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LEGAL INSTRUMENTS TO SUPPORT LOCAL FOOD SYSTEMS IN UNITED STATES LAW

Abstract

The study aims to determine what instruments supporting local food systems (LFS) are implemented in US law. To achieve this goal, the most important regulations supporting LFS, issued at federal, state, and local levels, drawn from various fields, were analysed, including food safety law, zoning law, tax law, and federal programmes. The provisions are discussed in relation to the key elements of LFS: direct marketing, farmers' markets, community-supported agriculture, urban agriculture, and agritourism. The study shows that US law lacks a systematic approach to legal support for LFS. However, important legislative tools supporting LFS can be identified. These include exemptions from certain food safety requirements for direct farm marketing, a food sales tax exemption established by certain states, relevant local zoning laws encouraging urban agriculture and farmers' markets, as well as local laws on public procurement prioritizing local food. The most visible support, designed specifically for LFS, are federal programmes offering financial grants.

Keywords

US law – local food systems – direct sales – farmers' markets – urban agriculture – community-supported agriculture

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INTRODUCTION

The local food system (LFS) is not a new concept as it was dominant in the United States (US) before World War II.¹ In recent decades, there has been a return to local food systems, or a relocalisation of the food system.² This is visible in both the social and theoretical movements³, as well as in the actual growth in demand for locally produced foods⁴ and in the increasingly widespread marketing channels of these products, such as farmers' markets or community-supported agriculture.

In the 1930s, the first federal programmes which focused on "state-grown" or "locally-grown" products were introduced.⁵ In 1976, the first programme was adopted to encourage direct marketing of agricultural products by providing financial support.⁶ In the late 1990s, the United States Department of Agriculture (USDA) recognized the need to

¹ The literature indicates that in the early 1900s, most of the food bought and consumed in the United States was locally grown, S. Martinez, et al., *Local Food Systems: Concepts, Impacts, and Issues*, "Economic Research Report", 2010, No 97, p. 1, available at: https://www.ers.usda.gov/webdocs/publications/46393/7054_err97_1_.pdf?v=0, [last accessed 14.08.2020].

² *Ibid.*, p. 2.

³ Growing interest in local foods in the United States is the result of several movements: cit. A. Guptill, and J. L. Wilkins, *Buying into the Food System: Trends in Food Retailing in the U.S. and Implications for Local Foods*, "Agriculture and Human Values", 2002, Vol. 19, pp. 39–51. These movements include: the environmental movement, the community food-security movement, the Slow Food movement, the local food movement; See more in S. Martinez et al., *supra* note 1, p. 2.

⁴ About surveys reflecting consumers interest in purchasing local foods see: J. Keeling-Bond, D. Thilmany, and C. Bond, *What Influences Consumer Choice of Fresh Produce Purchase Location?*, "Journal of Agricultural and Applied Economics", 2009, Volume 41, Issue 1, pp. 61–74; L. Zepeda, L. Jinghan, *Who Buys Local Food?*, "Journal of Food Distribution Research", 2006, Vol. 37, pp. 1–11.

⁵ E.g.: "Pride of New York," "Pick Tennessee Products," or "Ohio Proud" see in: P. M. Patterson, *State-Grown Promotion Programs: Fresher, Better?*, "Choices magazine", 2006, Quarter 1; and R. Johnson, *The Role of Local and Regional Food Systems in U.S. Farm Policy*, "Congressional Research Service Report", 2016, p. 3, available at: <https://fas.org/sgp/crs/misc/R44390.pdf>, [last accessed 14.08.2020].

⁶ Farmer - to - Consumer Direct Marketing Act of 1976, *Pub. L. 94-463*, § 3, Oct. 8, 1976, 90 Stat. 1982.

strengthen the “local farm economy” through policy changes under federal programmes.⁷ In the Farm Bills of 2008⁸, 2014⁹, and the most recent of 2018¹⁰, the federal government has envisaged programmes to promote local food and engage citizens to “take more local control of the food system”.¹¹

Local food systems are part of the broader models of localizing food systems: “the civic agriculture” as presented by Professor Thomas A. Lyson¹², and “food democracy” by Professor Neil D. Hamilton.¹³ These models were proposed in line with the natural trends observed over the years.¹⁴ Civic agriculture is suggested as an alternative model to the industrial one that is the predominant food system in the US today. It is an embedded local food system that plays many roles such as increasing the citizens’ incomes of agricultural businesses and improving the “health and vitality of communities in a variety of social, economic, political, and cultural” aspects for which industrial agriculture is basically ill-prepared.¹⁵ In this system participate “smaller-scale, locally oriented, flexibly organized farms and food producers”. They are seen as able to “fill geographic and economic spaces that have been passed over or ignored by large-scale, industrial producers” and meet consumers’ demand for locally produced and processed food.¹⁶

⁷ Johnson, *The role*, *supra* note 5, p. 3.; and USDA, “A Time to Act,” National Commission on Small Farms Report and Recommendations, July 2009.

⁸ Food, Conservation, and Energy Act of 2008, *Pub. L.* 110-246.

⁹ Agricultural Act of 2014, *Pub. L.* 113-79.

¹⁰ Agriculture Improvement Act of 2018, *Pub. L.* 115-334.

¹¹ B. A. Fink, A. O. Schluntz, J. U. Galperin, *Food Localization: Empowering Community Food Systems through the Farm Bill*, “Journal of Food Law & Policy”, 2018, Vol. 14, No. 1, p. 206. Available at: <https://scholarworks.uark.edu/jflp/vol14/iss1/14>, [last accessed 14.08.2020].

¹² T. A. Lyson, *Civic Agriculture: Reconnecting Farm, Food, and Community*, University Press of New England, 2004.

¹³ N. D. Hamilton, “Essay – Food Democracy and the Future of American Values”, *Drake Journal of Agricultural Law*, 2004, Vol. 9, No 1, pp. 9-31, available at: <https://aglawjournal.wp.drake.edu/wp-content/uploads/sites/66/2016/09/agVol09No1-Hamilton.pdf>, [last accessed 14.08.2020].

¹⁴ Fink, Schluntz, Galperin, *supra* note 11, p. 204.

¹⁵ Lyson, *supra* note 12, p. 62 and Fink, Schluntz, Galperin, *supra* note 11, p. 190.

¹⁶ Lyson, *supra* note 12, p. 61; Fink, Schluntz, Galperin, *supra* note 11, p. 190.

Neil D. Hamilton's model of the food system focuses on the collective community efforts to promote democratic ideals through food and agriculture.¹⁷ It is "a framework for making food more responsive to citizens' needs (health, access, quality) and decentralizing control of production".¹⁸ In the literature, the local food systems are also referred to as "community food systems".¹⁹ These are described as "a collaborative network that integrates sustainable food production, processing, distribution, consumption and waste management in order to enhance the environmental, economic, and social health of a particular place".²⁰ In this network, farmers, consumers, and other community members "partner to create a more locally based, self-reliant food economy".²¹

Despite the growing popularity of the local food market, there is no established legal definition of "local food systems" nor is there a consensus about what constitutes a "local food".²² For the purposes of the study, "local food systems" refer to systems where the food produced by the farmer is sold directly to the consumer or to local retail establishments that directly supply final consumers in close geographical proximity between the place of production and the place of sale.²³ A wide range of farm businesses may be considered to be engaged in local foods. This includes all forms of short supply chains, like direct-to-consumer marketing, which means the sale of agricultural products directly to individuals for human consumption (e.g., on-farm sales/stores, from roadside stands, farmers' markets, pick-your-own or "U-Pick" operations, community-supported agriculture) and also, farm-to-school programmes, or different forms of urban agriculture (community gardens, rooftop farms, school gardens). Other types of operations include food hubs and market aggregators, kitchen incubators and mobile slaughter units, internet marketing, food

¹⁷ Hamilton, *Essay – Food*, *supra* note 13, p. 16; and Fink, Schluntz, Galperin, *supra* note 11, p. 190.

¹⁸ L. Ristino, "Back to the New: Millennials and the Sustainable Food Movement", *Vermont Journal of Environmental Law*, 2013, Vol. 15, Issue 1, p. 19; and Fink, Schluntz, Galperin, *supra* note 11, p. 190.

¹⁹ Fink, Schluntz, Galperin, *supra* note 11, p. 186.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Johnson, *The role*, *supra* note 5, p. 3.

²³ The same concept was adopted by Johnson, *The role*, *supra* note 5, p. 3.

cooperatives and buying clubs, community kitchens, small-scale food processing and decentralized root cellars, and some agritourism or other types of on-farm recreational activities.²⁴ Intermediated outlets can also be a part of local food systems, such as grocery stores, restaurants, public canteens, and regional distributors.²⁵

Local food systems are associated with economic, social, and environmental benefits.²⁶ Many consumers perceive locally sourced foods as fresher and higher in quality compared to some other readily available foods. Buying local food is believed to help support local farming economies adopting more environmentally friendly production practices.²⁷ Awareness of the negative effects of the industrial model of production and consumption and the demand for a growing world food population makes it necessary to search for alternative and sustainable models, among which local food systems are of particular importance.²⁸ LFS can play an important role in responding to a number of needs: improving the standards of food safety, quality, and taste (food less processed, fresher, with more nutrients), environmental protection (reducing fuel consumption and emissions from transport), supporting territorial and economic systems, maintaining social ties and the unique culture of the countryside.²⁹ LFS is a significant phenomenon in the

²⁴ *Ibid.*, p. 1.

²⁵ *Ibid.*, p. 5–6.

²⁶ About the benefits of Local Food Markets see Martinez et al., *supra* note 1, p. 42–50; and R. Buchan, D. Cloutier, A. Friedman, A. Ostry, *Local Food System Planning: The Problem, Conceptual Issues, and Policy Tools for Local Government Planners*, “Canadian Journal of Urban Research”, 2015, Vol. 24, Issue 1, p. 1–23. The authors pointed out that, however, some scholars claim that there is nothing inherently good about “local” scale. “Local-scale food systems are equally likely to be just or unjust, sustainable or unsustainable, secure or insecure”: B. Born, M. Purcell, *Avoiding the Local Trap: Scale and Food Systems in Planning Research*, “Journal of Planning Education and Research”, 2006, Vol. 26, Issue 2, pp. 195–207. See also R. Sonnino, *Local foodscapes: place and power in the agri-food system*, “Acta Agriculturae Scandinavica”, Soil & Plant Science, Section B, 2013, Vol. 63, No. Supplement 1, pp. 2–7.

²⁷ Johnson, *The role*, *supra* note 5, p. 1.

²⁸ E. Sirsi, *Regole e implicazioni giuridiche della produzione e del consumo di cibo locale*, in: *Studi in onore di Luigi Costato*, vol. 3, Napoli: Jovene Editore, 2014, p. 499.

²⁹ *Ibid.*, p. 500. See also G. Lipovetsky, *Una felicità paradossale. Sulla società dell'iperconsumo*, Milano: Cortina Raffaello, 2007.

category of innovative social practices and the forms of producer and consumer organizations, more often noticed in government policy. Therefore this issue deserves consideration not only in economic and sociological, but also in legal terms.³⁰ These are the reasons that justify the choice of this topic for the present study.

The aim of the study is to determine what instruments supporting local food systems are implemented in US law. It is not an easy task, as regulations concerning local food systems cannot be found in a single law devoted to this issue. Instead, they need to be drawn from a variety of areas including food safety law, zoning and planning law, tax law, and federal programmes administered by the USDA and other agencies that may be applied to support local food systems. The difficulty is exacerbated by the fact that there are three levels of sometimes overlapping sources of law: federal, state, and local.³¹ For this reason, it is beyond the scope of this article to discuss all the regulations. Rather, the focus will be on the laws that the author believes are most relevant to supporting local food systems. These rules will be analysed in relation to the key components of local food systems: direct marketing, farmers' markets, community-supported agriculture, urban agriculture, and agritourism.

I. DEFINITION OF LOCAL FOOD SYSTEMS

First, it is important to understand the concept of local food systems in order to consider the legal issues surrounding this phenomenon. The first component of the term "local food" has no established legal or other definition. Instead, it currently has a variety of meanings, depending on the context and the party defining it.³² "Local" has primarily a geographic connotation, however, there is no consensus in terms of

³⁰ Sirsi, *supra* note 28, p. 500.

³¹ See more about the U.S. legal system in: N. D. Fortin, *Food Regulation: Law, Science, Policy, and Practice*, John Wiley & Sons, 2017, p. 6-19; P. A. Curtis (ed), *Guide to US Food Laws and Regulations*, 2nd ed, Wiley-Blackwell, 2013.

³² D. Braaten, M. Coit, *Legal issues in local food systems*, "Drake Journal of Agricultural Law", 2010, Vol. 15, No.1, p. 10.

the distance between production and consumption³³. Besides, there are other characteristics attributed to local food. As an example, four criteria identified by the USDA Economic Research Service (ERS) may be given that characterize local food: (1) distance travelled, (2) marketing outlet, (3) perceived attributes, and (4) potential to address food deserts.³⁴

The distance limit for food sold locally for different regions, businesses, consumers' local food markets, and federal legislation ranges between twenty-five miles and 400 miles from the place of production to the place of purchase.³⁵ At the federal level, the first definition of local food was set forth in the 2008 Farm Bill. It states that "locally or regionally produced agricultural food product" is "[A]ny agricultural food product that is raised, produced, and distributed in (I) the locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or (II) the State in which the product is produced.³⁶ Thus, the total distance that a product can be transported and still be considered a locally or regionally produced food product is less than 400 miles from its origin, or within the State in which it is produced. The Food Safety and Modernization Act (FSMA)³⁷ provided for some exemption for producers selling their products on local markets. Local product in this Act is defined as products produced within a state's borders or within 275 miles.³⁸

At the state level, local food is typically defined as food grown within state borders³⁹ such as in the case of Illinois.⁴⁰ Vermont, for example,

³³ Martinez, et al., *supra* note 1, p. iii.

³⁴ Johnson, *The role*, *supra* note 5, pp. 2-11.

³⁵ See more: *Ibid.*, p. 3.

³⁶ Farm Bill 2018, § 6015 (codified at 7 U.S.C. § 1932(g)(9)(A)(i)). This definition applies to eligibility under a USDA's Business and Industry loan program, but has also been applied by USDA to other programmes in cases where a specific statutory definition has not been defined.

³⁷ *Pub. L. No. 111-353*, 124 *Stat.* 3885 (2011).

³⁸ See the definition of the "qualified end-user" at 21 CFR § 112.3; and in 21 U.S.C.A. § 350(h); 21 U.S.C.A. § 350(g).

³⁹ See e.g. state programmes promoting state products grown, e.g. "*Fresh from Florida*," "*Get Real, Get Maine*," "*From the Heart of Washington*," or "*California Grown*," Johnson, *The role*, *supra* note 5, p. 4.

⁴⁰ According to the Illinois Local Food, Farms, and Jobs Act of 2009, 30 *ILL. COMP. STAT.* 595/5 (2009) "[l]ocal farm or food products are products grown, processed, packaged,

encourages public administrations to purchase products grown or produced in the state.⁴¹ Often “local” refers to a “geographical indicator”, such as Washington apples, Florida oranges, or Napa Valley wines.⁴²

The second criterion of the “local food” refers to the sorts of marketing channels farmers use to distribute to consumers the food they produced or manufactured.⁴³ These channels include (1) direct-to-consumer outlets, such as farmers’ markets, roadside farm-stands, on-farm stores, and community-supported agriculture; and (2) intermediated outlets, such as grocery stores, restaurants, and regional distributors.⁴⁴

“Perceived attributes” as the third characteristic of the local food refer to several elements, including the type of farm (whether it is small or urban), the methods of production (environmentally friendly), the simplification of the supply chain, the financial and social support of local communities, the fairness of the food system.⁴⁵ Local food also may play a role in addressing food deserts, that is, “concerns about access to healthy food in some low-income or otherwise underserved communities (so-called food deserts)”.⁴⁶ The use of this potential depends on local government policy decisions, such as tax incentives for farmers’ markets or programmes to encourage communities to be active producers in urban agriculture or community gardening, or prioritizing local food production and consumption to tackle hunger in the community.⁴⁷

The two last characteristics (“perceived attributes” and “potential to address food deserts”) are not related to the food itself, but rather to the whole food system. In fact, in the literature, the term “food system” is broadly defined as “everything from farm to fork”, which means “a systematic way of thinking about the life cycle of a food

and distributed by Illinois citizens or businesses located wholly within the borders of Illinois.”

⁴¹ *Vermont Statutes Annotated*, Title 6, § 4601 (2009).

⁴² Johnson, *The role*, *supra* note 5, p. 4; and Fink, Schluntz, Galperin, *supra* note 11, p. 208.

⁴³ Fink, Schluntz, Galperin, *supra* note 11, p. 208.

⁴⁴ Johnson, *The role*, *supra* note 5, p. 6.

⁴⁵ Fink, Schluntz, Galperin, *supra* note 11, p. 209–210.

⁴⁶ *Ibid.*, p. 210.

⁴⁷ *Ibid.*

product”.⁴⁸ It includes production, harvesting, processing, handling, packaging, storage, transportation, and waste disposal. The system, however, also addresses factors that are external to the supply chain, such as political decisions, environmental, economic, and cultural impact on food production.⁴⁹

Therefore, the term “local food systems” does not refer only to distance or geography, but also covers other important characteristics associated with the supply chain⁵⁰, as well as external to it, that can affect food production and local communities as a whole. Finally, it is worth quoting the Congressional Research Centre’s definition that concisely describes local food systems as follows: “[l]ocal and regional food systems generally refer to agricultural production and marketing that occurs within a certain geographic and social proximity (between farmer and consumer) or that involves certain social or supply chain characteristics in producing food (such as small family farms, urban gardens, or farms using sustainable agriculture practices)⁵¹. Federal and state initiatives to identify local food are seen in the literature as evidence of a rapidly growing interest in local food, and legislative efforts to define this term⁵², which will hopefully lead to a more standardized definition.⁵³ In the current situation, when the term “local food” does not have a set meaning, becoming “a commonplace advertising term”, its misuse may mislead consumers.⁵⁴

II. FARMER-TO CONSUMER DIRECT MARKETING

Farmer-to-consumer direct marketing is a key part of local food systems because most of the sales of local food take place in its context.⁵⁵ In US

⁴⁸ M. T. Roberts, *Food Law in the United States*, Cambridge University Press, 2016, p. 384.

⁴⁹ Braaten, Coit, *supra* note 32, p. 13.

⁵⁰ Fink, Schluntz, Galperin, *supra* note 11, p. 206; M. Coit, “Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement”, *Journal of Food Law & Policy*, 2008, Vol. 4, pp. 45, 47.

⁵¹ Johnson, *The role*, *supra* note 5, p. 1.

⁵² Braaten, Coit, *supra* note 32, p. 13.

⁵³ *Ibid.*, p. 10.

⁵⁴ *Ibid.*

⁵⁵ Coit, *supra* note 50, p. 56.

law there is no single legal definition of direct marketing of agri-food products applicable in all branches of law. For the first time, its definition was established in the 1976 «Farmer to Consumer-Direct Marketing Act of 1976 7 USC 3001»⁵⁶ for the purpose of the Federal-State Marketing Improvement Program, specially designed to facilitate direct marketing. Pursuant to this Act, the term “direct marketing” means: “the marketing of agricultural commodities at any marketplace (including, but not limited to, roadside stands, city markets, and vehicles used for the house-to-house marketing of agricultural commodities) established and maintained for the purpose of enabling farmers to sell (either individually or through a farmers’ organization directly representing the farmers who produced the commodities being sold) their agricultural commodities directly to individual consumers, or organizations representing consumers, in a manner calculated to lower the cost and increase the quality of food to such consumers while providing increased financial returns to the farmers.”

In the literature, “direct marketing” is defined as an activity of the sale of food directly from the farmer to the consumer.⁵⁷ It includes such forms as farm stands, roadside stands, pick-your-own operations, farmers’ markets, community-supported agriculture (CSAs). These forms of sales enable consumers to have a direct and more personal relationship with the producer of the food they buy and eat, which is one of the reasons why they are interested in buying locally.⁵⁸

There is no single piece of legislation covering or specifically dedicated to all direct marketing issues in US law. First, the direct marketing of agricultural products is a business activity that the farmer must register in one of the legal forms provided for by law. He will also need a tax identification number for income tax purposes or other taxes, such as employment or sales tax. Most of the farms undertaking this business are small, and for them, sole proprietorship is the most appropriate form. The farmer who carries out this activity must adhere to a set of

⁵⁶ Codified in 7 U.S. Code § 3002.

⁵⁷ Neil D. Hamilton, *The legal guide for direct farm marketing*, Drake University Press, 1999, p. 1.

⁵⁸ M. Pollan, *The omnivore’s dilemma: a natural history of four meals*, New York: The Penguin Press, 2006, p. 242; Braaten, Coit, *supra* note 32, p. 14.

rules established by federal, state, and local governments regarding tax, licensing, insurance, labour requirements, food safety, and zoning regulations. Several federally administered and state-administered programmes offer financial incentives for direct marketing activities.

Many federal laws and regulations are directly applicable to local food systems. However, most regulations are in force at the state or local level, or a combination thereof. For example, there may be relevant zoning laws that impose limitations for operating a farm stand or similar enterprise. In addition, public health and safety, food sampling restrictions, and the application of a sales tax are regulated at the local or state level. Producers selling local food should be aware that laws can vary from state to state and even from county to county within a state. Certainly, observing all the rules requires additional administrative work from farmers and the incurring of fixed costs.⁵⁹ The study will focus on identifying, among the complexity of regulations, those that facilitate or support farmer-to-consumer direct marketing.

1. FOOD SAFETY REQUIREMENTS

Food safety requirements are an important factor in building viable direct marketing businesses as they define the scope of the farm's activities, may require investment in equipment and infrastructure, and may limit market access.⁶⁰ Food safety, quality control, and consumer protection regulations are established at three levels of government: federal, state, and local.⁶¹ They regulate, to varying degrees, the following five areas: processing, facility, storage, labelling, and distribution. The impact of the regulations depends on the type of food being considered and the

⁵⁹ An overview of Local Food Systems of the National Agricultural Law Center, available at: <https://nationalaglawcenter.org/overview/local-food/>, [last accessed 14.08.2020].

⁶⁰ B. Best, M. Kilkelly, S. Levine, K. Ruhf, "Understanding Food Safety Regulations for Farm-Direct Food Sales: A Study of Connecticut, Massachusetts, New York and Vermont", *The Northeast Ag Works! Project*, 2007, p. 4, available at: <https://nesawg.org/sites/default/files/NESAWGUnderstandFoodSafetyRegs.pdf> [last accessed 14.08.2020].

⁶¹ More about US food safety law see in: M. C. Sanchez, *Food Law and Regulation for Non-Lawyers. A US Perspective*, 2nd ed., Springer International Publishing, 2015.

scale of the activity. The hierarchy between federal, state, and local governments is that federal laws supersede state laws, and state laws supersede local laws. In some states “home rule” means that local rules supersede state rules.⁶²

Moreover, the jurisdiction is divided among government agencies. The United States Department of Agriculture and the Food and Drug Administration (FDA) share federal jurisdiction over food production and sale, and regulate all food in “interstate commerce”. Food produced in one state and sold in another state must meet the requirements of USDA and/or FDA regulations which means the food, and the facility where it is produced, stored and sold, must be inspected by USDA, FDA, or both, unless it falls under an exemption.

There are many significant federal exemptions in food safety regulations, although states do not always incorporate them if non-incorporation is warranted by the needs of a state (its economy, agriculture, markets, style of government, and administrative infrastructure).⁶³ However, a state’s regulations must be at least as protective of health and safety as USDA and FDA regulations, and in some cases, they may be more protective.⁶⁴ Therefore, a farmer wishing to sell his produce directly to customers, on a farm or elsewhere, must learn to navigate a three-level regulatory environment. The number of regulations may even increase if his products are sold at a farmers’ market or in another state. This will require compliance with market-specific regulations and state and local laws, but also federal regulations governing interstate commerce.⁶⁵

1. EXEMPTION FROM REGISTRATION FOR RETAIL FOOD ESTABLISHMENTS

As a general rule, facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States must be

⁶² Best, Kilkelly, Levine, Ruhf, *supra* note 60, p. 5.

⁶³ *Ibid.*

⁶⁴ See more Curtis, *supra* note 31, pp. 55–71.

⁶⁵ Best, Kilkelly, Levine, Ruhf, *supra* note 60, p. 6.

registered⁶⁶ with the state Department of Agriculture and undergo facility inspections to ensure that construction, health, and food safety codes are met. However, under 21 CFR § 1.226, an exemption is provided for some facilities, including farms and “retail food establishments” (RFE). Farms that manufacture or process food can be exempted, provided that “[a]ll food used in such activities is consumed on that farm or another farm under the same management”⁶⁷. Pursuant to 21 CFR § 1.227 “food” has the meaning given in section 201(f) of the Federal Food, Drug, and Cosmetic Act.⁶⁸ The regulator gives some examples of food.⁶⁹

Farms that sell food products directly to consumers “as their primary function” may benefit from the “retail food establishments” exemption, as defined in section 21 CFR § 1.227.⁷⁰ “Retail food establishment” means an establishment that sells food products directly to consumers as its primary function. It includes facilities that manufacture, process, pack, or hold food to sell it from that establishment (including food that it manufactures, processes, packs, or holds) directly to consumers. For the sale of food to qualify as a “primary function” of the RFE, the annual monetary value of selling food products directly to consumers⁷¹ must

⁶⁶ See more about requirements concerning registration in: Registration of Food Facilities: What You Need to Know About the FDA Regulation: Guidance for Industry Small Entity Compliance Guide, U.S. Department of Health and Human Services Food and Drug Administration Center for Food Safety and Applied Nutrition Center for Veterinary Medicine May 2018, available at: <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/small-entity-compliance-guide-registration-food-facilities>, [last accessed 14.08.2020].

⁶⁷ 21 CFR § 1.227 (iii)(A).

⁶⁸ The Federal Food, Drug, and Cosmetic Act (section 201(f)) states that “The term ‘food’ means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.”.

⁶⁹ “Fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or as components of food, animal feed (including pet food), food and feed ingredients, food and feed additives, dietary supplements and dietary ingredients, infant formula, beverages (including alcoholic beverages and bottled water), live food animals, bakery goods, snack foods, candy, and canned foods”, 21 CFR § 1.227

⁷⁰ Retail Food Establishment Facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States must be registered, See *Exemption Flowchart*, FDA, May 2018, available at: <https://www.fda.gov/media/112967/download>, [last accessed 14.08.2020].

⁷¹ The term “consumers” does not include businesses, 21 CFR § 1.227.

exceed the annual monetary value of selling food to all other buyers.⁷² An RFE, apart from grocery stores, convenience stores, and vending machine locations, includes farm-operated businesses selling food directly to consumers as their primary function. Pursuant to the Act, sale of food directly to consumers may be made (1) from an establishment located on a farm or (2) by a farm-operated business⁷³, and it includes sale:

- (i) At a roadside stand (a stand situated on the side of or near a road or thoroughfare at which a farmer sells food from his or her farm directly to consumers) or farmers' market (a location where one or more local farmers assemble to sell food from their farms directly to consumers);
- (ii) Through a community-supported agriculture program. Community-supported agriculture (CSA) programme means a program under which a farmer or group of farmers grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop(s) for that season. This includes CSA programs in which a group of farmers consolidate their crops at a central location for distribution to shareholders or subscribers; and
- (iii) At other such direct-to-consumer sales platforms, including door-to-door sales; mail, catalogue and Internet order, including online farmers markets and online grocery delivery; religious or other organization bazaars; and State and local fairs.⁷⁴

2. EXEMPTION FROM STANDARDS FOR PRODUCE SAFETY

Farms engaged in direct farm marketing of food on local markets may be also exempt from The Produce Safety Rule.⁷⁵ This rule establishes standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption, and implements

⁷² 21 CFR § 1.227.

⁷³ For the purposes of the act, "farm-operated business" means a business that is managed by one or more farms and conducts manufacturing/processing not on the farm(s).

⁷⁴ 21 CFR § 1.227.

⁷⁵ A tool to help determine if a farmer is exempt from the rule is available at <https://www.fda.gov/downloads/Food/GuidanceRegulation/FSMA/UCM472499.pdf>, [last accessed 14.08.2020].

the Food Safety Modernization Act.⁷⁶ In accordance with 21 CFR § 112.4, the rule does not apply to very small farms, i.e. farms with an average annual value of products sold over the past three years of \$25,000 or less. Other farms that meet the two requirements of 21 CFR § 112.5 can be eligible for the “qualified exemption” and modified requirements. The first requirement is that the farm must have food sales averaging less than \$500,000 per year during the previous three years. According to the second, the farm’s sales to “qualified end-users” must exceed sales to all others combined during the previous three years. In other words, a majority of the food (by value) must be sold directly to “qualified end-users”. A “qualified end-user” is either (a) the consumer of the food or (b) a restaurant or retail food establishment that is located in the same state or the same Indian reservation as the farm or not more than 275 miles away.⁷⁷ Hence, farms to be exempt must sell food within this distance limit.

However, a farm with the qualified exemption must still meet certain modified requirements, and keep certain documentation and records, as per Sections 112.6 and 112.7 CFR, Title 21 for three to four years to demonstrate that it has not exceeded any limits.⁷⁸ The farm will also need to disclose the name and the complete business address of the farm where the produce was grown either on the label of the produce or at the point of sale.⁷⁹ The exemption is aptly targeted at farms participating in local food systems given that these farms, as defined in this study, sell food directly to a consumer or to a retail food establishment in close proximity between the place of production and the place of sale. In this case, “proximity” is defined by restricting the distance of food travel to 275 miles or state boundaries.

⁷⁶ The final rule went into effect on 26 January 2016, it is contained in 80 FR 74353.

⁷⁷ 21 CFR § 112.3.

⁷⁸ 21 CFR §112.6 and 21 CFR §112.7; M. Coit, T. A. Feitshans, *Food Systems Law: An Introduction for Non-Lawyers*, Routledge, 2020, p. 12.

⁷⁹ See the explanation given by the FDA: <https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-produce-safety>, [last accessed 14.08.2020].

3. EXEMPTION FROM FOOD PROCESSOR LICENCE

In general, small scale farmers do not need a licence to sell fresh, whole, raw fruit and vegetables.⁸⁰ Whereas, for processed foods, a licence is required. However, when considering food safety regulations for a particular food product, it is important to know which federal, state, or local authorities have jurisdiction for setting standards, giving approvals, and issuing licences or permits. Baked goods are subject to FDA and USDA food safety regulations. Depending upon specific ingredients they may be considered hazardous or non-hazardous. Therefore licences may restrict recipes, or conversely, specific recipes may require specific licences. Milk farms are regulated by the FDA, but dairy farms by USDA. Therefore, milk producers, milk hauliers, and milk processors are licensed separately, although they may be the same business. Regulations for milk may be different in each state.⁸¹ FDA and USDA food safety regulations apply to honey and maple syrup. In addition, states issue their own regulations, which may vary from state to state regarding requirements for licences for beekeepers, retail vs. wholesale, label content, grade standards, and small farm exemptions.⁸²

Most states have “cottage food” laws that allow certain foods to be legally prepared in home kitchens and sold on a small scale directly to the consumer.⁸³ Many of them, such as Texas⁸⁴, do not require a food manufacturer’s licence and inspection for in-house operations. Washington, in contrast, imposes an obligation for a cottage food operator to obtain

⁸⁰ See e.g. the study: Best, Kilkelly, Levine, Ruhf, *supra* note 60.

⁸¹ Each state may have different requirements regarding: facilities, the place where milk can be sold and to whom, mandatory pasteurization, animal vaccinations, packaging, label content, and small producer exemptions.

⁸² Best, Kilkelly, Levine, Ruhf, *supra* note 60, pp. 17–25.

⁸³ View the National Agricultural Law Centre’s compilation of state cottage food laws, available at: <https://nationalaglawcenter.org/state-compilations/>, [accessed 14.08.2020].

⁸⁴ See Texas Department of State Health Services, *Frequently Asked Questions – Cottage Food Production Operations*, available at: <https://www.dshs.texas.gov/foodestablishments/cottagefood/faq.aspx>, [last accessed 14.08.2020] (the authorities in Texas may investigate a complaint regarding the preparation of potentially hazardous food at a private residence).

a permit annually.⁸⁵ In Washington, all businesses selling processed foods⁸⁶ direct to the consumer at farmers markets, on-farm, or any other location must obtain a Food Processors licence from the Washington State Department of Agriculture (WSDA) Food Safety Program. However, Revised Code of Washington (RCW) provides some exemptions from the requirement to obtain a WSDA Food Processor License, in several cases, among which for example, when washing a raw agricultural product and preparing or packaging for sale in their natural state (i.e. fruits and vegetables); or when being licensed as a Food Service Establishment and 100% of sales are on-site.⁸⁷ “Cottage food operation” is also listed in the chapter. It refers to producing food exclusively in the home kitchen of a person’s primary domestic residence in Washington state and only for sale directly to the consumer. “Cottage food products” means non-potentially hazardous baked goods; baked candies and candies made on a stovetop; jams, jellies, preserves, and fruit butters as defined in 21 CFR § 150.

Another example concerns exemption for retail food establishments. Under the Washington Administrative Code (WAC) some establishments offering food that is not potentially hazardous (e.g. unprocessed fruits, vegetables, fresh herbs) are not subject to requirements from Chapter 246–215 on the food safety regarding retail food establishments. The exemption is not specifically designed for direct selling farms, but to any establishment that meets the criteria set in the chapter.

Another exemption for farmer-to-consumer direct marketing, as determined by state and local governments, may apply to sales tax. In Washington State, most food sales are not taxed, except when selling “prepared food”, i.e. food that is heated for immediate consumption or where the seller provides utensils for immediate consumption.⁸⁸ Oregon

⁸⁵ See Washington State Department of Agriculture, Cottage Food Operation, website, available at: <https://agr.wa.gov/cottagefood>, [last accessed 14.08.2020].

⁸⁶ “Food processing” is defined in RCW 69.07 as “the handling or processing of any food in any manner of preparation for sale for human consumption.” This can be confused with “prepared foods.” Food processing includes common practices such as putting cleaned lettuce into packaged, ready to serve salad mix, or freezing blueberries in five pound plastic bags.

⁸⁷ See more in RCW 69.07.100 on Establishments exempted from provisions of chapter.

⁸⁸ RCW 82.08.0293.

has no sales tax⁸⁹, while in Idaho, sales tax must be collected on all retail sales, including direct farmer-to consumer sales of food.⁹⁰

As the analysis shows, there are some facilities for direct marketing in US food safety regulations (federal and state). At the federal level, they concern exemptions from registration and the Produce Safety Rule, and at the state level, there may be exemptions from the requirement to have a food processor licence and from sales tax. However, the regulatory framework can confuse farmers and remain complex due to the three levels of governance, the lack of a separate piece of legislation specifically designed for direct marketing, and rules that vary depending on the state and product being sold.

III. FARMERS' MARKETS

Farmers' markets are one of the most significant and visible components of local food systems. Through this marketing channel, local farmers can sell their products directly to consumers, who, in turn, can buy fresh local products, know the producer, learn about farming and food safety issues, and establish social relations with the producers. Farmers' markets can help local farmers maintain their production and stimulate the creation of new food businesses, thereby "increas[ing] the security and ability of communities and regions to produce their own food supplies".⁹¹ In addition to creating new opportunities for farmers and consumers, they can help revitalize neighbourhoods and bring about critical economic and social change in communities. These reasons make them the fastest growing forms of direct farm marketing in the USA.⁹²

As in the case of direct sales, there is no single federal law governing farmers' markets. Each US farmers' market has its own rules, which can be very diverse, more or less complex, from a one-page list of guidelines to a set of laws or policies. Typically, the farmer will have to complete

⁸⁹ See at: <https://www.oregon.gov/dor/Pages/sales-tax.aspx>

⁹⁰ See Idaho Statutes: Title 63, Chapter 36.

⁹¹ N. D. Hamilton, "Farmers' Markets Rules, Regulations and Opportunities", *National Agricultural Law Center Publications*, June 2002, p. 2.

⁹² *Ibid.*, p. 1.

an application or sign a contract or statement with the market organizer that he will abide by all market rules and pay a fee to become a vendor. From a legal perspective, all the rules and documents become part of a binding legal agreement between the parties.⁹³

In addition to the market's rules, a farmer's participation in the market may be governed by federal, state, and local laws. Depending on the state, county, city, or town where the market is located, farmers may need to comply with laws regarding many issues, including licensing and permits, food handling and safety, collecting and reporting sales tax, labour issues, and farming practices.⁹⁴ There are also several federally-created programmes to support farmers' markets, such as the Farmers Market Promotion Program, the Senior Farmers' Market Nutrition Program, and the Local Agriculture Market Program. The vast majority of states have farmers' market associations that assist and facilitate the regulation of local food marketing.

1. DEFINITION OF FARMERS' MARKET

There is no uniform binding legal definition of farmers' markets in US law. For each state or city, its meaning may vary. In some places, this name is used for markets where farmers sell not only retail to consumers, but also wholesale to other customers, or even for grocery stores where no farmers can be found.⁹⁵ For the purposes of the Senior Farmers' Market Nutrition Program (SFMNP), Section 249.2 of title 7, Code of Federal Regulations defines "farmers' markets" as: "an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers". The definition seems appropriate when considering farmers' markets as part of local food systems. It includes the criteria of "local farmer" and "direct" sales of their products to consumers. Such markets should indeed be reserved for local farmers.

⁹³ *Ibid.*, p. 2.

⁹⁴ J. A. Speier, J. E. Krueger, "Understanding Farmers' Market Rules", *Farmers' Legal Action Group, Inc.*, 2006, available at: <http://www.flaginc.org/wp-content/uploads/2013/03/FarmersMarket.pdf>, [last accessed 15.08.2020].

⁹⁵ Hamilton, *farmers' supra* note 91, p. 3–4.

It is therefore important that the rules governing the markets define a restriction of the commercial area for producers in order to meet the criterion of a “local” farmer. Some markets address this problem by listing the counties from which producers are eligible.⁹⁶

Secondly, farmers’ markets should be limited to the products that are produced by farmers who sell them at the market. Allowing the sale of other products is contrary to the idea of a “farmers’” market. Moreover, it is confusing for consumers, who may not be aware of this distinction, and creates unfair competition for local farmers in the market. For this reason, most of the US farmers’ markets are “producer-only”.⁹⁷ This objective is typically achieved through appropriate rules governing the eligibility of products and producers to participate in the market. Another criterion that distinguishes farmers’ markets from other types of food outlets, grocery stores, or roadside stands is their location in a public area, such as a street or parking lot, as well as their periodic working time, usually several times a week.⁹⁸

It is interesting to examine some examples of farmer’s market rules and definitions in relation to these criteria. For example, California has a definition of “Certified Farmers’ Markets”. These are “locations established in accordance with local ordinances, where California farmers may transport and sell to the public Californian agricultural products that they produced, that are exempt from the established grade, size, labelling, packaging and other such requirements for fruits, nuts, and vegetables, and operated in accordance with this chapter and regulations adopted pursuant to this chapter”.⁹⁹ Two criteria included in the definition are worth noting: the local origin of the farmers and the products (“California

⁹⁶ See for example: 2020 Santa Fe Farmers’ Markets Rules and Regulations Approved by the SFFM Board of Directors 7.16.20 which states that “The local area refers to the counties of Santa Fe, Rio Arriba, Los Alamos, Taos, Mora, San Miguel, Sandoval, Torrance, McKinley, San Juan, Guadalupe, Harding, Colfax, Union, and De Baca”, available at: https://s3.amazonaws.com/media.santafefarmersmarket.com/wp-content/uploads/2020/07/17165801/Rules-Regulations_7.16.201.pdf, [last accessed 15.08.2020].

⁹⁷ Hamilton, *Farmers’*, *supra* note 91, p. 28.

⁹⁸ *Ibid.*, p. 3. According to Prof. Hamilton “The critical issue is that farmers are selling food they produce directly to consumers on a seasonal basis.”

⁹⁹ California Food and Agricultural Code § 47004(b), *Division 17 enacted by Stats. 1967, Ch. 15. Heading of Article 1.5 added by Stats. 2008, Ch. 447, Sec. 5.*

farm produce” only) and the market reservation only for farmers as vendors. This state law not only regulates which farmers can sell what kind of products in “certified” markets, but it also requires inspection and certification of farmers in order to become sellers.

Maine defines the term “farmers’ market” as “a building, structure or place used by two or more farmers for the direct sale of farm and food products to consumers (...)”.¹⁰⁰ In addition, at least 75% of the products offered by a person must be grown or processed by that person. Other products must have been purchased directly from another farmer. It is important to know that Maine’s law prohibits, under fine, the use of the term “farmers’ market” to refer to a market elsewhere that does not meet the definition. Apparently, the purpose of this law is to preserve the ability of true farmers’ markets to use this term.¹⁰¹ Unlike Maine, where the term “farmers’ market” is legally defined, in other states such as Pennsylvania, it can be used by anyone. The freedom in using the term may mislead and confuse the consumer.

In Washington state, wine and beer from Washington state vineyards and breweries can be sold at “qualifying farmers markets”.¹⁰² The condition is that the wine must be made entirely of grapes grown in the Washington appellation or other agricultural products grown in the state. Beer must be produced in Washington. For other alcoholic beverages sold at farmers markets that are members of the Washington State Farmers Market Association (WSFMA), the condition is that they must be 95% Washington-grown ingredients.¹⁰³

2. FOOD SAFETY REQUIREMENTS FOR FARMERS’ MARKETS

Food safety requirements for farmers’ markets are regulated in many state codes. Some of them provide for exemption from rules applying to food

¹⁰⁰ Maine Statute Annotated, Title 7 §415, PL 2011, c. 280, §1 (AMD).

¹⁰¹ Hamilton, *Farmers’*, *supra* note 91, p. 4.

¹⁰² RCW 66.24.240, 66.24.244, and 66.24.170, PL 2020, c. 230, H.B. 2412.

¹⁰³ P. Barrentine, C. Donovan, F. Berman, *Small Farm & Direct Marketing Handbook Regulations and Strategies for Farm Businesses in Washington State*, Sixth Edition, Updated 2010, A Publication Of The Washington State Department Of Agriculture, available at:

establishments. For example, non-potentially hazardous food products listed in the Iowa Farmers' market regulations may be sold at farmers' markets without being licensed.¹⁰⁴ New York State¹⁰⁵ exempts farmers' markets from their definition of retail food establishment, but their food code does not mention farmers' markets.¹⁰⁶ California, on the contrary, includes farmers' markets in its definition of food facility, prescribing sanitation requirements for them.¹⁰⁷

Most market rules make farmers responsible for obtaining any business permits or licences they need, including issues such as state and local tax permits, if required.¹⁰⁸ In Crescent city farmers' markets, each vendor is responsible for collecting and reporting his/her own sales taxes, where applicable according to all federal, state, and local guidelines. However, as was already mentioned, many states exempt the sale of food from the application of state sales taxes. For example, in Iowa, the sale of fresh fruits and vegetables is exempt from retail tax. While, as a rule, the sale of processed foods, or non-food items such as flowers or crafts is taxed.¹⁰⁹ It has been noted in the literature that such a distinction can cause complications when "food in one form, for example, watermelon, would be tax exempt, but if sliced and served ready to eat would be subject to tax".¹¹⁰

<http://agr.wa.gov/Marketing/SmallFarm/directmarketinghandbook.aspx>, [last accessed 15.08.2020].

¹⁰⁴ Code of Iowa, Section 137F.8, 98 Acts, c. 1162, §13, 30.

¹⁰⁵ Sanitary Regulations for Direct Marketing, New York Department of Agriculture and Markets, available at: https://agriculture.ny.gov/system/files/documents/2020/03/sanitaryregulationsforfarmersmarkets_0.pdf, [last accessed 15.08.2020].

¹⁰⁶ Roberts, *supra* note 48, p. 180.

¹⁰⁷ According to California Health and Safety Code § 114370 "Certified farmers' markets shall meet the applicable general sanitation requirements in Section 113980 and as provided in this chapter." (The chapter added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.) According to the California Food and Agricultural Code, Section 47004, "Every producer selling within a certified farmers' market shall comply with Section 47020".

¹⁰⁸ Hamilton, *Farmers'* *supra* note 91, p. 35.

¹⁰⁹ See e.g. Vendor's Licences and Sales Taxes at Ohio Farmers Markets, Ohio Department of Taxation, available at: https://www.tax.ohio.gov/sales_and_use.aspx, [last accessed 15.08.2020].

¹¹⁰ Hamilton, *Farmers'* *supra* note 91, p. 33.

3. LABELLING OF PRODUCTS SOLD AT FARMERS' MARKETS

Many market regulations have specific labelling requirements for the products being sold. For example, California requires a “sign or banner at the point of sale that states the name of the farm or ranch, the county where the farm or ranch maintains the production grounds that produced the products being offered for sale is located, and a statement: “We Grew What We Are Selling” or “We Raised What We Are Selling” or “We Grow What We Sell”.¹¹¹ Alternatively, similar expressions may be used that would clearly indicate that the farm is selling agricultural produce grown on Californian land that is owned or controlled by the farm.¹¹² Information about the local origin of a product (e.g. “locally grown”) and that it is “farm-raised” can help buyers understand what kind of products they are buying. When the market allows the sale of wholesale goods, such a “label” may be even more important to distinguish between types of vendors.¹¹³

4. LAND USE LAWS

Another issue that significantly affects the possibility of creating a farmers’ market are zoning laws. Whether a farmers’ market is allowed in a given place (private property, public property, streets) is determined by local land use laws. Some of them may require cumbersome permit issuing processes, and others, on the contrary, facilitate the creation of a farmers’ market.¹¹⁴ In Los Angeles County, for example, farmers’ markets are a defined use and are subject to either a director’s review approval or a minor conditional use permit, depending on the zone where a farmers’ market seeks to locate.¹¹⁵ As noted in the literature, it would be advisable

¹¹¹ California Food And Agricultural Code, Section 47004 (c) (1).

¹¹² *Ibid.*

¹¹³ Hamilton, *Farmers’ supra* note 91, p. 34.

¹¹⁴ Roberts, *supra* note 48, p. 390.

¹¹⁵ See Los Angeles County, California, Code of Ordinance, Title 22. Planning and Zoning, § 22.44.1521, *Ord. 2019-0004 § 1, 2019.*

for the community to establish farmers' markets as allowed in selected areas, which would eliminate the need for a permit and increase the area available to the markets.¹¹⁶ The problem is when a farmers' market is not a recognized use or is not allowed at all, even as a temporary use. In some cases, the costs of permitting processes are an obstacle. For example, in San Jose, California, a farmers' market needed a Special Use permit costing up to three thousand dollars annually.¹¹⁷ Some cities are developing policies to encourage the placement of farmers' markets on different public spaces, where often there are favourable amenities, foot traffic, and parking.¹¹⁸

It is worth mentioning the solutions contained in the Land Use Regulation, which aim to help low-income consumers make purchases at farm markets. Zoning codes can require the acceptance of various forms of payment, including the Supplemental Nutrition Assistance Program (SNAP) benefits.¹¹⁹ For example, California encourages participation in SNAP, where the equivalent is CalFresh.¹²⁰ Los Angeles zoning code explicitly requires that farmers' markets accept CalFresh benefits.¹²¹ A number of programmes have been targeted at the federal level to support farmers' markets, including the Agricultural Market Promotion Program, the Senior Market Nutrition Program, and the latest Local Agricultural Market Program.

¹¹⁶ Roberts, *supra* note 48, p. 390.

¹¹⁷ See San Jose, California, Ordinance 29218, adopted 3/5/2013, effective 4/5/2013.

¹¹⁸ See, e.g. San Francisco, California, Administrative Code §9A.3, *Ord. No. 3758(1939)*, *Sec. 2, as amended*, (providing that a farmers' market may be established on property under the jurisdiction of the Recreation and Park Commission); and Roberts, *supra* note 48, p. 390.

¹¹⁹ Food and Nutrition Act of 2008, *Public Law 88-525; Enacted Aug. 31, 1964; 78 Stat. 703, as amended through P.L. 116-94, Enacted December 20, 2019*. The programme assists farmers' markets and direct-marketing farmers to become authorized to accept SNAP Electronic Benefits Transfer (EBT). USDA makes funds available through states to supply farmers and farmers markets with EBT equipment, which is free. Through partner organizations, USDA also provides funding for wireless equipment to process EBT.

¹²⁰ See California Welfare and Institutions Code, Chapter 10 (*amended by Stats. 2011, Ch. 227, Sec. 67.5*).

¹²¹ See e.g. Los Angeles County, California, Code of Ordinance, Title 22. Planning and Zoning, § 22.140.210 C.6. (*Ordinance 1494, passed on 12 September 1927, as amended*).

IV. COMMUNITY-SUPPORTED AGRICULTURE

Community-Supported Agriculture, since it first appeared in the USA in 1986, has expanded, becoming an increasingly popular way of buying local, seasonal food directly from a farmer.¹²² A CSA may be defined as a producer-consumer local production and marketing partnership that involves a subscription-based contract for the delivery of seasonal products from the farm.¹²³ Typically, these kinds of farmer-consumer arrangements, with possible variations, involve consumers buying “shares” of the annual harvest. Farmers are paid in advance and do not have to spend time on the marketing of their produce during the season when they must be fully involved in the production. In turn, consumers receive fresh produce, develop a relationship with the farmer, and learn more about how the food is grown. In other words “this relationship provides fresh local produce to consumers, and working capital plus a guaranteed market for farmers”.¹²⁴

The CSA model, usually, implies an important concept of “shared risk”, which goes beyond a mere commercial transaction. Members agree to accept a possible risk of crop failure, with no possibility of reimbursement. This idea creates a sense of community among members, and between members and the farmers.¹²⁵ There are also value-added aspects of CSA, which, as noted in the literature, is “selling a lifestyle that reconnects people to their food and the land”.¹²⁶ The adjective

¹²² In 1986, there were 2 CSA operations in the United States. Though the concept of CSA originated in the 1960s in Switzerland and Japan: Martinez et al., *supra* note 1, p. 7-8.

¹²³ “Defining Community Supported Agriculture.” Community Supported Agriculture (CSA): An Annotated Bibliography and Resource Guide, 1993, National Agricultural Library, available at: <https://pubs.nal.usda.gov/sites/pubs.nal.usda.gov/files/csadef.html>, [last accessed 16.08.2020].

¹²⁴ M. Paul, *Supported Agriculture: a model for the farmer and the community?, case study*, “Future Economy” 2/2/2015, p. 1, available at: https://static1.squarespace.com/static/5bca1b68b9144962bef1e1a5/t/5c3d7ab72b6a285d25509798/1547532984252/MP_Final_PDF.pdf, [last accessed 16.08.2020].

¹²⁵ *Ibid.*, p. 1.

¹²⁶ G. Lamb, “Community-supported agriculture”, *Threefold Review*, 1994, No 11, pp. 39-43 and M. Paul, “Farmer Perspectives on Livelihoods Within Community Supported

“Community Supported” illustrates the community-based funding and local-food orientation of the production system. In some respects, CSAs present an early form of crowd-funding.¹²⁷

According to the list provided by the US Department of Agriculture, Section CSA Directory, there are currently 896 farms that offer consumers regular deliveries of locally-grown farm products on a subscription or membership basis.¹²⁸ They range from very small family farms to large-scale farms using CSA as one of many marketing strategies to sell products, and everything in between.¹²⁹ Many CSAs operate in the “informal contractual relationships between farmer and consumer”, based on a more personal relationship with their consumer.¹³⁰ The lack of more legalistic rules governing the CSA can, paradoxically, be the reason for its successful development. However, a corporate form would better protect farmers’ land and non-farm assets from liability risk, but it would be contrary to the “community-oriented, risk-sharing principles of CSAs”.¹³¹ The community-oriented CSA appears to be an alternative food production model that supports consumer values of health and community. According to some views, unlike the organic movement, it is not burdened by political pressure or “hijacked by industrial agriculture”.¹³² It is also an opportunity for smaller farmers as it does not require economies of scale and long supply chains, unlike conventional food production and distribution systems, resulting in highly processed food.¹³³ That is why this business model is growing. However, at the same

Agriculture”, *Economics Department Working Paper Series*, No 212, 2016, p. 3, available at: https://scholarworks.umass.edu/econ_workingpaper/212, [last accessed 16.08.2020].

¹²⁷ N. R. Johnson, R. Armstrong, A. Bryan Endres, “Community Supported Agriculture: An Exploration of Legal Issues and Risk-Management Strategies”, *Natural Resources & Environment*, 2013, Vol. 28, No 2, p. 1.

¹²⁸ <https://www.ams.usda.gov/local-food-directories/csas>, [last accessed 16.07.2020].

¹²⁹ Paul, *Supported*, *supra* note 124, p. 1.

¹³⁰ Johnson, Armstrong, Endres, *supra* note 127, p. 1.

¹³¹ *Ibid.*

¹³² See in: Paul, *Supported*, *supra* note 124, p. 2, who notes that according to D. Buck, et al., “From farm to table: The organic vegetable commodity chain of Northern California”, *Sociologia Ruralis*, 1997, Vol. 37, Issue 1, pp. 3–20 “Organic was no longer an alternative model for those who wanted their food to support their values”.

¹³³ Johnson, Armstrong, Endres, *supra* note 127, p. 1.

time, CSA farms have to face legal issues regarding business organization, employment, food safety, and insurance choice.¹³⁴

As for the legal instruments supporting the CSAs, the most relevant are exemptions in food safety legislation.¹³⁵ The Food Safety Modernization Act in section 102 (Registration of food facilities), provides for exemption from registration for a retail food establishment also in the case of the CSA. Section 1.227 CFR, Title 21 contains the definition of CSA that was already cited in this study.¹³⁶ In addition, given that most CSA farms operate on a small scale, many may be fully exempt from the requirements of the FDA's Produce Safety rule (discussed at point 1.2.), or at least eligible for a qualified exemption.¹³⁷ The federal government has provided financial support to the CSA under the LAMP program in its current 2018 Farm Bill.

V. URBAN AGRICULTURE

There is no single legal definition of urban agriculture (UA). Municipal governments may define it in different ways. The 2018 Farm Bill refers to "urban, indoor, and other emerging agricultural production" but without specifying the term of UA.¹³⁸ One of the apt descriptions of UA has been given by the United States Environmental Protection Agency, as "part of a local food system where food is produced within an urban area and marketed to consumers within that area".¹³⁹ A diverse range of practices can be included in UA. The first type is outdoor farming, consisting of flat land farming in urban areas (such as in community gardens or public and private farms) and rooftop farming (with or without the

¹³⁴ *Ibid.*, p. 4.

¹³⁵ Contained in Section 1.226 CFR, Title 21.

¹³⁶ See *supra*, part. 1.1.

¹³⁷ Johnson, Armstrong, Endres, *supra* note 127, p. 4.

¹³⁸ Section 7212 of 2018 Farm Bill. See also R. Johnson, T. Cowan, "2018 Farm Bill Primer: Support for Urban Agriculture", *Congressional Research Service Report*, May 2019, available at <https://crsreports.congress.gov/product/pdf/IF/IF11210>, [last accessed 16.08.2020].

¹³⁹ <https://www.epa.gov/agriculture/agricultural-crops#UrbanAgriculture>, [last accessed 16.08.2020].

use of greenhouses or other accessory structures). The second type is indoor farming, consisting of vertical farming (through the use of tube systems or stacked planters), aquaponics (growing plants in water, often in conjunction with cultivating fish and using a closed-loop water filtration system), and aeroponics (using water vapour). Other methods, like keeping bees and livestock, are also part of UA.¹⁴⁰

Growing food in urban areas can bring many benefits, such as fewer food miles and better access to affordable fresh produce.¹⁴¹ This, in turn, may improve nutrition and reduce obesity rates.¹⁴² Other positive effects include the revitalization of abandoned urban land and the betterment of urban landscape.¹⁴³ The advantages of UA and the need to support its development are underlined by policy supporters.¹⁴⁴ In fact, agriculture in urban areas has expanded in recent years as a result of increased interest in accessing healthy food, promoting community sustainability and sourcing local produce.¹⁴⁵ However, the way the law and planning were shaped in the twentieth century imposed barriers on urban agriculture. The local

¹⁴⁰ T. Z. Pawlowski, "From Food Deserts to Just Deserts: Expanding Urban Agriculture in U.S. Cities Through Sustainable Policy", *Journal of Affordable Housing & Community Development Law*, 2018, Vol.26, Issue 3, pp. 531–573.

¹⁴¹ About the benefits of UA see e.g.: A. C. Bellows, K. Brown, J. Smit, "Health Benefits of Urban Agriculture", *A paper from members of the Community Food Security Coalition's North American Initiative on Urban Agriculture*, 2008, available at: https://www.researchgate.net/publication/238742667_Health_Benefits_of_Urban_Agriculture; see also the website: <https://www.theecologycenter.org/10-ways-urban-farms-benefit-the-community/>; H. Godfrey, "Benefits of urban agriculture: Reality or illusion?", *Geoforum*, 2013, Vol. 49, pp. R7-R8. In contrast, on possible health risk, and potential contamination of food cultivated in cities see: C. Aubry, N. Manouchehri, "Urban agriculture and health: assessing risks and overseeing practices", *Field Actions Science Report*, 2019, Special Issue 20, pp. 108–111, available at: <https://journals.openedition.org/factsreports/5854#toc>, [last accessed 16.08.2020].

¹⁴² Roberts, *supra* note 48, p. 431.

¹⁴³ According to the United States Environmental Protection Agency, <https://www.epa.gov/agriculture/agricultural-crops#UrbanAgriculture>, [last accessed 10.08.2020].

¹⁴⁴ M. Pollans, M. Roberts, "Setting the Table for Urban Agriculture", *Urban Agriculture: Policy, Law, Strategy, and Implementation*, 2015, No 3, (American Bar Association).

¹⁴⁵ Roberts, *supra* note 48, p. 431, See also S.T. Lovell, "Multifunctional Urban Agriculture for Sustainable Land Use Planning in the United States", *Sustainability*, 2010, Vol. 2, Issue 8, pp. 2499–2522.

food movement has contributed significantly to the implementation of legal tools to remove barriers and to develop urban agriculture.¹⁴⁶

Several legal issues should be well addressed in urban farming to facilitate its development. First of all, land access for the farmers. In terms of financial access, there is a variety of loan programmes to support farm ownership and operation provided by Federal Funding for Accessing Land USDA's Farm Service Agency. Loans that may help purchase land are available to both urban and rural producers. Regarding physical access, in addition to using private property, states can make their public land available to promote urban agriculture, for example, for community gardens, as in the case of California, Massachusetts, and Tennessee.¹⁴⁷ They can also allow, as in California, school districts to sell produce grown in school gardens, as long as federal, state, and local health and safety requirements are followed.¹⁴⁸ Roofs are attractive places for food production, especially in cities lacking green space. California has provided for the use of vacant lots and property tax incentives.¹⁴⁹ San Francisco requires for new building construction that 15% of the roof space is solar and either 30% is Living Roof (i.e. green or vegetated roof), or a combination of both.¹⁵⁰

The second central issue is the question of what types of agricultural activities can take place in urban areas. This is stated in the land use regulation.¹⁵¹ Adequate zoning is key to optimizing farming practices

¹⁴⁶ Roberts, *supra* note 48, p. 431.

¹⁴⁷ See "State Statutes and Programs Concerning Community Gardens", National Conference of State Legislatures on: <https://www.ncsl.org/research/agriculture-and-rural-development/community-gardens-state-statutes-and-programs.aspx>, [last accessed 16.08.2020].

¹⁴⁸ See *California Education Code* § 51798, *Added by Stats 2012 ch 428 (AB 2367), s 1, eff. 1/1/2013*.

¹⁴⁹ See for example California BILL AB 551 that authorizes a county or city to establish Urban Agriculture Incentive Zones (UAIZ) for the purpose of supporting local food production.

¹⁵⁰ Pursuant to Section 149 Better Roofs; Living Roof Alternative of San Francisco Planning Code and Green Building Code, Zoning Administrator Bulletin No 11.

¹⁵¹ See Urban Agriculture State Legislation on: <https://www.ncsl.org/research/agriculture-and-rural-development/urban-agriculture-state-legislation.aspx>, [last accessed 18.08.2020].

in a city, otherwise, when unclear, complex, or explicitly restrictive, it may limit the potential of the UA. Some states that consider the UA to be part of a larger local food system, have enacted statutes that encourage cities or require cities to provide flexibility in zoning for agriculture.¹⁵² In fact, many cities have modified their zoning codes over the past few years to stimulate a variety of urban agriculture activities. San Francisco allowed for edible gardening and urban farming throughout the city.¹⁵³ Seattle's Land Use Code recognizes five different urban agriculture uses: Animal Husbandry, Aquaculture, Community Gardens, Horticulture, and Urban Farms. These code changes were aimed to "create a more sustainable and secure local food system by increasing opportunities to grow and sell food in all zones".¹⁵⁴ Breeding practices such as keeping chickens in residential areas are much more commonly allowed by local governments.¹⁵⁵

Beyond zoning code amendments, municipalities have adopted comprehensive plans and incentives to promote urban farming. As an example, several solutions implemented by municipal authorities can be presented. The District of Columbia gave access to funds to implement the Urban Farming and Gardens Program.¹⁵⁶ Maryland provides grants for the acquisition, planning, design, and construction of a food hub facility, including construction of a food pantry, urban farm, kitchen incubator, food distribution facility, food production facility, and community spaces located in Baltimore City.¹⁵⁷ Kansas amends property tax law so that the

¹⁵² T. A. Feishans, *Agricultural and Agribusiness Law. An introduction for non-lawyers*, Routledge, 2018, p. 196.

¹⁵³ San Francisco enacted the Urban Agriculture Ordinance to recognize and permit edible gardening and urban farming throughout San Francisco (Ordinance No 162-12 amending the San Francisco Administrative Code by adding Sections 53.1 4 through 53.4 to: 1); establish an Urban Agriculture Program to oversee and coordinate 5 all of the City's Urban Agriculture activities; and adopt goals for the City related to 6 Urban Agriculture.

¹⁵⁴ Seattle Department of Construction and Inspections, Tip #244-Urban Agriculture. Ordinance 123378 introduced as Council Bill 116907.

¹⁵⁵ E.g. San Diego changed its zoning code in 2012 to allow chickens and goats in residential neighbourhoods. See San Diego California Municipal Code, § 44.0307 (2004).

¹⁵⁶ Bill B 158 (2015).

¹⁵⁷ SB 191 (2016).

county appraiser determines the size and value of a piece of land for agricultural use and properly estimates it as agricultural land.¹⁵⁸

Public procurement legislation is an important tool to promote the purchase of local food by institutions, which many states have addressed.¹⁵⁹ Numerous state laws require state and local agencies to give preference to food grown or processed within the state.¹⁶⁰ For instance, the Illinois bill sets a target that by 2020, 20% of all food products purchased by state agencies and state-owned facilities are local agricultural or food products.¹⁶¹

There are also many other tools to promote urban agriculture¹⁶² developed by centralized agencies¹⁶³ or local government entities.¹⁶⁴ Often academics and citizens are involved in building an effective UA policy and support UA development in cities.¹⁶⁵ The 2018 Farm Bill provides

¹⁵⁸ SB 280 (2015).

¹⁵⁹ North Dakota House Bill 1543, *61st Leg. Assem. (N.D. 2009)*, available at: <http://www.legis.nd.gov/assembly/61-2009/bill-text/JBKB0100.pdf>, [last accessed 16.08.2020]; Montana Code Annotated § 18-4-132 (2007), *S.B. 328, 60th Leg. (Montana 2007)*.

¹⁶⁰ Roberts, *supra* note 48, p. 396.

¹⁶¹ HB 3990 (2009).

¹⁶² See a study about tools for UA: <https://www.usda.gov/sites/default/files/documents/urban-agriculture-toolkit.pdf>

¹⁶³ See, e.g., National Center for Appropriate Technology. ATTRA – National Sustainable Agriculture Information Service: <https://attra.ncat.org/topics/urban-community-agriculture/> This site provides information on accessing land, capital, markets, and other informational resources geared at helping the new urban farmer succeed.

¹⁶⁴ See e.g. Colorado Bill SB 106 (2010) that created a Food Systems Advisory Council to develop recommendations that promote local food economies, available at: <https://legiscan.com/CO/text/SB106/2010>, [last accessed 16.08.2020].

¹⁶⁵ See e.g. The Urban Agricultural Legal Resource Library, a project of the Sustainable Economies Law Center, has developed a site focused on land access for urban agriculture. This resource covers how to access public lands, the purposes of and best practices for land trusts, and the existing urban farming land inventories conducted in cities around the country. The website contains information regarding lease agreements and easements, particularly relevant to non-profit urban agriculture projects. The San Francisco Urban Agriculture Alliance has a comprehensive guide to starting an urban farm or garden in San Francisco with a lengthy section on land acquisition; University of Missouri Extension's Urban Agriculture - Best Practices and Possibilities; Baltimore: Baltimore City Farm Alliance How-to Guide and the Green Registry and Green Pattern Book, a collaborative effort with the USDA Forest Service to map vacant land and identify productive uses

additional support for urban, indoor, and other emerging agricultural production, creating new programmes and authorities and providing additional funding for such operations.¹⁶⁶

VI. AGRITOURISM

Agritourism, as a channel of direct marketing of farm produce, is one of the important elements of local food systems. Allowing farmers to generate additional income can help maintain their profitability and protect farmland, and by increasing local tax, it can be a beneficial factor for local communities. In the US, this economic activity has emerged and increased due to consumer demand for local food and experiences on farms and ranches.¹⁶⁷ However, it is less supported by the government, especially owing to the lack of legal frameworks and policies related to the development of agritourism.¹⁶⁸

The term “agritourism” is understood in different ways by states and counties throughout the US. There is neither a standard theoretical definition of agritourism, nor agreement among academics on the types of activities that constitute it. The confusion over the concepts and inconsistency in definitions has been hindering research, policy, and programmes to support agritourism.¹⁶⁹ However, the Local Agriculture Market Program (LAMP), instituted by the recent 2018 Farm Bill, includes grants for agritourism activities.

Some researchers agree that agritourism refers to “farming-related activities carried out on a working farm or other agricultural settings for

for that land, including urban agriculture. › Chicago: Advocates for Urban Agriculture’s Resource Guide.

¹⁶⁶ Johnson, Cowan, 2018 *Farm*, *supra* note 138, pp.1-2.

¹⁶⁷ L. C. Chase, M. Stewart, B. Schilling, B. Smith, M. Walk, “Agritourism: Toward a conceptual framework for industry analysis”, *Journal of Agriculture, Food Systems, and Community Development*, 2018, Vol. 8, Issue 1, p. 15.

¹⁶⁸ C. G. Arroyo, C. Barbieri, S. Rozier Rich, “Defining agritourism: A comparative study of stakeholders’ perceptions in Missouri and North Carolina”, *Tourism Management*, 2013, Vol. 37, Issue C, p. 39-47.

¹⁶⁹ Chase, Stewart, Schilling, Smith, Walk, *supra* note 169, p. 15.

entertainment or education purposes".¹⁷⁰ According to others, this activity can be defined "as being either core or peripheral on the basis of location (i.e., on-farm vs off-farm), or the relative degree to which that activity is connected to agriculture." The marketing of farm products is part of the core activities concept, which refers to "a working farm or ranch and has deep connections to agricultural production". These include direct farm sales of agricultural products sold on the farm through farm stands and U-pick and farm-to-table meals. In contrast, the concept of peripheral activities does not imply a deep connection to agricultural production, even though they may take place on a working farm or ranch, and may include events, such as weddings, concerts, hiking, and biking.¹⁷¹

Generally, agritourism operations existing throughout the United States include direct-to-consumer sales, U-Pick operations, on-farm farmers' markets, winery tours and wine tasting, and rural bed and breakfasts. Sales of local produce with an indication of origin are gaining importance in some parts of the USA, such as the Sonoma and Napa vineyards in California, where locally produced wine is sold and tasted. While the agritourism industry appears to be flourishing in practice, the legal instruments to support it are not very clear. Issues related to agritourism are varied and complex, depending on the activities involved and the laws of the state where the business is located. Agritourism businesses, like direct marketing farms, must comply with federal, state, and local requirements regarding taxation, building codes, food safety and public health laws, and business permits and licences. The community zoning laws determine whether selling food on a farm is a permissible activity.

California counties are one of the examples of local government initiatives supporting agritourism. Many of them have adjusted zoning ordinances to encourage agritourism. This required a balance between the needs of local residents to be protected against the negative effects of tourism and the need to create allowances and ease of permitting for agritourism. For example, the Lake County general plan addresses

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*, p. 17.

agricultural tourism.¹⁷² It includes Goal AR-3, “To provide opportunities for agritourism that are beneficial to the county and its agricultural industry and are compatible with the long-term viability of agriculture”.¹⁷³

In food safety legislation, exemptions are not explicitly stated for agritourism, but depend on the type of product sold. Most of the state laws require a licence for food prepared and served on-site in individual servings, such as sandwiches, soups, or full meals. Eggs and certain meats are exempted in many states from licensing requirements if the items are raised and processed on the farm where sold.¹⁷⁴ Some states, as it has been mentioned, do not require a licence or compliance with food safety standards for “cottage foods” prepared in a residential kitchen, which typically include jams, jellies, baked goods, and other non-potentially hazardous food. Fresh, unprocessed produce direct from the farm is also exempted, though it may be subject to the FSMA Produce Safety Rule, unless it meets requirements discussed already at point 1.2. As also mentioned, the provisions on the food sales tax differ from state to state and county to county, and depend on the type of food and the place of consumption and not on the business type. With regard to agritourism, it may be noted that some states exempt from sales tax farm products sold by the farmer who produced them, but require a tax on prepared food consumed at the seller’s premises, as in the case of Washington State.¹⁷⁵

VII. FEDERAL PROGRAMMES SUPPORTING LFS

There are many federal programmes administered by the USDA that contribute directly or indirectly to the development of local food systems through financial incentives. Most of them are generally available to

¹⁷² http://www.lakecountyca.gov/Government/Directory/Community_Development/Planning/2008FinGP.htm.

¹⁷³ See more in P. Leff, “Sidebar: California counties adapt permitting and regulations for agritourism”, *California Agriculture*, 2011, Vol. 65, Issue 2, p. 65; E. Rilla, S.D. Hardesty, C. Getz, H. George, “California agritourism operations and their economic potential are growing”, *California Agriculture*, 2011, Vol. 65, Issue 2, pp. 57–65.

¹⁷⁴ As with the Oregon state: The Farm Direct Marketing Bill, adopted under OAR 603-205-0215 through 603-205-0275.

¹⁷⁵ RCW 82.08.0293.

provide support to all US farmers and ranchers. They may be grouped into the following broad categories: marketing and promotion, business assistance and agricultural research, rural and community development, nutrition and education, and farmland conservation.¹⁷⁶ Some of those most relevant to LFS will be discussed in the article.

The first programme specifically designed to support direct marketing was established by the Farmer-to-Consumer Direct Marketing Act of 1976. The act was enacted with the purpose to “promote, through appropriate means and on an economically sustainable basis, the development and expansion of direct marketing of agricultural commodities from farmers to consumers.” It set up an assistance programme to encourage the undertaking of this activity, which would result in lower prices to consumers, higher returns for farmers, a reduction in middleman costs, and improved farmer-to-consumer understanding.¹⁷⁷ The programme supported activities most needed in particular states, such as, (1) sponsoring related conferences, (2) identifying state and local laws pertaining to direct-marketing and advocating for improved legislation, or (3) providing technical assistance to deepen understanding of direct marketing.

The literature noted that this was an example of legislation that moved away from regulating mainly commodity markets and extended to the wider category of local food.¹⁷⁸ This federal piece of legislation “began to legitimize the importance of community-controlled local-food economics and policies”.¹⁷⁹

¹⁷⁶ Johnson, Cowan, 2018 *Farm*, *supra* note 166; See more about these programmes in: R. Johnson, “U.S. Farm Policy: Local and Regional Food Systems”, *Congressional Research Service Report*, 2016; R. Johnson, T. Cowan, “Local Food Systems: Selected Farm Bill and Other Federal Programs”, *Congressional Research Service Report*, 2016; Fink, Schluntz, Galperin, *supra* note 11; S. W. Martinez, “Policies Supporting Local Food in the United States”, *Agriculture*, 2016, Vol. 6, Issue, 43, p. 4.

¹⁷⁷ Facts About: Farmer-to-Consumer Direct Marketing, Agricultural Marketing Service Report Number 575, U.S. Department of Agriculture. Agricultural Marketing Service 1978, available at: <https://www.nal.usda.gov/exhibits/ipd/localfoods/items/show/120> [last accessed 11.06.2020].

¹⁷⁸ Fink, Schluntz, Galperin, *supra* note 11, p. 212.

¹⁷⁹ *Ibid.*, p. 213.

The 2002 Farm Bill¹⁸⁰ created the Farmers Market Promotion Program (FMPP). The FMPP was added to the Direct Marketing Act to “develop (...) new farmers’ markets, roadside stands, community-supported agriculture programs, and other direct-to-consumer infrastructure”.¹⁸¹ The grants could be awarded to a variety of entities, such as local governments, non-profit organizations, an agricultural cooperative, or an economic development corporation.¹⁸² Funding for the FMPP was reauthorized in the 2008¹⁸³ and 2014¹⁸⁴ Farm Bills.

In addition to establishing and funding the FMPP, the 2002 Farm Bill also created the Senior Farmers’ Market Nutrition Program (Senior Nutrition Program), which, like the FMPP, amended the Direct Marketing Act.¹⁸⁵ The programme had many objectives, including extending local direct markets for consumers, promoting local food, and in particular providing “resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs” at these marketplaces.¹⁸⁶ It awarded grants to states, territories, and tribal governments to offer low-income seniors coupons that could be exchanged for eligible foods at farmers’ markets, roadside stands, and community-supported agriculture programmes. Therefore, this programme was important to address the “food desert” which was discussed in the first paragraph in relation to the definition of “local food”.

Among the programmes benefitting U.S. agricultural producers, established in the 2008 Farm Bill, several were directed to support local and regional food systems. The Act not only reauthorized funding for the Senior Nutrition program¹⁸⁷ but it provided tax benefits, such as exemption from state or local sales taxes when purchasing qualifying food, as well as exemption from local, state, or federal income tax for economic benefits granted to senior individuals.¹⁸⁸

¹⁸⁰ Farm Security and Rural Adjustment Act of 2002, *Pub. L. 107-171, 116 Stat. 134.*

¹⁸¹ 7 U.S.C. § 3005(b)(1)(B) (2002).

¹⁸² 7 U.S.C. § 3005(c).

¹⁸³ § 10106, *122 Stat. 1651, 2098-99.*

¹⁸⁴ § 10003, *128 Stat. 649, 940-41.*

¹⁸⁵ See 7 U.S.C. § 3007 (2002).

¹⁸⁶ See 7 U.S.C. § 3007b.

¹⁸⁷ 7 U.S.C. § 3007(a) (2008).

¹⁸⁸ 7 U.S.C. § 3001(c), (d); Fink, Schluntz, Galperin, *supra* note 11, p. 216.

Another programme important to tackle the “food desert” problem and food waste is the Community Food Projects. It was established by the 1996 Farm Bill¹⁸⁹ for the purposes of helping low-income people meet their food needs, increasing the self-reliance of local communities providing their own food, and promoting “comprehensive responses to local food, farm, and nutrition issues”.¹⁹⁰ The 2002 Farm Bill reauthorized funding for the Community Food Projects program through 2007 and expanded its scope.¹⁹¹

The Child Nutrition¹⁹² and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Reauthorization Act of 2004¹⁹³ expanded access to local foods at schools and promoted school gardens by providing grants and technical assistance to schools and non-profit organizations.¹⁹⁴ The Healthy, Hunger-Free Kids Act of 2010¹⁹⁵ reauthorized this programme through 2015 and continued its mission of connecting schools and other institutions to local-food systems.¹⁹⁶ The Child Nutrition Act together with the Richard B. Russell National School Lunch Act¹⁹⁷, and Office of Federal Procurement Policy Act¹⁹⁸ are the three statutes that govern the federal level procurement of foods for schools. “Farm-to-school” projects have come to the fore as a leading model for institutionalizing local food systems.¹⁹⁹

¹⁸⁹ Through an amendment to the Food Stamp Act of 1977, codified at 7 U.S.C. 2034.

¹⁹⁰ Federal Agriculture Improvement and Reform Act of 1996, *Pub. L. 104127*, § 25, *110 Stat. 888, 1027*.

¹⁹¹ § 4125, *116 Stat. 134, 326–27*.

¹⁹² The Child Nutrition Act was established in 1966 (42 U.S.C. § 1771 (2006)).

¹⁹³ Child Nutrition and WIC Reauthorization Act of 2004, *Pub. L. 108–265*, § 122, *118 Stat. 729, 759*.

¹⁹⁴ Fink, Schluntz, Galperin, *supra* note 11, p. 234.

¹⁹⁵ More information on the Child Nutrition Reauthorization see in: K. C. Billings, R. A. Aussenberg, “An Introduction to Child Nutrition Reauthorization”, *Congressional Research Service Report*, 2019, available at: <https://fas.org/sgp/crs/misc/IF10266.pdf>, [last accessed 16.08.2020].

¹⁹⁶ *Ibid.*

¹⁹⁷ 42 U.S.C. § 1751 (2006).

¹⁹⁸ U.S.C. § 403 (2006)

¹⁹⁹ Braaten, Coit, *supra* note 32, p. 22.

USDA's WIC Farmers' Market Nutrition Program targets sustainable farmers, including those involved in the FMNP. It aims to provide fresh, unprepared, locally grown fruits and vegetables (included in urban agriculture), especially to low-income pregnant, breastfeeding and non-breastfeeding post-partum women, and to infants and children up to 5 years of age, who are found to be at nutritional risk and who are enrolled in the WIC program.

Federal support for the Senior Nutrition Program and the WIC Nutrition, is particularly significant in terms of duration and resources, such as the direct financing of market transactions and various grants designed to promote and expand direct-to-consumer marketplaces.²⁰⁰ Therefore, both programmes are considered the "single most important federal or state program[s] relating to farmers markets".²⁰¹

The Farm Bill 2014 extended funding for the Senior Nutrition Program²⁰² and created the Local Food Promotion Program (LFPP), a grant programme dedicated to supporting local food systems.²⁰³ The purpose of the LFPP was to increase the domestic consumption of and access to local foods and to expand market opportunities for farmers and ranchers serving local consumers.²⁰⁴ Grants were offered to agricultural businesses or cooperatives, producer networks and associations, farmers' market authorities, community-supported agriculture networks, and others. The LFPP together with the Farmers Market Promotion Program was aimed to support education, promotion, outreach, coordination, and business planning for projects such as farmers markets, mobile markets, roadside

²⁰⁰ Fink, Schluntz, Galperin, *supra* note 11, p. 219.

²⁰¹ N. D. Hamilton, "Farmers Market Policy: An Inventory of Federal, State, and Local Examples", *Drake Project for Public Spaces*, 2005, pp. 1-35, available at: <https://s3.amazonaws.com/aws-website-ppsimages-na05y/pdf/FarmersMarketPolicyPaperFINAL.pdf>, [last accessed 16.08.2020].

²⁰² Agricultural Act of 2014, *Pub. L. 113-79*, § 4203, *128 Stat. 649*, 822-23 (codified as amended at 7 U.S.C. § 3007(a) (2014)).

²⁰³ *Ibid.*, § 4026 and § 10003.

²⁰⁴ *Ibid.*, § 10003; Fink, Schluntz, Galperin, *supra* note 11, p. 219. Fink, Schluntz, Galperin, *supra* note 11, p. 233. See also: Local Food Promotion Program, U.S. Department of Agriculture, Agricultural Marketing Service: <https://www.ams.usda.gov/services/grants/lfpp> [last accessed 16.08.2020].

stands, community-supported agriculture programmes, agritourism activities, and other direct producer-to-consumer market opportunities, as well as local food projects that are not direct-to-consumer (e.g. food hubs, farm to retail/restaurant).

The most recent Farm Bill of 2018 combines and expands existing programmes administered by the U.S. Department of Agriculture (USDA) that provide financial and technical assistance for local and regional food production.²⁰⁵ This piece of legislation reauthorized and reduced funding for Community Food Projects and also reauthorized the Senior Farmers Market Nutrition Program. It also provides additional support targeting urban agriculture, if that food is sold and consumed near where it is produced, and creates several new authorities to specifically support “urban, indoor, and other emerging agricultural production”.²⁰⁶

An important programme to support local food markets, established in the Farm Bill of 2018, is the Local Agriculture Market Program (LAMP).²⁰⁷ The programme provides for state grants for each of the fiscal years from 2019 to 2023 for the conduct of activities to support and promote a diversity of operations concerning direct marketing, such as: domestic direct producer-to-consumer marketing; farmers’ markets, roadside stands, community-supported agriculture programmes, agritourism activities, and other direct to consumer marketing practices, to develop marketing strategies for producers of local food products and value-added agricultural products in new and existing markets. The 2018 Farm Bill authorizes LAMP to receive mandatory funding of \$50 million annually, to remain available until expended.

Over the years, the federal legislator has provided many specific programmes that directly support local and regional food systems. It has been noted in the literature that farmers’ markets and direct-to-consumer marketing have expanded significantly with federal funding.²⁰⁸

²⁰⁵ See more about these programmes in: Johnson, Cowan, 2018 *Farm*, *supra*, note 138.

²⁰⁶ Agriculture Improvement Act of 2018, P.L. 115–334, §12302.

²⁰⁷ *Ibid.* §10102; contained also in the 7 U.S. Code § 1627c.

²⁰⁸ Fink, Schluntz, Galperin, *supra* note 11, p. 219.

CONCLUSIONS

The study shows that local food has been part of federal, state, and local government policies. However, US law lacks a systematic approach to legal support to the local food system. Some laws affecting LFS can be identified, although they are scattered in different areas at different levels of legislation. Many of them are not specifically designed for LFS, but they facilitate some aspects of various forms of direct marketing to consumers.

Important legislative tools include exemptions from food safety requirements set at the federal level. The first concerns registration and applies to farms (retail food establishments) selling food directly to the consumer as their primary function. This exemption may benefit direct farm-to-consumer businesses, i.e. farms selling their products within short supply chains, included in agritourism, at farmers' markets, through the CSAs. The second refers to the Produce Safety rule and it applies to small farms selling local food (within 275 miles or state borders) with annual sales not exceeding a certain amount.

Whether farmers' markets are considered food establishments that require licences or permits is determined by state and local government regulations. While food sold by small farms is generally exempt from FSMA, food sold to consumers at the retail level is usually governed by state food codes.²⁰⁹ Federal and local authorities decide as well whether to exempt farmers from food processor licensing requirements. Many states exempt "cottage food" from licensing.

As noted in the literature, local food systems find themselves in the unusual position of defending their food safety while seeking derogations from the more stringent FSMA aspects.²¹⁰ Indeed, given the fact that food safety rules were designed "with large-scale farming in mind", they can

²⁰⁹ Roberts, *supra* note 48, p. 388.

²¹⁰ R. B. Holcomb, M. A. Palma, M. M. Velandia, "Food Safety Policies and Implications for Local Food Systems", *Choices*, 2013, Quarter4, available at: <https://www.choicesmagazine.org/choices-magazine/theme-articles/developing-local-food-systems-in-the-south/food-safety-policies-and-implications-for-local-food-systems>, [last accessed 16.08.2020].

represent “significant barriers” to small farms²¹¹ that “are a foundation of a successful local food system”.²¹² Researchers believe it is important to investigate “whether these regulations make sense across different sizes of farms and what innovative policy approaches to food safety might be helpful”.²¹³

Many states have a food sales tax exemption, although laws also vary by state and county, depending on the type of food being sold and the place of consumption. Relevant local zoning laws are an important instrument for the existence and development of different forms of LFS, especially for farmers’ markets and urban agriculture. The study shows that the development of LFS in communities depends on their policies to prioritize local food and help local farmers by increasing the availability and affordability of land, offering tax incentives, loans, and issuing regulations to favour the sale of agricultural produce grown in urban areas. In this regard, also state and local government procurement laws and incentives for low-income consumers to shop at farmers’ markets are valuable legal tools.

On the other hand, regulatory complexity, the three levels of government requirements and restrictions on various aspects of direct marketing activities, as well as local zoning laws, not adapted to LFS, can be a significant obstacle for farmers to undertake and carry out this type of activity. Therefore, some researchers rightly recommend that the role of public policy is to reduce market barriers to local food production and to provide assistance with regulatory compliance.²¹⁴

The most visible support, specifically designed for LFS is federal programmes offering financial grants. These are a legal tool through which “the federal government explicitly incentivizes and legitimizes individuals and organizations determined to govern their local food supply chains”.²¹⁵ A number of direct marketing strategies have been

²¹¹ M. McGuffey, “The Producer’s Perspective: Examining the Challenges of Providing Local Food”, *An Interdisciplinary Journal*, 2016, Vol. 6, Issue 3, p. 24.

²¹² Roberts, *supra* note 48, pp. 382–454.

²¹³ McGuffey, *supra* note 211, p. 24.

²¹⁴ Johnson, *The Role*, *supra* note 5, p. 36, where the author points out to R. P. King, *Can Local Go Mainstream?*, C-FARE webinar, April 11, 2011.

²¹⁵ Fink, Schluntz, Galperin, *supra* note 11, p. 238.

recognized by US law as important activities worth supporting. The USDA Economic Research Service's analysis of the 2002, 2008, 2014, and 2018 farm acts shows that the mandatory funding of local and regional food programmes has tripled in the 2002–2018 Farm Bills ranging from \$183 million in 2002 to almost \$650 million in 2018.²¹⁶ This support can “empower communities to remodel their own food systems”²¹⁷, though the actual local impact of the programmes ultimately depends on the nature of their implementation.²¹⁸

Farm support programmes are a major tool in the US agricultural system. Traditional farm subsidy schemes are deemed to be a means of securing “the world’s most abundant, safest and cheapest food supply”.²¹⁹ However, there are concerns about the overall effectiveness of farm programmes and the costs for taxpayers and consumers²²⁰ especially with regard to the core farm bill programmes focused on selected commodities. Subsidies of commodity crops such as corn and soybeans are seen as a tool of “a cheap food policy” of the US, contributing greatly to the rise of processed foods while marginalizing healthy alternatives”.²²¹ Fresh fruit and vegetable producers receive just 1% of total subsidies.²²² Therefore, it is desired that food policies give more attention to health-oriented, sustainable and fair food systems.²²³

Finally, the shifting focus of food systems and food policy requires the involvement of scientists and practitioners. The legal instruments supporting LFS presented in the study may be interesting examples to be followed and expanded by scholars and governments. However, more research is needed on innovative, comprehensive, and systemic legal tools to support local food systems.

²¹⁶ <https://www.ers.usda.gov/agriculture-improvement-act-of-2018-highlights-and-implications/local-and-regional-foods/>

²¹⁷ Fink, Schluntz, Galperin, *supra* note 11, p. 239.

²¹⁸ Johnson, *U.S. Farm*, *supra* note 176, p. 2.

²¹⁹ Johnson, *The Role*, *supra* note 5, p. 35.

²²⁰ *Ibid.*

²²¹ Paul, *Supported*, *supra* note 124, p. 13.

²²² McGuffey, *supra* note 211, p. 23.

²²³ With regard to core farm bill programs that are focused on selected commodities, it is observed, that vegetable and fruit producers face barriers accessing the same kinds and levels of assistance (such as crop insurance) that commodity farmers benefit from, *Ibid.*