



**COLORADO**

**Department of Agriculture**

Inspection & Consumer Services Division

**ESTABLISHING A STATE REGULATORY  
PROGRAM TO ENSURE PROCESSED  
POULTRY SOLD TO RETAIL FOOD  
ESTABLISHMENTS IS FROM AN APPROVED  
SOURCE**

Hollis Glenn

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## Introduction

In early 2016, Senate Bill 16-058 established a new state licensing program that allows small and mid-sized poultry processors exempt from federal inspections to sell processed poultry directly to individuals at venues such as farmers' markets. Through this legislation, the Colorado Department of Agriculture ("CDA") now provides the regulatory oversight to allow local processors to sell their poultry to individuals. Nevertheless, there remains a gap in state regulations that prevents small and mid-size processors from selling poultry to retail food establishments, such as a restaurant or grocery store. To bridge that regulatory gap and allow these processors to sell poultry to retail food establishments, additional regulatory oversight from the state will be required.

Consequently, SB16-058 required CDA to develop a regulatory framework for the processing of poultry that could be sold at retail food establishments and to prepare a report which will be made available to all stakeholders and the public. To help develop this framework, CDA established a stakeholder group comprised of poultry producers, processors, state and federal regulatory officials, and representatives from the restaurant, grocery, and insurance industries. Through discussions with these stakeholders, CDA has identified four areas that capture the overarching considerations for additional regulatory oversight that would allow for the sale of poultry to retail food establishments.

**Section 1: Concerns and Benefits for Stakeholders.** Examines the primary concerns and benefits about a new regulatory program from both regulatory and industry perspectives.

**Section 2: Regulatory Logistics.** Explains the regulatory element for a program and highlights the regulations licensed poultry processors will need to follow in regards to labeling, recordkeeping, and sanitation regulations.

**Section 3: Next Steps** describes the actions required to move forward with any further program development.





## Background

Before laying out the framework of a new program, it is important to provide some context regarding the federal and state oversight of poultry processing operations. Specifically, it is essential to clarify the roles and jurisdiction of three regulatory agencies: the United States Department of Agriculture (“USDA”), Colorado Department of Public Health and Environment (“CDPHE”), and the CDA Meat Processing Program (“The CDA Meat Program”).

### ***USDA and Understanding USDA Exemptions***

The USDA inspects poultry processing facilities, including on-site inspections of the birds. Typically, USDA inspects facilities that process 20,000 birds or more per year. A facility processing less than 20,000 birds may claim one of eight exemptions from USDA inspections. For the purposes of this report, “producer” and “processor” are interchangeable. The three most common exemptions relevant to this report are:

1. **Producer Grower 1,000 Bird Limit.** Small processors that process 1,000 or less of their own birds in a year to sell to individuals, hotels, restaurants and institutions.
2. **Producer Grower 20,000 Bird Limit.** Mid-size processors that process up to 20,000 of their own birds in a year. In other states, processors claiming this exemption from the USDA can sell their birds to individuals, hotels, restaurants and institutions.
3. **Producer Grower or Other Person (PGOP) 20,000 Bird Limit.** Mid-size processors that process a mix of their own birds and birds they have purchased.

A processor claiming an exemption is considered “USDA exempt,” meaning they are exempt from USDA-level inspections of the poultry. While exempt from inspection, these processors must still comply with other federal requirements, including sanitary operations and labeling requirements. Typically these standards are used as the model for a number of state programs. These states have developed state licensing and regulatory programs for these small producers that are exempt from USDA inspection. CDA has studied a number of these state programs to develop a regulatory framework for Colorado. What is important to understand for this report is that the USDA does generally allow certain USDA exempt processors to sell their birds to certain retail markets with additional provisions. Any state requirements that would be developed would be in compliance with federal regulations so that local processors are compliant on both the state and federal levels.

### ***CDPHE and Understanding “Retail Food Establishment” and “Approved Source”***

CDPHE manages minimum standards and rules for retail food establishments and any food prepared for service through retail food establishments in Colorado. Per Section 25-4-1601 of the Colorado Revised Statutes, CDPHE runs the uniform statewide administration, implementation, interpretation, and enforcement of such minimum standards and rules.

#### ***What is a “retail food establishment”?***

According to Colorado Revised Statutes section 25-4-1602(14), a retail food establishment is a retail operation that stores, prepares, or packages food for human consumption, serves or otherwise provides food for human consumption to consumers directly or indirectly through a delivery service, whether





such food is consumed on or off premises or whether there is a charge for such food. CDPHE established a regulation in 6 CCR 1010-2, Chapter 3-101 that states “food shall be obtained from *approved* sources that comply with applicable laws relating to food and food labeling.” Per 6 CCR 1010-2, Chapter 1-202(A)(4), “approved” means acceptable to CDPHE, based on compliance with principles, practices, and generally recognized standards that protect public health. Licensed poultry producers have not been licensed or inspected in the state of Colorado. As a result, these facilities cannot be considered to be approved sources, since state regulators have not ensured they meet CDPHE’s minimum standards. To qualify as approved sources, processors need a regulatory program that provides oversight that includes regular inspections.

### ***The CDA Meat Program***

The CDA Meat Program oversees the licensing and inspection of custom meat processors. In Section 35-33-103(4) of the Colorado Revised Statutes, custom processing is defined as “the slaughter or processing...of meat or meat products of an animal not owned by the person performing the slaughter or processing and not intended for sale by the owner of the animal.” In other words, these licensed processors process animals for another person (such as a hunter) who owns the animals.

Facilities licensed in this program undergo CDA inspections at least once per year. A typical inspection covers facility construction and maintenance, operating procedures, sanitation, labeling and record keeping. The CDA Meat Program also performs inspections of custom processors through a cooperative agreement with the USDA Food Safety and Inspection Service.

The current regulatory standards established through regulation for custom meat processors and their facilities are very similar to CDPHE’s standards to be considered an approved source. With the existing inspection process and regulations, the CDA Meat Program could determine if a licensed operation meets the CDPHE standards to be considered an approved source.

## **Section 1: Concerns and Benefits for Stakeholders**

While discussing the need for a regulatory program, CDA and the stakeholder group identified general concerns and benefits for industry and regulatory officials. As with any new program, regulatory and industry representatives must consider the impact of the program on industry and state resources.

Primary concerns that the stakeholder group discussed are:

1. Safety and consumer protections that meet CDPHE’s standards for an approved source
2. Cost and scope of work for CDA and processors
3. Overall interest from processors and consumers

### ***Concern 1: Safety and consumer protections that meet CDPHE’s standards for an approved source***

CDA and CDPHE want to ensure that poultry sold to retail food establishments comes from an approved source. The approved source standard currently applies to all food products entering retail food establishments, except unprocessed, raw agricultural produce. This standard requires good manufacturing practices, safety protocols, and regulatory oversight.





One specific concern from CDPHE is the ability to trace back and recall adulterated poultry in the event of a foodborne illness outbreak. The traceability of adulterated poultry is necessary to ensure the safety and protection of consumers. Without clear manufacturing and safety standards, foodborne illness incidents could increase. Proper labeling and record keeping requirements for the producers should provide the necessary link to trace adulterated poultry from the retail food establishment to the processor and the producer.

**Concern 2: Cost and scope of work for CDA and processors**

**CDA** - An initial concern is the cost and scope of work needed for Division staff to implement a new type of inspection program. Additional poultry processing regulation within the CDA Meat Program would be highly feasible to implement for a minimal cost. The CDA Meat Program already conducts inspections on meat processing facilities throughout the state on a frequent basis. Poultry processing facility inspections would be similar to current program inspections, so training and new equipment for inspections would be minimal. Even more, the licensing component of the program is already in place.

**Processor** - It is difficult to quantify the feasibility and cost for a processor to meet licensing requirements, since poultry operations vary in size, location, and other characteristics. Expenses for constructing a new facility would be considerable. The cost of converting an existing structure into a processing facility would depend on the modifications needed. The concern is that potentially high construction costs in addition to the limitation of 20,000 processed birds per year could inhibit processors from participating in the program. CDA discussed with stakeholders (including local processors) how to make a regulatory requirements feasible for small processors subject to the 20,000-bird limit. Recommendations in the Regulatory Logistics section of this report were developed from a standpoint of minimum requirements. Further adjustments to regulations can be made once the program is initially implemented to make the program profitable for small processors entering the retail market.

**Concern 3: Overall interest from processors and consumers**

It is difficult to quantify retail food establishment demand for locally sourced poultry. Some stakeholders indicated that local restaurants and grocery stores have a specific interest in locally sourced poultry, which falls in line with the growing farm-to-table movement in Colorado. Currently, local processors are focused on selling directly to individuals at venues like farmers' markets. In order for these processors to enter the retail market, they must have their birds processed by a USDA-inspected facility. Processors in the stakeholder group expressed their interest in expanding their operations so that they do not have to go through a third party for their processing. It was expressed that being able to process their own birds allows them to expand their operations and possibly improve the quality of their product.

As stated above, individuals that process more than 1,000 birds are currently required to be licensed with CDA. However, no processor has applied for a poultry processor license from CDA since these licenses became available. This is in part because the poultry license does not currently allow processors to expand into the retail market without going through a USDA-inspected facility. Should this framework be developed, it is reasonable to believe that the program will initially receive applications from a handful of existing processors, and will be able to accept more licensees if interest





grows. For perspective, departments of agriculture in Washington and Oregon offer similar licensing programs that are currently in effect. Washington has 70 licensees, and Oregon has 20 licensees.

Retail food establishments' interest in local poultry depends on the safety of the local poultry. If local poultry products are safe, then retail food establishments would be interested in selling local poultry. However, if someone gets sick from local poultry products, it affects the whole community, and ultimately harms the retail food establishment that uses the poultry. This concern from the retail stakeholders will be addressed through appropriate regulations concerning facility and sanitation requirements, as well as labeling requirements for traceability reasons.

### **Benefits for Stakeholders**

A regulatory program that ensures poultry is processed by an approved source has notable benefits for all stakeholders. Through stakeholder group discussions, CDA has identified three general benefits:

1. Increased market opportunity for processors and retail food establishments
2. Product safety standards that provide peace of mind
3. Clarification of the interplay between state and federal regulatory requirements

#### ***Benefit 1: Increased opportunity for processors and retail food establishments***

With the new regulatory program, poultry processors would be able to enter a growing niche market focused on locally sourced food, particularly in Colorado's restaurant scene. Retail food establishments interested in locally sourced food would have additional options for poultry, often establishing more personal relationships with local processors. Consumers are also becoming increasingly interested in knowing their food is locally sourced, which can play into consumers' restaurant and retail store preferences.

The new regulatory program will facilitate processors' ability to increase the quality of their locally produced poultry and will assist poultry processors to build their poultry brands across Colorado.

Expanding market opportunities would also support Colorado Proud, a program that CDA developed to market Colorado-based products. Colorado Proud promotes food and agricultural products grown, raised or processed in the state. Colorado Proud may be used as a marketing tool to promote local poultry processors and the farm-to-table movement for poultry. Allowing processors to sell their poultry to retail food establishments may increase opportunities for Colorado Proud to promote local products. For more information about Colorado Proud, visit [www.coloradoproud.org](http://www.coloradoproud.org).

#### ***Benefit 2: Product safety standards that provide peace of mind***

A state-level regulatory program will monitor poultry processing operations to establish a standard of safety that satisfies CDPHE's approved source qualifications. This program would use inspections and label reviews to help determine whether poultry processing operations are safe enough to be considered approved sources. This would ideally instill peace of mind for retail food establishments and consumers who purchase local poultry, in that the processing facility supplying that poultry will have been inspected to meet suitable safety standards.





***Benefit 3: Clarification of the interplay between state and federal regulatory requirements***

Thirdly, regulatory oversight would clarify the impact of state and federal regulations on processors. As mentioned above, CDA, CDPHE and USDA regulations can cause misunderstandings of what is allowed in Colorado for these small processors claiming federal exemption from inspection. A state-based regulatory program will provide guidance for the industry on compliance with state requirements, while also providing clarification on USDA requirements that will impact exempt processors.

**Section 2: Regulatory Logistics**

The regulatory logistics for poultry processors are typical for a food processing regulatory program in that the logistics will primarily include licensing, inspections, enforcement, and outreach components. The CDA Meat program has already established most of these components. Moreover, because poultry producers with more than 1,000 birds already fall under the jurisdiction of the CDA Meat Program, the regulations concerning labeling, recordkeeping and facility and equipment maintenance are already in place.

***Licensing:***

The CDA Meat Program houses the current licensing program, which already applies to processors with over 1,000 birds. CDA already has an online licensing database to manage the licensing of poultry facilities. This database will allow poultry processing facilities to renew their licenses online annually. The annual fee for licensing will be \$300, which is identical to that for the custom meat processors. Funds generated from these licenses will support inspections of the facilities and other administrative costs of the program.

***Inspections and Enforcement:***

Poultry inspections will focus on sanitation, facility and equipment maintenance, and recordkeeping. CDA field inspectors located throughout the state will conduct the inspections. Each licensed facility will be inspected at least once a year and possibly bi-annually or quarterly, based on the facility's inspection history. Because this is a new program, CDA anticipates licensees would be inspected either quarterly or bi-annually for the first few years to ensure compliance and to adjust inspection procedures. CDA does not charge a fee for these inspections. During inspections, CDA inspectors may take environmental swab samples to test sanitation levels of the facility and equipment. As with custom meat processors, CDA's biochemistry lab will analyze these samples and share results with the licensees. The cost for testing these samples will be covered by the licensing fee. If necessary, CDA can take regulatory action using the enforcement tools that currently exist in the custom meat program statutes.

The CDA Meat program currently receives and investigates complaints regarding meat processors. CDA investigates complaints by inspecting facilities as needed. If a violation occurs or product is found to be adulterated, the CDA Meat program can use a number of enforcement tools currently defined in statute, including cease and desist orders, civil penalties and revocation of licenses. Additionally, CDA





has the statutory authority to issue a retention order if the CDA Commissioner believes a product endangers public health and safety.

***Outreach:***

Industry and consumer outreach for the CDA Meat Program includes newsletters, speaking engagements, and relationship building with industry stakeholders. The expansion of the program to allow for retail sales will require a dedicated effort to inform poultry processors and the general public about the new allowance of poultry sales to retail food establishments. CDA Meat Program staff will work with industry leaders, CDA’s Markets Division, and the current stakeholder group in the effort to inform people about this new program. This outreach effort would help clarify the interplay between Colorado and USDA requirements for these processors.

***Regulation Overview:***

Regulations for poultry licensees will largely focus on two general areas: labeling and recordkeeping and facility and processing requirements. The CDA Meat Program has adopted many of the regulations necessary for a new framework. These regulations currently apply to any licensed poultry processor selling to individuals. Expanding the ability for these processors to sell to retail food establishments would require very minimal adjustments to the existing regulations.

To ensure the program develops sufficient and achievable minimum facility requirements, CDA staff members compared the CDA Meat Program with the poultry programs in Washington and Oregon. A preliminary view indicates all three programs have similar regulations and are patterned after USDA requirements and generally recognized practices for meat processing facilities. CDA staff members also discussed these requirements with CDPHE to ensure appropriate facility requirements will be in place to ensure facilities can qualify as approved sources and that they process poultry in a safe and sanitary manner.

***Labeling and Recordkeeping Regulations:***

Labeling and recordkeeping regulations already exist and were adopted on November 9, 2016 by the Agriculture Commission. These rules will be effective December 30, 2016 and will apply to any poultry processor that is licensed with the state or is otherwise exempt from licensure and sells to individuals. The same labeling and recordkeeping regulations could apply to poultry sales to retail food establishments with minor adjustments as needed. Highlights of minimum recordkeeping requirements are as follows:

- Date of slaughter, date of sale
- Name and address of buyer
- Description of the meat or meat product process, including species and quantity
- Name and address of owner

Highlights of minimum labeling requirements are as follows:

- The statement “Exempt - P.L. 90-492” (if USDA exempt)
- Description of the meat or meat products, including species and quantity





- A statement about resale based on the applicable exemption
- Safe handling instructions
- Pack or processing date
- Name and address of processor

***Facility and Equipment Maintenance Regulations:***

Minimum facility requirements will be based on regulations that currently exist for the CDA Meat Program. Highlights of minimum facility requirements are as follows:

- Indoor facility
- Floors and walls that are washable without absorbing
- Floors sloped and drained into a waste system
- Commercial grade equipment and utensils that are suitable for the industry and easily cleanable
- Refrigerated cooler that is large enough to handle product
- Separation between the slaughter area and processing area
- Suitable drainage
- Adequate potable water source with hot and cold water
- Hands-free sink
- Shielded lighting
- Refrigerated transportation (if transporting product to customers)
- Sanitization and cleaning of processing areas and equipment at least once per day

In addition to the requirements currently established in the Custom Meat Act, the poultry industry would need a few unique facility requirements, especially equipment to chill poultry carcasses at a rate that would meet federal requirements. These can be implemented through CDA's rulemaking process.

***Future Regulatory Possibilities:***

Processors in the stakeholder group mentioned an interest in processing species other than poultry, such as rabbit. Rabbit and other species that the USDA considers non-amenable (not required to have federal inspections) could be a viable addition that could help increase the economic feasibility of a processing facility. This would require a statutory change in legislation to allow for the sale of rabbits in addition to rulemaking to establish specific details regarding the processing. Additionally, Washington State has a program in place for processing rabbits and other species, and CDA will look to their program for guidance.

Stakeholders also showed interest in the allowance for mobile processing units. The CDA Meat Program currently licenses mobile slaughter units. Leased facilities are allowed as long as only the processor is using the facility, and no birds other than the processor's own are processed in the facility at that time. Mobile processing units could be allowed as long as they follow this model. These units are meant to be mobile and are not meant to be used as a way to avoid the requirements of a custom processing facility at a fixed location.





Both interests mentioned above can be clarified through the rulemaking process in the CDA Meat Program sunset review. This rulemaking process would involve input from the stakeholder group that is already established. USDA exemptions allow for both interests, so CDA can determine rules for Colorado-based processors fairly easily.

### **Section 3: Next Steps**

Should the decision be made to expand the poultry processing program, the next step in development would be to amend the CDA Meat Program through a relatively small legislative change to specifically allow for the sale of poultry to retail food establishments. New statutory language would need to allow for licensed processors who process between 1,000 and 20,000 birds to be able to sell to retail food establishments as defined by section 25-4-1601, C.R.S. This language would also clarify the rulemaking authority to allow CDA to develop specific regulations regarding facility and processing requirements that are unique to poultry processing. Any additional rulemaking will be done through a stakeholder process, which will include the current stakeholder group and CDPHE.

Regarding the timing of legislation, it is important to note the entire CDA Meat Program has started its scheduled sunset review process with the Office of Policy Research and Regulatory Reform (OPRRR). This review will result in legislation in 2018 that will most likely continue the program and make programmatic changes based on the recommendations of the OPRRR staff. Expanding the sale of poultry to retail food establishments could be accomplished through the sunset review process fairly easily if supported by stakeholders and CDPHE. During the sunset review process OPRRR will be provided a copy of this report to consider including the expansion of poultry sales into retail food establishments in their recommendations if legislation is not run in 2017 to expand the program. Using the sunset review process would be an efficient way to expand the program and would allow processors to sell to retail food establishments beginning in the summer of 2018.

Whether stand-alone legislation is done this year or through legislation from the sunset review process in 2018, a good strategy to build this regulatory framework would be to start simple and use existing regulation to cover the basic requirements needed to cover the concerns and logistics in this report and make further adjustments, such as expanding to processing rabbits and mobile slaughter units in subsequent years based on the need of the stakeholders. These expansions would be done through the stakeholder/rulemaking process as needed.

For more information you may contact Steve Blunt, Program Manager at 303-697-9237

