



# Custom and Retail Exemptions from Federal Inspection

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Kristin Chen  
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# Custom and Retail Exemptions from Federal Inspection

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The FMIA and the PPIA prohibit the slaughter of livestock or poultry or the preparation of meat or poultry products for commerce without inspection, if such products are intended for use as human food, with specific exemptions.

FSIS is seeking recommendations to clarify the Agency's positions on the custom and retail exemptions to ensure that meat and poultry products produced under the exemptions are safe, wholesome and correctly labeled and packaged.

- **Custom Exemption**

- 21 U.S.C. § 623(a) and 464(c)(1)(B).
- Codified regulations in 9 CFR 303.1(a)(2) and 381.10(a)(4).
- Allows facilities to operate without Federal inspection if they slaughter/process livestock or poultry for the exclusive private use of the livestock or poultry's owner, members of the owner's household or the owner's nonpaying guests or employees.
- All product derived from the exempt animal must be returned to the original owner.

- **Retail Exemption**

- 21 U.S.C. § 661(c)(2) and 464(a).
- Codified regulations in 9 CFR 303.1(d) and 381.10(d).
- Exempts from routine Federal inspection operations of types traditionally and usually conducted at retail stores, restaurants and restaurant central kitchen facilities.



# Custom Exemption – Current Policy and Background

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- FSIS current guidance states that animals slaughtered and/or processed under the exemption may have more than one owner.
  - The Agency has not set a numerical limit on the number of individuals allowed to co-own an exempt animal.
- FSIS has stated in private stakeholder correspondence that, based on a plain reading of the FMIA, animals cannot be owned by a firm, such as a business, or collectively-owned by membership organizations for the purposes of the exemption.
- FSIS has also stated in stakeholder communications that records maintained by custom operators under the recordkeeping requirements of 9 CFR 303.1(b)(1) and 9 CFR part 320 must demonstrate an exact correspondence between the individuals owning a particular animal prior to slaughter and any or all products derived from that animal.



# Custom Exemption – Current Policy and Background Continued

- The growing popularity of “herd share” and similar types of business models for distributing custom slaughtered meat has raised questions about the need for limits on the number of owners of an animal custom slaughtered, as well as the associated recordkeeping requirements.
- Several states have taken legislative action to allow members of consumer cooperatives, herd shares and similar groups of individuals to collectively own animals for purposes of the custom exemption. FSIS is monitoring these efforts and will continue to work with state representatives to address whether specific actions meet the requirements of the FMIA and the PPIA and align with Agency regulations and policies.



# Retail Exemption – Current Policy and Background

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- Agency retail exemption regulations for meat and poultry products were implemented in the 1970s, when retail stores traditionally consisted of a brick-and-mortar grocery store or restaurant.
  - Grocery stores operating under the exemption usually included a butcher counter location for the direct consumer purchase of meat or meat food products that were cooked, cured or smoked.
  - Restaurants typically prepared all food onsite or at a central kitchen, owned by the restaurant, for direct sales to consumers.
- Today's retail grocery stores may differ greatly from the traditional retail store, as an increase in internet marketing and sales have upended traditional business models.
- Restaurant operations also have changed significantly, with the advent of sometimes complex business arrangements for contracted food delivery.

FSIS seeks to ensure that the Agency's retail exemption policies effectively address current retail consumer platforms and food distribution models.



# NACMPI Committee Questions: Custom Exemption

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FSIS asks NACMPI to review and advise on the following questions about custom exemption:

1. Should FSIS conduct rulemaking to set a numerical limit on the number of individuals allowed to co-own an animal presented for slaughter/processing under the custom exemption provision? If so, what factors should the Agency consider, if any, to determine the limits for different amenable species?
2. Should FSIS conduct rulemaking to clarify that collectively-owned membership organizations or other firms cannot “own” animals for purposes of the custom exemption?
3. Should FSIS conduct rulemaking to clarify that custom operators must maintain records that demonstrate an exact correspondence between the individuals owning a particular animal prior to slaughter and the individuals receiving any part of the products derived from that animal?



# NACMPI Committee Question #1: Custom Exemption

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Should FSIS conduct rulemaking to set a numerical limit on the number of individuals allowed to co-own an animal presented for slaughter/processing under the custom exemption provision? If so, what factors should the Agency consider, if any, to determine the limits for different amenable species?

- **Example scenario:** FSIS regulations could state that no more than four individuals may co-own a market hog presented for slaughter. The Agency could consider as a factor the industry standard for the number of discrete meat products that are typically produced from the slaughter and processing of one market hog.



# NACMPI Committee Question #2: Custom Exemption

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Should FSIS conduct rulemaking to clarify that collectively-owned membership organizations or other firms cannot “own” animals for purposes of the custom exemption?

- **Example scenario:** A farm and ranch operation in California offers slaughter services under the custom exemption provision. The operation wants to sell a live animal online to a co-op organization, slaughter and process the animal and then ship the resulting product to ten co-owners in New York, Vermont, Texas and Georgia. FSIS regulations could clarify that such an arrangement is not allowed.





# NACMPI Committee Question #3: Custom Exemption

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Should FSIS conduct rulemaking to clarify that custom operators must maintain records that demonstrate an exact correspondence between the individuals owning a particular animal prior to slaughter and the individuals receiving any part of the products derived from that animal?

- **Example scenario:** FSIS regulations could require an establishment to demonstrate through recordkeeping that six identified individuals owned a particular cow prior to slaughter and that each owner received a documented part of the product derived from that animal.



# NACMPI Committee Questions: Retail Exemption

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FSIS also asks NACMPI to review and advise on the following questions about retail exemption:

4. Should 3<sup>rd</sup> parties be permitted to prepare meat and poultry received from restaurant and retail operations for delivery to consumers without Federal inspection being required for the retail or restaurant operation? And if so, what types of preparation should be allowed?
5. Should such arrangements be allowed only in institutional settings?
6. Should FSIS conduct rulemaking to clarify what types of preparation are allowed, and in what settings, when 3<sup>rd</sup> parties are permitted to prepare meat and poultry received from retail and restaurant operations for delivery to customers without Federal inspection?



# NACMPI Committee Question #4: Retail Exemption

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Should 3<sup>rd</sup> parties (e.g., independent contractors or delivery services) be permitted to prepare meat and poultry received from restaurant and retail operations for delivery to consumers without Federal inspection being required for the retail or restaurant operation? And if so, what types of preparation should be allowed?

Examples of preparation might include warming up, defrosting, assembly of meats, cutting or packing.

- **Example scenario:** A grocery store operating under the retail exemption provision contracts with an independent service to deliver purchased products to customers who place online orders. Should the regulations allow the delivery service to prepare the meat product as part of delivery? If so, may the delivery service warm up meatloaf? Defrost steaks? Assemble meats on a snack platter? Break up bulk packages of hamburger and re-pack?



# NACMPI Committee Question #5: Retail Exemption

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Should such arrangements be allowed only in institutional settings?

Examples of these settings include school cafeterias, hospitals, nursing homes and prisons.

- **Example scenario:** FSIS regulations could allow an independent delivery service to contract with a retail exempt company to deliver prepared meat to a private preschool across its three campuses, but not to residential homes for single-consumer use.



# NACMPI Committee Question #6: Retail Exemption

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Should FSIS conduct rulemaking to clarify what types of preparation are allowed, and in what settings (as we discussed in the preceding slides), when 3<sup>rd</sup> parties are permitted to prepare meat and poultry received from retail and restaurant operations for delivery to customers without Federal inspection?



Food Safety and Inspection Service  
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