



**STATE OF VERMONT**  
OFFICE OF LEGISLATIVE COUNSEL

**MEMORANDUM**

To: Senate Committee on Agriculture  
House Committee on Agriculture and Forestry

From: Michael O'Grady, Office of Legislative Counsel

Date: December 1, 2021

Subject: Slaughter of Livestock under Animal Share Agreements

This memorandum addresses the requirements of 2021 Acts & Resolves No. 47, Sec. 1b (Act 47), which requires the Office of Legislative Counsel, in consultation with the Agency of Agriculture, Food and Markets (AAFM) and other interested parties, to review federal and State law regarding whether the State may exempt the slaughter of livestock and provision of meat under an animal share contract from the license and inspection requirements of 6 V.S.A. chapter 204. On or before December 1, 2021, the Office of Legislative Counsel (Legislative Counsel) is required to submit its findings to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry. The findings shall include proposed draft legislation.

In response to Act 47's requirements, Legislative Counsel consulted with AAFM and Rural Vermont. AAFM subsequently consulted with the U.S. Department of Agriculture's Food Safety Inspection Service (FSIS). This memorandum first provides an overview of the legal requirements for the livestock slaughter and inspection. The memorandum then summarizes the legislative discussion preceding Act 47. Next, the memorandum discusses the Federal Meat Inspection Act (FMIA) personal use exemption and animal share laws in other states. The memorandum also summarizes Legislative Counsel consultation with interested parties and AAFM consultation with FSIS.

Last, the memorandum provides Legislative Counsel's recommendation that no legislation be drafted at this time until more information is collected regarding application of the FMIA personal use exemption to animal share agreements.

**I. Overview of Legal Requirements**

The FMIA<sup>1</sup> and the FSIS implementing rules<sup>2</sup> require inspection of the slaughter of animals and the preparation of meat products at establishments conducting operations for transport or sale in commerce of the products of the slaughter. Similarly, Vermont statutes prohibit the sale, transport, offer for sale or transportation, or receipt for transportation of livestock products in intrastate commerce unless the products and their slaughter have been

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<sup>1</sup> See 21 U.S.C. § 621.

<sup>2</sup> See 9 C.F.R. part 302.

inspected.<sup>3</sup> In addition, Vermont statutes require an establishment in the business of buying, selling, preparing, processing, packing, storing, transporting, or otherwise handling meat or meat food products to be licensed by AAFM.<sup>4</sup>

However, both the FMIA and Vermont statutes include exemptions from inspection and licensing of the slaughter of livestock.<sup>5</sup> For purposes of the requirements of Act 47 and the required report under the Act, the exemption at issue is the personal use exemption. Specifically, 9 C.F.R. § 303.1(a)(1) provides that:

(a) The requirements of the Act [FMIA] and the regulations in this subchapter [FSIS regulations] for inspection of the preparation of products do not apply to:

(1) The slaughtering by any individual of livestock of his own raising, and the preparation by him and transportation in commerce of the carcasses, parts thereof, meat and meat food products of such livestock exclusively for use by him and members of his household and his nonpaying guests and employees;<sup>6</sup>

This exemption allows the owner of livestock to slaughter the livestock without inspection and then use the food products for personal use or distribute those products to members of the owner's household or the owner's guests or employees.

## II. Legislative Discussion Preceding Act No. 47

During the 2021 session of the Vermont General Assembly, the Senate Committee on Agriculture (Committee) took testimony regarding the demand for additional slaughter opportunities for farmers in Vermont. The Committee proposed increasing the number of animals that could be slaughtered on a farm under the on-farm, personal slaughter exemption. In addition, the Committee discussed other alternatives for increasing slaughter opportunities.

The Committee reviewed a Wyoming statute that seemingly allowed farmers to enter animal share agreements with the public, slaughter an animal without inspection, and then provide products from the slaughter of the animal to a holder of an animal share.<sup>7</sup> The Committee was curious about the Wyoming approach and asked Legislative Counsel to draft possible language for inclusion in H.420 (the bill that ultimately was enacted as Act 47).

<sup>3</sup> 6 V.S.A. § 3308.

<sup>4</sup> 6 V.S.A. § 3306.

<sup>5</sup> See 9 C.F.R. § 303.1; 6 V.S.A. § 3311a.

<sup>6</sup> Parenthetical clarifications added by author.

<sup>7</sup> See W.S. § 11-49-104:

11-49-104. Animal shares.

(a) The acquisition of meat from animals by an informed end consumer shall not constitute the sale of meat products in contravention of this act and shall not be prohibited if all of the following conditions are met:

(i) The meat is delivered pursuant to an animal share and is:

(A) Received from the farm or ranch where an animal or herd subject to the animal share is located;

(B) Received by or on behalf of an owner of an animal share;

(C) Obtained from the particular animal or herd subject to the animal share.

(ii) Ownership of each animal is established prior to slaughter and the slaughter is conducted pursuant to W.S. 11-23-102(a), if applicable;

(iii) A prominent warning statement that the meat has not been inspected is delivered to the informed end consumer with the meat or is displayed on a label affixed to the meat packaging;

(iv) Information describing the standards used by the farm or ranch with respect to herd health, and in the processing of meat from the herd, is provided to the informed end consumer by the farmer or rancher.

(b) No person who obtains meat in accordance with this section shall sell, donate or commercially redistribute the meat.

(c) No farmer or rancher shall publish any statement that implies the department of agriculture's approval or endorsement of meat delivered pursuant to an animal share.

Legislative Counsel drafted animal share language and circulated it to the Committee, AAFM staff, Rural Vermont, and other interested parties.<sup>8</sup>

The Committee and Legislative Counsel were informed of certain issues with the circulated language. AAFM staff noted certain drafting issues, which Legislative Counsel acknowledged as valid. AAFM staff also noted that they discussed the proposed language with FSIS and that FSIS was opposed to the language.

Apparently, FSIS indicated that if multiple owners owned livestock under an animal share agreement, all owners of the livestock would need to take part in the slaughter of the livestock at the time of slaughter. In addition, AAFM staff indicated that the animal share language might put Vermont at jeopardy of losing equal-to-status under federal law. Equal-to-status allows AAFM to conduct inspection of slaughter under a cooperative agreement with FSIS and provides funding to Vermont for slaughter inspection activities.<sup>9</sup>

The Committee discussed the consequences of losing equal-to-status and the actions that FSIS would take if the State did not qualify for equal-to-status. Because of the impending end of the 2021 session and because of continued interest in pursuing authorized animal share agreements, the Committee inserted the language in Act 47, Sec. 1b requiring this report. The amendment proposed by the Committee was subsequently passed by the Senate, concurred with by the House, and enacted into law.<sup>10</sup>

### III. Application of the Personal Use Slaughter Exemption

As discussed above, 9 C.F.R. § 303.1(a) excepts from slaughter inspection the “slaughter by any individual of livestock of his own raising, and the preparation by him and transportation in commerce of the carcasses, parts thereof, meat and meat food products of such livestock exclusively for use by him and members of his household and his nonpaying guests and employees.” As written, the rule seems to apply only to an individual person. However, FSIS guidance, Vermont statute, and statute in other states indicate that the personal use exemption seemingly should apply when livestock is owned by more than one individual person.

#### i. FSIS Guidance

FSIS Guidance provides that the FMIA personal use exemption applies to the owner of livestock.<sup>11</sup> FSIS guidance documents also discuss FMIA exemptions and provides interpretative notes for application of each of the exemptions to inspection of slaughter. Under the guidance notes for the personal use exemptions, FSIS clearly provides: “The owners of the

<sup>8</sup> See Michael O’Grady, Office of Legislative Counsel, H.420: Livestock; Inspection, Licensing, Personal Slaughter, Itinerant Slaughter (Apr. 27, 2021), available at <https://legislature.vermont.gov/Documents/2022/WorkGroups/Senate%20Agriculture/Bills/H.420/Drafts,%20Amendments%20and%20Legal%20Documents/H.420~Michael%20O'Grady~Livestock;%20Inspection,%20Licensing,%20Personal%20Slaughter,%20Itinerant%20Slaughter~4-27-2021.pdf>

<sup>9</sup> See Senate Committee on Agriculture (April 30, 2020), available at <https://www.youtube.com/watch?v=44Sk1EjHJe0>. See also discussion of equal to status at Federal-State Audit Branch Audit and Resource Management Division Office of Investigation, Enforcement and Audit Food Safety and Inspection Service U.S. Department of Agriculture Comprehensive Review and Determination Report Fiscal Year 2020 Vermont (January 2021), available at [https://www.fsis.usda.gov/sites/default/files/media\\_file/2021-02/state-review-vermont.pdf](https://www.fsis.usda.gov/sites/default/files/media_file/2021-02/state-review-vermont.pdf).

<sup>10</sup> See H.420 (Act 47) detailed status, available at <https://legislature.vermont.gov/bill/status/2022/H.420>.

<sup>11</sup> The slaughter and processing of the livestock is performed by the owner of the livestock.” See FSIS Guideline for Determining Whether a Livestock Slaughter or Processing Firm is Exempt from the Inspection Requirements of the Federal Meat Inspection Act May 24, 2018, p.3 (emphasis added).

livestock may or may not reside at the same physical location as the animal.”<sup>12</sup> Additional guidance on enforcement of inspection requirements also acknowledge that there may be multiple owners of an animal subject to the personal use exemption.<sup>13</sup> Thus, according to FSIS’s own guidance, multiple owners of livestock slaughtered under the personal use exemption seem to be allowed, and apparently those owners do not need to be of the same household.

#### ii. Multiple Owners under Personal Slaughter; Vermont and Other States

In Vermont, the personal slaughter exemption applies to an owner or owners and not to an individual.<sup>14</sup> In California, “owners who slaughter, on their own premises, livestock of their own raising where the meat is not for sale, but used exclusively by the owners, members of the owner’s household, the owner’s employees, and nonpaying guests” are exempt from slaughter inspection.<sup>15</sup> Texas, Wisconsin, and Minnesota’s personal use exemption all reference the owner of the livestock.<sup>16</sup>

In addition, several states do not adopt a state specific personal use exemption language but instead incorporate by reference any activity that would be exempt under the FMIA. For example, Missouri exempts from inspection the operation of any person “if and to the extent the operation would be exempt from the corresponding requirements under the Federal Meat Inspection Act.”<sup>17</sup> As the FSIS guidance apparently indicates that the personal use exemption applies to multiple owners who do not live in the same household, states such as Missouri also should allow multiple owners who do not live in the same household to qualify for the personal use exemption.

### IV. Animal Share Laws in Other States

#### i. Wyoming

During discussion of slaughter under the personal use exemption of livestock under an animal share agreement, the Senate Committee on Agriculture reviewed Wyoming statute 11-49-104, which appeared to except from inspection meat “delivered pursuant to an animal share and is:

(A) Received from the farm or ranch where an animal or herd subject to the animal share is located; (B) Received by or on behalf of an owner of an animal share; [and] (C) Obtained from the particular animal or herd subject to the animal share . . .”

However, after further review of the slaughter laws in Wyoming and consultation with AAFM, it was determined that Wyoming has its own state inspection program that incorporates by reference the requirements of the FMIA and its rules.<sup>18</sup> The Wyoming animal share statutes did

<sup>12</sup> Id.

<sup>13</sup> See FSIS Guideline for Determining Whether a Livestock Slaughter or Processing Firm is Exempt from the Inspection Requirements of the Federal Meat Inspection Act May 24, 2018, p.3 (The owners of the livestock. . .). See also FSIS Directive 8410.1, Revision 6, Detention and Seizure (Referencing multiple owners of livestock. Note, Revision 7 amended the reference to multiple owners of the product, but that likely has little distinction for purposes of the personal use exemption.)

<sup>14</sup> 6 V.S.A. 3311a(b). In addition, in Vermont statute, “words importing the singular number may extend and be applied to more than one person or thing.” 1 V.S.A. § 175. Thus, “owner” can be read as “owners.”

<sup>15</sup> California Food and Agriculture Code § 19020.

<sup>16</sup> Texas Health and Safety Code § 433.006, Wisconsin Stat. Ann. § 97.42, and Minn. Stat. Ann. § 31A.15.

<sup>17</sup> See Missouri Revised Statutes § 265.320(1); see also Va. Code Ann. § 3.2-5405(9).

<sup>18</sup> See Wyoming Rules and Regulations § 010.003.1 § 16.

not repeal or preempt application of the meat inspection rules to animal shares. Thus, meat slaughtered under an animal share agreement in Wyoming is subject to all FMIA slaughter requirements.

ii. Colorado

Almost simultaneously with the Vermont Senate Committee on Agriculture’s discussion of animal share language, Colorado enacted an animal share law, known as the Ranch-to-Plate Act.<sup>19</sup> Specifically, the Colorado law exempted from inspection meat sold under an animal share and subsequently delivered to the owner of that share.<sup>20</sup> The Colorado law did not specifically reference a personal use exemption or exemption under an FSIS interpretation of the personal use exemption. This is likely due, in part, to the fact that Colorado does not have a state inspection program or equal-to-status and, thus, does not have state inspection laws.

As Colorado does not have state inspection laws or a state inspection program, FSIS enforces the FMIA in the state. From AAFM accounts, FSIS has initiated enforcement in Colorado for any meat slaughtered or sold under the new animal share law. Enforcement likely will include seizing meat slaughtered or sold under the law and imposition of monetary fines.

The Colorado Department of Agriculture has issued guidance to farmers and ranchers regarding application of the Ranch-to-Plate Act.<sup>21</sup> The Colorado guidance provides that all slaughter and processing is still subject to regulation. The guidance recognizes the application of the personal use exemption but provides that:

The Ranch to Plate Act does not allow a rancher or other animal owner to slaughter and self-process an animal under an animal share agreement and distribute the meat to multiple owners. Such action could be considered a violation of the personal use exemption found in the FMIA and may be subject to regulatory action by the USDA.<sup>22</sup>

The guidance further provides that FSIS has advised the Colorado Department of Agriculture that the FMIA regulations on the personal use exemption are intended for exclusive use by an individual, not by multiple owners of a single animal,<sup>23</sup> even though FSIS’s own guidance references multiple owners or multiple residences of owners.

## V. Legislative Counsel Consultation with AAFM and Rural Vermont

On October 22, 2021, Legislative Counsel met with Steve Collier, Dr. Katherine McNamara, and Julie Boisvert, representing AAFM; and Caroline Gordon, representing Rural Vermont, regarding the Act 47 requirements. Legislative Counsel gave a short overview of the issues and of information learned since enactment of Act 47. Steve Collier gave an overview of AAFM’s interpretation, and Caroline Gordon also provided an overview of Rural Vermont’s position.

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<sup>19</sup> See Senate Bill 21-079, enacted on April 29, 2021, available at [https://leg.colorado.gov/sites/default/files/2021a\\_079\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2021a_079_signed.pdf).

<sup>20</sup> Id.

<sup>21</sup> Colorado Department of Agriculture, Guidance to Ranchers and Custom Exempt Processors Regarding the Ranch to Plate Act (SB21-079), available at <https://ag.colorado.gov/guidance-to-ranchers-and-custom-exempt-processors-regarding-the-ranch-to-plate-act-sb21-079>.

<sup>22</sup> Id.

<sup>23</sup> Id.

Caroline Gordon made the point that the FMIA does not explicitly prohibit animal share agreements. Contract law and the general concepts of ownership allow multiple persons to own animals together at different percentages of ownership. As the FMIA and USDA do not prohibit such forms of ownership, it should be allowed. If multiple ownership is allowed, then exemptions under the FMIA for owners also should be allowed.

Moreover, in review of existing law under the FMIA, FSIS regulations, and FSIS guidance, Legislative Counsel agrees with Caroline Gordon that there is a reasonable interpretation that personal slaughter under an animal share agreement, although not specifically referenced, is allowed under federal and State law. FSIS guidance seemingly provides that there may be multiple owners of an animal under the personal use exemption and that the multiple owners under the personal use exemption do not need to reside at the same physical location. One would assume that persons who do not reside together but own livestock together have some legal arrangement, formal or informal, addressing ownership of the livestock and rights in that livestock. In addition, Vermont law explicitly allows for a person or persons to own livestock subject to the personal use exemption in State law.<sup>24</sup>

However, Legislative Counsel is not the agency administering or enforcing State slaughter laws or the FMIA. AAFM enforces the State laws in concert with FSIS enforcement of FMIA. As such, Legislative Counsel asked AAFM to confer with FSIS on several questions, most notably whether multiple owners of an animal could slaughter that animal for personal use under the FMIA personal use exemption. AAFM agreed to confer with FSIS.

## **VI. AAFM Consultation; FSIS Feedback**

AAFM provided general feedback from FSIS. Most notably, FSIS stated that the personal use exemption is not permissible for use under animal share or herd share programs. FSIS emphasized that the personal use exemption is designed for farmers slaughtering their own animals for their consumption and that a herd share program lies outside the exemption's parameters. FSIS also reiterated that the FMIA's threshold intent is to promote food safety and that developing a meat-sharing system that frustrates its sanitation or inspection requirements lies outside the FMIA's parameters.

AAFM did raise real-world questions with FSIS about how interpretations of State<sup>25</sup> and federal law regarding multiple ownership of animals and whether or how multiple owners must participate in slaughter in order to qualify for the personal use exemption. FSIS was unprepared to answer those questions but offered to provide further input as appropriate. FSIS noted that discussion of these issues would be prudent in order to avoid legislation that jeopardizes Vermont's equal-to-status.

## **VII. Legislative Counsel Recommendations**

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<sup>24</sup> 6 V.S.A. § 3311a.

<sup>25</sup> See *id.* Legislative Counsel notes that State law allows multiple owners of livestock slaughtered under the personal use exemption. See, 6 V.S.A. § 3311a(c). As the Vermont program has been approved by FSIS and AAFM's interpretation of statute cannot conflict with the plain meaning of the statute, there remains a question of whether AAFM can prohibit multiple owners of livestock slaughtered under the personal use exemption. Similarly, see the California statute, California Food and Agriculture Code § 19020, allowing multiple owners of livestock under the personal use exemption.

Act 47 requires Legislative Counsel to review federal and State law regarding whether the State may exempt the slaughter of livestock and provision of meat under an animal share contract from the license and inspection requirements of 6 V.S.A. chapter 204. Legislative Counsel is required to submit its findings to the General Assembly, including proposed draft legislation. The findings required by Act 47 are set forth in this report. The report does not include proposed draft legislation for the following reasons.

Allowing slaughter under the personal use exemption of animals held under animal share agreements currently poses too many potential detrimental consequences to propose draft legislation. As was made clear by the FSIS response to Colorado's Ranch-to-Plate Act, the legal consequences are clear. FSIS will not allow multiple owners to receive meat from an animal or herd share agreement under the personal use exemption. Meat slaughtered under the Colorado law was seized, and violators were subject to federal enforcement.

Similar legal actions likely would be taken in Vermont. More significantly, and as opposed to Colorado, authorizing use of the personal use exemption for animal shares could jeopardize Vermont's equal-to-status and the authority, funding, and staffing associated with the program. The capacity afforded by the State program is currently subject to significant demand. Jeopardizing that program could reduce or eliminate existing funding, staff, and facilities for slaughter.

Similarly, the practical, unintended consequences of authorizing use of the personal use exemption for animal share agreements are unknown. Most people acknowledge that animal share agreements are ongoing in the State; families own livestock with other families, neighbors own livestock with other neighbors, and friends own livestock together. It is likely that some of these animals are slaughtered by the person or persons who raised the animal and that subsequently the meat is used by the multiple owners. Enacting legislation without greater clarity regarding its application could have unintended consequences for the practical arrangement of ongoing livestock ownership on the State.

As a result, Legislative Counsel does not recommend draft legislation at this time. More discussion and input is needed from FSIS, including written or official statements or documents that can be relied on in drafting State policy. Without more formal statements or guidance from FSIS on application of the FMIA personal use exemption to animal share agreements, legislating in this subject area likely will cause more harm than good.