

Jam and Water Watch

Food and Water Watch said that HR 875 does not include "language" that would regulate, penalize, or shut down backyard gardens. How true. It carefully **avoids** just such "language." Yet, it can regulate homes and gardens, nonetheless.

Look **very** carefully at this section of the bill, showing homes, and thus gardens, are easily included.

Place it in its context.

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FWW's Myths and Facts H.R. 875 – The Food Safety Modernization Act

MYTH: H.R. 875 "makes it illegal to grow your own garden" and would result in the "criminalization of the backyard gardner."

FACT: There is no language in the bill that would regulate, penalize, or shut down backyard gardens. This bill is focused on ensuring the safety of foods sold in supermarkets.

Though private **residences** are not specifically included, **nor are they specifically excluded**. While this does not immediately affect home owners growing tomatoes in the backyard, *entered testimony leaves the door open for just that in the future*. Referring back to the Bio-Terrorism Act, in a discussion on this very topic and entered in the official record of debate on the interim rule, the same argument exists here and no new definitions or exclusions have been provided in HR 875 - and *"reasonable" is a subjective term in theory as well as practice...*

Here are the relevant terms to keep an eye on:

(13) FOOD ESTABLISHMENT-

(A) IN GENERAL- The term 'food establishment' means a Slaughterhouse (except those regulated under the Federal Meat Inspection Act or the Poultry Products Inspection Act), factory, Warehouse, or facility owned or operated by a person located in Any State that processes food or a facility that holds, stores, Or transports food or food ingredients.

Notice that every home in the country "holds" food and also "transports" it (some call it lugging) back from the grocery store. Will they be included, too?

Comment by a mother: He, no. They're going to be magnanimous and say that, while they could, they won't right now.

Excerpted from the same **Interim Rule**:

"(Response) FDA has concluded that private individual residences are Not `facilities" for purposes of the registration provision of the Bioterrorism Act. Under the Bioterrorism Act, the term `facility" Includes ``any factory, warehouse, or establishment."

Congress did not Specify any definition for these terms.

Under their common meanings, the terms can include private residences.

For example, according to Webster's II New Riverside University Dictionary (1994), the most relevant definition of "establishment" is:

*"a business firm, club, institution, or **residence**, including its possessions and employees."*

However,

*"[I]n determining whether Congress has specifically addressed The question at issue, the court should not confine itself to examining A particular statutory provision in isolation * * *."*

It is a fundamental canon of statutory construction that the words of a Statute must be read in their context and with a view to their place in The overall statutory scheme."
FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 121 (2000).

***Other parts of the registration Provisions** in section 415 of the FD&C Act Indicate that Congress only intended businesses to register, and **raise a question** as to whether Congress intended that private individual residences, even though food Is manufactured/processed, packed, or held at such residences, be Considered facilities.*

*For instance, a registrant is required to submit ``the name and Address of each facility at which, and all trade names Under which, the registrant conducts business * * * `` (21 U.S.C.350d(a)(2)).*

*Thus **it is unclear** whether Congress intended all Individual private residences at which food is manufactured/processed, Packed, or held to be included in the term ``facility." Furthermore, The requirement that a facility submit its ``name" as well as its ``trade names" **raises a question** as to whether Congress intended ``facility" to include private individual residences since*

it is Unlikely that a home would have a name or a trade name.

*Where the words Of the statute are ambiguous, **an agency may make a reasonable Interpretation** of the statute.*

Chevron, USA, Inc. V. NRDC, Inc., 467 U.S. 837, 842-843 (1984); Brown & Williamson, supra, at 132.

Consistent with the language of section 415(a)(2) discussed

Previously, the agency concludes that interpreting the term "facility" to exclude private individual residences is a reasonable

Construction for purposes of registration.

This interpretation, however, does not necessarily preclude a reasonable construction of other provisions of the FD&C Act to Include such residences."

The context:

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Australia is harmonized with the US under [HACCP](#) . As the following comment indicates, the control of food in homes and for sale from homes, is **already** subject to the very government control at issue here which people call a myth.

"i wanted to point out that in australia to sell food at a stall or charity fundraiser all ingredients are to be listed, and if you even heat and serve a pastie or pie, someone has to have done a HACCAp course, and keep thermometer reading on the warmer! ditto the fridge etc. I planned to make **jam** to sell, my home kitchen does not meet their standards, but by any normal home

standards it is fine..so to make a few dollars i now need to HIRE the local halls kitchen to cook up 10lbs of jam, by the time i pay that, buy the jars etc i would be making less than 25c a jar. and yes i could just do it here, but! the local council can buy a jar, ask where it was cooked and packed, ask to come into my home, and i MUST comply! or, to see receipts for hall or hired commercial kitchen, and fine me if i cannot prove it was made in an "approved " area.

"... regardless of us growing bartering, and i heartily endorse that, the laws can , and will be used to catch us at some point. have you heard and seen the home [invasion of a small food co op in usa](#) a while ago? family held for hours under arms, food taken, and yet they cannot seem to find a charge that stands? but no apology and NO return of their carefully grown and preserved food either."