/bill/116th-congress/house-bill/2859?s=1&r=3> (accessed May 22, 2020).
26. News release, “Representatives Massie and Pingree Introduce Bipartisan PRIME Act to Empower Local Cattle Farmers, Meet Consumer Demand,” Office of Thomas Massie, May 23, 2019, <https://massie.house.gov/newsroom/press-releases/representatives-massie-and-pingree-introduce-bipartisan-prime-act-to-empower> (accessed May 22, 2020).
27. See, e.g., National Pork Producers Council, “PRIME Act,” <http://nppc.org/issues/issue/prime-act/> (accessed May 22, 2020), and Baylen Linnekin, “Congress Can Level the Playing Field for Small Farmers,” *The Hill*, May 10, 2018, <https://thehill.com/opinion/energy-environment/387150-congress-can-level-the-play-field-for-small-farmers> (accessed May 22, 2020). Another argument against the PRIME Act is allowing the sale of custom-slaughtered meat in intrastate commerce could violate the country’s World Trade Organization obligations because foreign meat would have to be subject to stricter regulatory standards than the custom-slaughtered meat. This argument is not without any merit, but it is important to recognize that the PRIME Act would not discriminate against foreign meat since domestic meat to be sold in interstate commerce would also have to meet the higher regulatory standards. Hollie McKay, “Revived Legislation Seeks to End Monopoly of Meat Industry, Open Markets to Small Farmers Amid Coronavirus Pandemic,” Fox News, May 12, 2020, <https://www.foxnews.com/us/revived-legislation-seeks-to-end-monopoly-of-the-meat-industry-open-the-markets-to-small-farmers-amid-coronavirus-pandemic> (accessed May 27, 2020).
28. For one perspective on greater flexibility in food safety regulations, see David Taylor, “Does One Size Fit All?: Small Farms and U.S. Meat Regulations,” *Environmental Health Perspectives*, Vol. 116, No. 12 (December 2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2599784/> (accessed May 27, 2020) (“Instead of the current mode of federal inspection and risk management, small-scale farmers and farm advocates believe rules should be based on independently measurable standards of sanitation and quality, with sensitivity to scale of the operation being assessed.”).
29. If meat from custom slaughterhouses and state-inspected facilities are both only allowed to be sold intrastate, it is possible that existing state-inspected facilities might choose the less burdensome regime that likely would still exist for custom facilities. There are many factors, though, such as consumer preference as to whether, and to what extent, this would occur. To avoid this possible scenario (if desired), state-inspected meat should be allowed to be sold in interstate commerce since it would provide a major incentive for facilities to stay within a state-inspected regulatory regime. This entire issue—and how one regulatory change can impact the structure of the meat industry—is a very good example of why Congress needs to look carefully at the entire federal meat inspection system. It also should be noted: “Some facilities may offer both inspected and custom-exempt services.” University of Tennessee, “General Overview of the History, Regulations and Inspection Information for Direct Meat Marketing in Tennessee,” Institute of Agriculture, December 2013, <https://ag.tennessee.edu/cpa/CPA%20Publications/PB1819%20%20FINAL%20CPA.pdf> (access May 27, 2020).

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31. The USDA has had its own issues with ensuring the integrity of its federally inspected food safety system. In testimony to Congress in March of 2007, USDA officials admitted that "U.S. inspectors visited 250 meat processing plants as rarely as once every two weeks despite federal law requiring daily inspection." Charles Abbott, "USDA Admits Skipped Meat Plant Checks for 30 Years," Reuters, March 29, 2007, <https://www.reuters.com/article/us-usa-meat-usda-idUSN2930654720070329> (accessed May 27, 2020).