

LEGAL ISSUES FOR SMALL-SCALE POULTRY PROCESSORS

Federal and State Inspection Requirements For On-Farm Poultry Production and Processing

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BACKGROUND AND INTRODUCTION

Congress and the various state legislatures have adopted laws and regulations regarding the **licensing of facilities** where poultry are slaughtered or processed into products for human consumption, and the **inspection of the birds themselves** as they are processed. Congress and some state legislatures have also provided exemptions from these licensing and inspection requirements for small-scale processors. These exemptions have been made for two primary reasons. First, providing inspection officials at all places where poultry are slaughtered or processed would be very expensive and impractical. Second, subjecting small-scale processors to the requirements designed for large-scale facilities would also be inappropriate and burdensome for the producer.

This document will summarize the licensing and poultry processing inspection requirements for small-scale processors. Both federal and state requirements will be examined. This information can help small-scale processors comply with federal and state laws and regulations. **Throughout this document, “federal inspection” usually refers to examination of the birds themselves while they are being processed, and “state licensing” usually refers to the physical design and equipment requirements for poultry processing facilities.**

The laws and regulations discussed in this document may change over time. Therefore, those interested in this subject should be vigilant in pursuing any changes which may have occurred in either the federal or state laws and regulations.

It is also important to acknowledge that these regulations are often confusing, hard to understand, apparently overlapping, and open to subjective interpretation by the regulators themselves. Differences of opinion about the meaning of these regulations is common, and individual regulators do not always know how the regulations apply to small-scale processors in their geographic jurisdiction. In general, they are much more familiar with how the regulations apply to conventional, large-scale industrial processors; and often they are not aware of the exemptions for small-scale processors. Therefore, experienced processors strongly recommend that small-scale producers and processors ask to see the specific regulations in writing if they are challenged by regulators who say what the processors are doing is illegal.

Those wishing to market pastured and on-farm processed poultry should also consult a local attorney and their state department of health when setting up their business. This document is not intended to provide individual legal advice to every small-scale poultry processor. This document is offered only as an introductory discussion of the regulatory requirements facing small-scale processors.

This introduction is followed by a brief description of the federal requirements. Then the requirements of each state are given individually in alphabetical order. The requirements for Puerto Rico and the Virgin Islands are described in the last section.

This document was prepared through an agreement between the Kerr Center for Sustainable Agriculture (KCSA) and Heifer Project International (HPI). It was compiled with the financial assistance of a grant (LS 99-105) from the USDA's Southern Region Sustainable Agriculture, Research and Education (SARE) program.

Some of the state sections include comments from poultry producers and processors about how the processing regulations have been implemented in their state. These comments are clearly marked as **EDITOR'S NOTES** to distinguish them from our efforts to objectively describe the regulations in each state. Additional comments are welcomed, and these may be sent by either hard copy or email to:

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Other useful references:

The Legal Guide for Direct Farm Marketing by Neil D. Hamilton answers common questions about laws on marketing agricultural products directly to consumers and to retail and wholesale buyers. Hamilton wrote this book for farmers involved in direct marketing produce, livestock and other food products, and for farm advisers, such as extension educators and attorneys working with farm marketers.

Twelve chapters cover legal issues on a variety of topics, such as farmers markets; on-farm businesses; contracts, food stamps and getting paid; advertising, organic certification and eco-labels; land use and property law; labor and employment; insurance and liability; and inspection, processing and food safety. Chapter 12 is particularly relevant to producers who want to market meat, poultry, eggs and dairy products.

Visit <http://www.sare.org/htdocs/dev/legal.htm> for more information about this book. It may also be ordered from the Drake University Agricultural Law Center, Des Moines, IA 50311; (515) 271-2947.

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Small-scale poultry producers and processors may also wish to familiarize themselves with state and federal standards and regulations related to food safety. This information can be found at the web site for the National Association of State Departments of Agriculture (www.nasda-hq.org). At the home page, open the pull-down menu and click on "Food Safety—State and Federal Standards and Regulations."

THE FEDERAL POULTRY PRODUCTS INSPECTION ACT

A. Requirements for Federal Inspection

Under the federal Poultry Products Inspection Act and the regulations implementing the Act,¹ the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) is responsible for ensuring that poultry products distributed in United States commerce are safe, wholesome, not adulterated, and are properly marked, labeled and packaged.

In most states, federal FSIS inspectors oversee the facilities which slaughter and process poultry. Some states participate in the Federal State Cooperative Inspection Program (formerly known as the Talmadge-Aiken program). This program allows state-employed inspectors to provide federal inspection services in poultry plants that sell products in interstate commerce.

As of April 2001, twenty-six states provide state inspection programs for meat and poultry. These states are Alabama, Alaska, Arizona, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Mississippi, Montana, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. In California, Colorado, Minnesota, and New York custom exempt facilities are reviewed under contract with the state. The remaining states rely on federal inspectors. States must maintain inspection requirements at least equal to those of the federal program in order to continue operating intrastate inspection programs and to continue to receive federal funding assistance.

B. Exemptions from Federal Requirements for Small-Scale Poultry Processors

The federal Poultry Products Inspection Act and its regulations provide exemptions for small-scale poultry processors. These "exemptions from inspection" mean that a federal inspector does not need to be present to examine the birds as they are being slaughtered and processed. Small-scale (or low-volume) processors qualify for these exemptions simply by meeting the requirements which are described below. There is no process for applying to the USDA or FSIS for these exemptions.

The smallest-scale processors are exempt from the federal inspection requirements if the following conditions are met:

1. The producer slaughters no more than 1,000 poultry during the calendar year for which the exemption is claimed.
2. All of the poultry were raised on the producer's own farm.
3. The poultry producer is not in the business of buying or selling poultry products other than those produced from poultry raised on his or her farm.
4. None of the poultry is distributed outside of the state where the poultry is raised.

The federal inspection requirements also do not apply to poultry producers or other persons who raise and slaughter or process 20,000 or fewer poultry in each calendar year as long as all of the following conditions are met:

¹ The federal Poultry Products Inspection Act can be found in the United States Code, Title 21, Sections 451-470. The Poultry Products Inspection regulations implementing the Act are found in the Code of Federal Regulations, Title 9, part 381 (http://www.access.gpo.gov/nara/cfr/waisidx_00/9cfr381_00.html).

1. They do not slaughter or process poultry products at a facility used for slaughtering or processing poultry by any other person.
2. The poultry are sound and healthy before slaughtering.
3. The poultry are slaughtered, handled, and otherwise processed under sanitary conditions, practices and procedures. The resulting poultry products must be sound, clean, and fit for human food when distributed.
4. The poultry products are distributed with a label that includes the producer's name, the producer's address, and the statement "Exempted-P.L. 90-492." The poultry products must not be misbranded in any way.
5. The poultry products may be distributed only in the state in which the poultry are raised and processed.
6. In the current calendar year the poultry producer or distributor may not engage in the business of buying or selling any poultry products other than those described in this exemption.

The poultry products produced under these exemptions may be distributed by the poultry producer or other person directly to household consumers, restaurants, hotels, and boardinghouses for use in their own dining rooms, or in the preparation of meals for sale to direct consumers.

Despite these exemptions from inspection of the birds themselves as they are being processed, the federal FSIS as well as state regulatory agencies may choose to examine processing facilities of any size to be sure that they are in compliance with the laws, including the requirement that poultry and poultry products are processed under clean and sanitary conditions. If the facility is not in compliance with the law, the FSIS or the state may suspend or terminate the facility's exemption from the law and impose penalties provided under federal or state law.

Finally, in recent years, the FSIS established the Hazard Analysis and Critical Control Point (HACCP) system as an effort to reduce pathogens in the food supply. This system established new requirements for meat and poultry processing plants. The new inspection requirements were designed to reduce food borne illnesses, and they were phased-in over several years.

"Small" plants (which employ at least 10 but fewer than 500 employees) were required to implement HACCP by January 25, 1999. According to FSIS, there are approximately 3,500 small meat and poultry processing plants nationwide.

"Very small" plants (those with fewer than 10 employees and less than \$2.5 million in annual sales) were required to implement HACCP by January 25, 2000.

HACCP implementation requires a knowledge of HACCP requirements, preparation of a HACCP plan, determination of Critical Control Points, testing, sanitation, standard operating procedures, training and various other implementation measures. Contact persons for HACCP within each state have been designated. As of September 2001, it remains to be seen whether the requirements of HACCP will be applied to on-farm processors who already enjoy the benefits of exemption from inspection requirements under the federal and some state laws. This is a developing issue that must be closely watched.

"Sanitary conditions," as indicated in the exemption for small-scale processing, is specifically defined in the Code of Federal Regulations. Most states do not adopt specific

definitions for sanitary conditions in their statutes, but include these definitions in their regulations. The producer should consult with their state regulatory authority concerning any regulations which may be in place which identify what the state requires for “sanitary conditions” to exist. The agency with authority varies from state to state; in some states it is the agriculture department, in others the health department.

The Federal requirements are found in Title 9 Code of Federal Regulations Part 416 and cover the grounds of the processing facility, construction of the facility, equipment and utensils used in the operation, and employee hygiene issues. The basic goal of sanitary condition requirements is the prevention of product adulteration through unsanitary conditions. Generally, the regulations require that:

- the operation must have a pest management program in place,
- buildings must be kept in good repair and be of sufficient size to allow processing, handling, and storage of the product so that adulteration does not occur,
- walls of the buildings must be built of durable materials impervious to moisture and cleaned/sanitized as necessary,
- lighting must be of good quality and sufficient intensity to ensure sanitary conditions are maintained,
- rooms where edible product is processed, handled, or stored must be separate and distinct from rooms where inedible product is processed, handled, or stored,
- ventilation must be adequate,
- plumbing must be installed to carry sufficient water to areas throughout the operation, carry sewage and liquid disposable waste from the establishment, and prevent adulteration of products,
- floor drainage must be adequate,
- sewage disposal must be sufficient to prevent backup of sewage into areas where the product is processed, handled or stored,
- an adequate supply of running water must be maintained,
- dressing rooms, lavatories and toilets must be sufficient in number and conveniently located but separate from rooms in which product is processed, stored, or handled,
- equipment and utensils must be sufficient for their purpose,
- employees must maintain cleanliness, appropriate attire and disease control activities.

Each operation is required to adopt written standard operating procedures that will ensure sanitary conditions exist at the operation and keep records that will reflect that the operation follows its standard operating procedures. Small scale processors should take every step to implement and maintain similar standard operating procedures regarding sanitary conditions.

STATE POULTRY INSPECTION LAWS

The federal Poultry Products Inspection Act allows states to establish their own state poultry inspection programs which must be at least as rigorous as the federal inspection program. Poultry products inspected under state inspection programs may be sold, transported, and used only within the state boundary, but not across state lines. If a state does not establish its own state poultry products inspection program, the FSIS is designated to inspect poultry products, even if the poultry products are distributed only within the state. As previously indicated, about half the states have state inspection programs. Other states utilize the federal inspection program, usually with no specifically adopted state law or regulation to address the issue of poultry inspection.

Small-scale poultry processors must comply with the inspection programs of their own states, even if their operation complies with the requirements in the federal law and regulations.

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