

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

FARM-TO-CONSUMER LEGAL)
DEFENSE FUND, et al.,)
)
Plaintiffs,)
)
v.)
)
KATHLEEN SEBELIUS, Secretary,)
United States Department of Health)
and Human Services, et al.,)
)
Defendants.)

No. 5:10-cv-4018-MWB

**[PROPOSED] ORDER REFERRING QUESTIONS FOR AN INITIAL
ADMINISTRATIVE DETERMINATION**

After reviewing the parties' Joint Status Report of September 17, 2010, and the authority cited therein, this Court refers the questions set forth below to the United States Food and Drug Administration ("FDA") for an initial administrative determination pursuant to 21 C.F.R. §§ 10.25(c) and 10.60:

Whether 21 C.F.R. § 1240.61 applies to and proscribes the conduct of

(1) persons who travel from one state, where it is not legal to purchase raw milk, to another state, where it is legal to purchase raw milk, legally purchase raw milk, then return to the original state where they consume the raw milk themselves or give it to their friends or family members; or

(2) a principal and agent who agree that the agent will obtain raw milk out-of-state, where it is legal to do so, and to deliver it to the principal in the principal's home state, where sales of raw milk are not permitted, where the principal then consumes the raw milk or gives it to their friends or family members; or

(3) a producer of raw milk who sells raw milk in a state where it is legal to do so in an intrastate transaction to persons that he knows are from out of state.

FDA will furnish a response to this referral as soon as possible but no later than 180 days of the referral.

Until such time as FDA makes an initial administrative determination with respect to the questions in this Order, this matter is stayed. This Court retains jurisdiction of this action for further proceedings as may be necessary or appropriate. The parties shall file, separately or jointly, a status report at least every 30 days from the date of this Order until FDA makes an initial administrative determination with respect to the questions in this Order.

IT IS SO ORDERED.

DATED this ____ day of September, 2010.

MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA