

Questions from CDFA to USDA, Food Safety and Inspection Services (FSIS)

Policy Development Staff concerning only Federal Poultry exemptions.

Question 1. Can operations, such as a mobile unit or brick and mortar slaughter and processing facility be used by multiple growers, slaughtering and processing under the 1,000-bird exemption, sell/distribute their products through the same community supported agriculture (CSA) group to customers?

Answer.

<1000 bird P/G

It should be noted, for a <1000 bird P/G, the "provisions of the Act shall not apply ... to the producers doing less than 1000, per 21 U.S.C. 464, Sec 15, (c)(4)."

The requirement preventing 20,000 bird P/G from not using a facility "for slaughtering or processing of the products of poultry by any other poultry producer or person" does not apply to a <1000 bird producer.

Therefore, the <1000 bird producer could rent space or a MSU to produce the poultry product and then take the product back to their farm to sell directly to consumers, unless the specific state restricts this action. The birds would have to be of his/her own raising and restricted to intrastate commerce.

Recordkeeping would be key since both the <1000 PG and the mobile slaughter or fixed unit would need to keep records.

20,000 P/G

Note there could be a complication in a scenario in which the owner of the MSU is using the facility themselves under their own 20,000 P/G Exemption in between service/equipment rentals to other PG operators involving the same MSU "facility".

This creates an eligibility conflict since multiple operators will be using the same facility used to slaughter another person's poultry. Such a conflict would be quite obvious if the owner of a slaughter facility was under his own 20,000 P/G Exemption with his own brick-and-mortar building, but was also leasing the same brick-and-mortar facility to other exempt operators. The fact remains that renting the MSU already being used under an exemption creates the same complication-- multiple exempt operators are using the facility and this conflicts with the regulation.

Producers cannot slaughter or process poultry products at a facility used for slaughtering or processing poultry products by any other person, per 9 CFR 381.10(b)(2) Exemptions for Specified Operations, especially if it is a 20,000 P/G, for example:

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(b) No person qualifies for any exemption specified in paragraph (a)(5), (6), or (7) of this section if, in the current calendar year, such person:

(2) Slaughters or processes poultry products at a facility used for slaughtering or processing poultry products by any other person, except when the Administrator grants such exemption after determining, upon review of a person's application, that such an exemption will not impair effectuating the purposes of the Act.

If the owner of the MSU operates under one of the three exemptions; (1) G/P less than 1000, (2) G/P less than 20,000 G/P or (3) Other Person (PGOP) and /or wishes to provide a mobile slaughter service or to lease a mobile slaughter service to farms operating under the three exemptions listed above, he / she would need to apply for and receive a permit from the FSIS administrator to do so.

Assuming this poultry exemption operator (Producer/Grower 20,000 limit for example) is actually slaughtering the birds for sale within the context of a CSA or buyer's club, he still would need to keep records that maintain a limit of 20,000 for the calendar year. Selling live birds that he only raises but does not slaughter himself would not be factored into that count.

The PPIA, Section 11(b) would give support for requiring records on birds slaughtered under an exemption, since they are "for commerce", because they are being used for commercial gain, even though exempt poultry products do not go "into (interstate) commerce".

Question 2. How do the poultry exemption (limits) apply to a mobile poultry unit that may or may not be run by a non-profit organization, and is brought to multiple grower's locations where the grower slaughters and processes their own birds? (i.e. Can a mobile slaughtering unit (poultry only) be shared?

Answer. Both a 20,000 Producer/Grower and a 1000 P/G can rent a Mobile Slaughter Unit (MSU) in most circumstances. Furthermore, a co-op type of arrangement for a fixed facility or MSU is not an option for multiple 20,000 P/G operators, but this arrangement is not expressly prohibited for multiple 1000 P/G operators.

NOTE: An exception exists if the owner of the MSU has completed or elected to discontinue his 20,000 birds for the calendar year. If the owner strictly shifts into arrangements to rent the MSU and their services for the remainder of the year without simultaneously continuing as an exempt operator him/herself. In that circumstance, the bullet from the Poultry Exemption guideline (p.11) would be correct:

"FSIS has determined that when a grower producing poultry under the Producer/Grower Exemption rents slaughtering or processing equipment and operates such equipment on his or her premises, he or she is not disqualified for the Producer/Grower Exemption. In this situation, the grower is not required to request an exemption from the Administrator of FSIS. "

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Question 3 How does one obtain such an exemption?

Answer. Regarding obtaining an "exemption" from the stated poultry slaughter exemptions (381.10(b)(2)), this has to be a written request sent through channels, to the District Office, OFO headquarters, etc.

Question 4. What are the facility requirements for "Open Air"? Does an open-air facility, such as a pop up tent with no sides, unprotected from environmental influences (dust, flies, etc.) comply with the required sanitary standards? What type of "Open Air" operation, meeting all other requirements for obtain a USDA grant of inspection? Or would that necessitate a permanent facility with walls, door, and ceiling of acceptable construction?

Answer. "Slaughtered under such sanitary standards, practices, and procedures as result in the preparation of poultry products that are not adulterated".

Based on current FSIS policy, there is not a prescriptive requirement that a poultry exempt operator is prohibited from having some aspects of its slaughter done out of doors. However, the poultry would be adulterated if it was prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. The exempt operator would have to account for open air conditions that may lead to adulteration, e.g., access to product by vermin, such as flies, mice or birds or from contamination from dirt, dust or debris. These conditions might be influenced by seasonal and geographic considerations. The burden is on the operator to avoid operational sanitation issues such as visible evidence of flying insect problems, not just the theoretical possibility of pest problems.

The guidelines are not necessarily to be interpreted as a prescriptive 'checklist' for either an official establishment or an exempt operation.

The Sanitation Performance Standards (SPS) language references facilities in general terms of a brick-and-mortar paradigm, and an official establishment this would be applicable. An exception, in limited terms, could be a Federally-inspected mobile slaughter unit, which might feature bleeding, scalding, etc., in an outdoor environment still subject to pest control and other operational sanitation.

The Poultry Products Inspection Act, 21 U.S.C. § 464, states that the Secretary shall "by regulation and under such conditions, as to sanitary standards, practices, and procedures as he may prescribe, exempt from specific provisions of the Act," certain poultry producers.

The regulations for the poultry exemptions found in 9 CFR 381.10(a) state that exempt poultry shall be "slaughtered and cut up and handled under such sanitary standards, practices and procedures as results in the preparation of poultry products that are not adulterated when so distributed." Most of the paragraphs within 9 CFR 381.10 cite language similar to this: "Provided, that in lieu of complying with all the adulteration and misbranding provisions of the

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Act, such poultry is healthy and is slaughtered and processed under such sanitary standards, practices, and procedures as a result in the preparation of poultry products that are sound, clean, and fit for human food, and the shipping containers of such poultry products bear the producer's name and address and the statement "Exempted-P.L. 90-492.""

There is not a specific FSIS regulation for exempt operators that expressly prohibits open air or outdoor slaughter. Custom slaughter and processing, or other exempt operations, must be done in a sanitary manner and may be done in open air conditions. It will be the exempt operator's responsibility to slaughter and process the poultry in accordance with the adulteration provisions found in the Act.

To qualify for any one of the poultry exemptions, a business must slaughter poultry or process poultry products under sanitary conditions using procedures that produce sound, clean poultry products fit for human food. These sanitation procedures and practices are required for poultry businesses receiving full USDA inspection and are applicable to exempt poultry operations [Title 9 CFR part 416].

Certain "applicable" SPS regulations are still required and cannot be "exempted." These regulations are ones which directly impact sanitary conditions of the facility, surfaces, utensils, exposed products, etc. and ensure that the product will not become directly contaminated or adulterated at the time of sale

SPS regulations which are definitely still required, and could therefore not be "exempted", would be those directly impacting sanitary conditions of the facility, surfaces, utensils, exposed products, etc., such that product would not be caused to become directly contaminated or adulterated at the time of sale.

For example, there is not a requirement that a poultry exemption operator must conduct all operations within a brick-and-mortar facility equivalent to a Federal establishment. However, pest control would still be enforceable, as needed, to preclude rodent and flying insect access to product. Similarly, non-potable water usage on exposed product would be an example of a failure to prevent insanitary conditions and a failure to meet regulatory intent.

Note: The guidance document cited above also contains a summary of general basic sanitary standards, however, this is not intended to translate as a prescriptive, enforceable list of requirements for practices in these exempt operations, except with relation to processing under sanitary operating conditions to prevent adulteration and contamination.

In summary, these operators are by definition "exempt" from many (but not all) aspects of the SPS regulations, and certainly not to the extent that direct contamination or adulteration is allowed during slaughter and processing of exempt poultry.

For more information on what would generally be considered sanitary conditions, exempt operators may refer to 9 CFR 416.2 to 416, the Sanitation Performance Standards Compliance

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Guide, or the FDA Food Code]. It is important to note these represent guidance documents only, and not prescriptive requirements with respect to exempt operations.

Question 5. Do convalescent care facilities, rest homes, wineries, etc. that use exempt poultry in the preparation of meals meet the definition of “similar institutions”?

Answer. Yes, a care facility, rest home, and a restaurant associated with a winery could all be considered applicable types of institutions.

381.10(2)(4)(c)

(b) The definition of a restaurant includes a caterer which delivers or serves product in meals, or as entrees, only to individual consumers and otherwise meets the requirements of this paragraph.

(vi) A consumer is any household consumer, hotel, or restaurant, or similar institution as determined by the Administrator in specific cases.

Of course, state and local laws may apply which are more restrictive.