



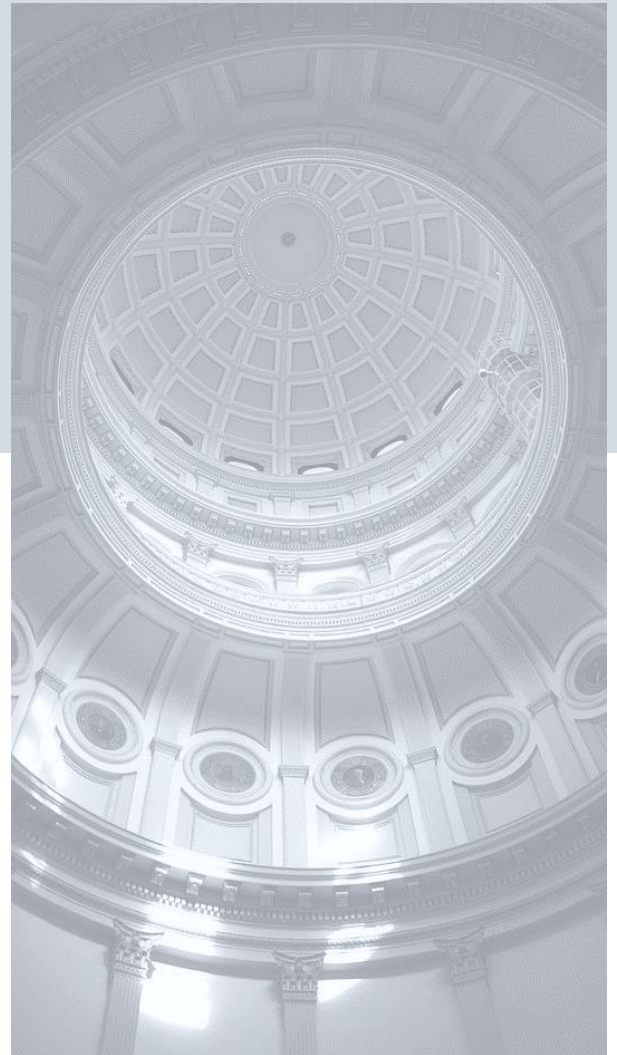
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2022 Sunset Review

Custom Processing of Meat Animals Act



October 14, 2022



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 14, 2022

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient, and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Custom Processing of Meat Animals Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2023 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 33 of Title 35, C.R.S. The report also discusses the effectiveness of the Commissioner of Agriculture in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director





Sunset Review: Custom Processing of Meat Animals Act

Background

What is regulated?

Throughout the United States, meat products purchased by consumers are regulated through either federal inspection or state inspection. However, some meat products may be exempt from inspection by meeting specific requirements.

Through the custom exemption, consumers who are sole owners or who own shares of a live animal have the option to have the animal processed for consumption by custom processors without meat product inspection, as long as the meat products are for personal or household use only. Additionally, meat processed through custom exemption must be labeled “not for sale”. Although these meat products are not inspected, custom meat processors are still required to adhere to the Custom Meat Processing of Animals Act and rules promulgated by the Commissioner of Agriculture.

Why is it regulated?

The program protects consumers from harm through licensure and regular inspection requirements to ensure that custom processing facilities maintain minimum sanitation and safety requirements and have the necessary tools and equipment for safe handling and processing of meat products.

Who is regulated?

As of fiscal year 2021, there were 110 custom meat processors licensed within the state.

How is it regulated?

Custom meat processing facilities must be licensed in Colorado. In order to obtain a license, applicants must submit an application and pay the appropriate

license fee, depending upon the type of processing facility to be licensed. Additionally, applicants for licensure undergo a pre-license inspection to ensure that the applicant meets structural and sanitation requirements. Inspections are also performed at least two times per year for each licensed facility.

What does it cost?

Program expenditures in fiscal year 20-21 totaled \$28,813, with a total of 0.25 full-time equivalent employees administering the Program.

What disciplinary activity is there?

The Act provides the Commissioner with the authority to issue fines, civil penalties, written retention orders, and cease-and-desist orders, and can revoke, suspend, refuse to renew, place on probation, or restrict a license for violations of the Act. During the years reviewed, no disciplinary activity was reported.

Key Recommendations

- **Continue the Custom Processing of Meat Animals Act (Act) for nine years, until 2032.**
- **Consolidate statutory sections relating to civil penalties.**
- **Standardize criminal penalties for violations of the Act.**
- **Direct that all monies collected by the Program resulting from civil penalties be deposited in the state’s General Fund.**

Table of Contents

Background	1
Sunset Criteria	1
Sunset Process	3
Methodology	3
Profile of the Industry	4
Inspection Requirements	4
Custom Exemption from Inspection Requirements	5
Legal Framework	7
History of Regulation	7
Federal Regulations	7
State Regulations	8
Legal Summary	9
Program Description and Administration	16
Licensing	17
Complaint and Disciplinary Activity	19
Inspections.....	20
Fining Activity.....	20
Collateral Consequences - Criminal Convictions	21
Analysis and Recommendations.....	22
Recommendation 1 - Continue the Custom Processing of Meat Animals Act for nine years, until 2032.....	22
Recommendation 2 - Repeal obsolete provisions relating to the development of poultry labeling requirements.....	23
Recommendation 3 - Consolidate statutory sections relating to civil penalties.	24
Recommendation 4 - Standardize criminal penalties for violations of the Act.....	25
Recommendation 5 - Direct that all monies collected by the Program resulting from civil penalties be deposited in the state’s General Fund.	26
Administrative Recommendation 1 - The Program should work with the Composting Program at the Colorado Department of Public Health and Environment to provide assistance and outreach to custom processing facilities that may be interested in utilizing grants to establish compost facilities.	27
Appendix A - Customer Service Survey	29

Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state, and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures, and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

**Table 1
Application of Sunset Criteria**

Sunset Criteria	Where applied
(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation;	<ul style="list-style-type: none"> • Profile of the Profession. • Legal Framework: History of Regulation. • Recommendation 1.
(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;	<ul style="list-style-type: none"> • Legal Framework: Legal Summary.
(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;	<ul style="list-style-type: none"> • Legal Framework: Legal Summary. • Program Description and Administration. • Administrative Recommendations. 1, 4, and 5.
(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	<ul style="list-style-type: none"> • Program Description and Administration.
(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;	<ul style="list-style-type: none"> • Not applicable.
(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;	<ul style="list-style-type: none"> • Profile of the Profession. • Administrative Recommendation 1.
(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;	<ul style="list-style-type: none"> • Program Description and Administration: Complaint and Disciplinary Activity. • Program Description and Administration: Inspections. • Program Description and Administration: Fining Activity.
(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action;	<ul style="list-style-type: none"> • Program Description and Administration: Fining Activity.

Sunset Criteria	Where applied
<p>(IX) Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.</p>	<ul style="list-style-type: none"> • Program Description and Administration: Collateral Consequences.
<p>(X) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.</p>	<ul style="list-style-type: none"> • Legal Framework: Legal Summary. • Program Description and Administration. • Recommendations 1 - 4. • Administrative Recommendation 1.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at coprrr.colorado.gov.

The functions of the Commissioner of Agriculture (Commissioner), as enumerated in Article 33 of Title 35, Colorado Revised Statutes (C.R.S.), relating to the regulation of custom processing of meat animals, shall terminate on September 1, 2023, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Commissioner pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of the custom processing of meat animals should be continued and to evaluate the performance of the Commissioner. During this review, the Commissioner must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Department of Agriculture staff, practitioners, and officials with professional associations; and reviewed complaint file summaries, Colorado statutes and rules, and the laws of other states.

The major contacts made during this review include, but are not limited to:

- Colorado Attorney General’s Office;
- Colorado Association of Custom Meat Processors;
- Colorado Cattleman’s Association;
- Colorado Counties, Incorporated;
- Colorado Department of Agriculture, Division of Inspection and Consumer Services;
- Colorado Department of Public Health and Environment;
- Colorado Farm Bureau;
- Colorado Livestock Association; and
- Colorado Restaurant Association.

In the spring of 2022, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of all custom meat processors who are licensed by the Commissioner. The survey was sent to 102 custom meat processing facilities; no emails were returned as undeliverable. The survey received 17 responses, which is a 16.6 percent response rate. Survey results may be found in Appendix A.

Profile of the Industry

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the custom meat processing industry does, where custom processors work, who they serve and any necessary qualifications.

Inspection Requirements

Throughout the United States, meat products purchased by consumers are primarily regulated through either federal inspection, state inspection, or custom exemption from inspection.²

Meat products that are sold commercially for human consumption are inspected by the Food Safety and Inspection Service (FSIS) within the United States Department of Agriculture (USDA) as required under the Federal Meat Inspection Act.³

² Colorado Food Systems Advisory Council, *Colorado’s Mid-Scale to Small Meat Value Chain*. September 2020, p. 1.

³ United States Department of Agriculture, Food Safety and Inspection Service. *Inspection of Meat Products*. Retrieved July 28, 2020, from www.fsis.usda.gov/inspection/inspection-programs/inspection-meat-products

For facilities under the inspection of the FSIS, all cattle, sheep, goats, and swine are required to be inspected, and FSIS inspection is considered voluntary for game and exotic species including, but not limited to, antelope, deer, bison, elk and rabbit.⁴ However, meat products other than cattle, sheep, goats, and swine are still required to comply with any regulations established by the Food and Drug Administration and any local and state regulations.⁵

In conducting inspections of meat products, FSIS inspectors must be present at the meat processing facility at all times while livestock are slaughtered and must also be present for at least a portion of any shift during which meat products are being processed. During the inspection process, inspectors confirm that animals are treated humanely and inspect the animals to ensure that they satisfy requirements for slaughter. Additionally, inspection processes take place after slaughter has occurred to ensure that the carcass and internal organs meet standards for human consumption.⁶

In collaboration with the FSIS, some states have created their own inspection programs in which a state agency has been designated to oversee meat inspection, as long as the state's inspection requirements are equal to and not less stringent than the requirements enforced by the FSIS. Although Colorado utilizes FSIS to satisfy inspection requirements, 27 states currently run their own meat inspection programs.⁷

Custom Exemption from Inspection Requirements

Custom exemption is a federally recognized option in which the requirements of the Federal Meat Inspection Act and USDA regulations regarding meat product inspection do not apply.⁸

Through this custom exemption, consumers who are sole owners or who own shares of a live animal have the option to have the animal processed for consumption without meat product inspection, as long as the meat products are for personal or household use only. Additionally, meat processed through custom exemption must be labeled "not for sale." Although meat products are not inspected, custom meat processors are still required to adhere to food safety guidelines.⁹

Custom meat processing facilities are not required to have either federal or state inspectors on duty during hours of operation to inspect the processing of meat and are therefore, not producing state or federally inspected meat products.¹⁰

⁴ Colorado Food Systems Advisory Council, *Colorado's Mid-Scale to Small Meat Value Chain*. September 2020, p. 2.

⁵ United States Department of Agriculture. *Summary of Inspection Requirements for Meat Products*. Retrieved July 18, 2022, from www.fsis.usda.gov/sites/default/files/media_file/2021-02/Fed-Food-Inspect-Requirements.pdf

⁶ Ibid.

⁷ The National Agricultural Law Center. *Meat Processing Laws in the United States: A State Compilation*. Retrieved July 18, 2022, from nationalaglawcenter.org/state-compilations/meatprocessing/

⁸ 9 CFR § 303.1(a)(2)

⁹ New Mexico State University, College of Agricultural, Consumer, and Environmental Sciences. *Selling Meat Direct to Consumers from the Ranch or Farm: Custom Exemption*. Retrieved July 18, 2022, from pubs.nmsu.edu/_b/B234/

¹⁰ Niche Market Processor Assistance Network. *What is a "custom slaughter" facility?* Retrieved July 18, 2022, from www.nichemeatprocessing.org/what-is-a-custom-slaughter-facility/

According to the FSIS, custom meat processors may provide custom exempt services for owners of livestock for personal use and may also provide custom slaughter and preparation.¹¹

For example, custom meat processors may be utilized to prepare meat products from an animal obtained through the use of a hunting license, or through sole or partial ownership of a live meat animal purchased from a rancher.

Custom meat processors in the state are exempt from federal meat inspection requirements, but the custom facilities themselves must be licensed and inspected.

The Custom Processing Program within the Division of Inspection and Consumer Services at the Colorado Department of Agriculture (Program, Division and Department, respectively) oversees inspection of custom processing facilities. These facilities are routinely inspected by the Program for record-keeping, proper sanitation, and to ensure compliance with other USDA regulations.¹²

Custom meat processing facilities must be licensed in Colorado. In order to obtain a license, applicants must submit an application and pay the appropriate license fee, depending upon the type of processing facility to be licensed. Additionally, applicants for licensure undergo a pre-license inspection to ensure that the applicant meets structural and sanitation requirements.

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation.

Colorado's livestock industry, which includes custom meat processing, is the state's largest agricultural sector and produces approximately:¹³

- \$4 billion per year in beef sales,
- \$182 million in pork sales,
- \$128 million in lamb sales, and
- \$101 million in poultry sales.

Further, approximately 18,000 Colorado farms and ranches sell livestock, which is roughly 46 percent of the total number of Colorado agricultural producers.¹⁴

In 2021, the salary for animal slaughtering and processing—which would include custom exempt processing—had an hourly mean wage of \$15.46, with an annual mean wage of \$32,160.¹⁵ In fiscal year 20-21, Colorado licensed 110 custom meat processors.

¹¹ United States Department of Agriculture, Food Safety and Inspection Service, *FSIS Guideline for Determining Whether a Livestock Slaughter or Processing Firm is Exempt from the Inspection Requirements of the Federal Meat Inspection Act*, 2018. p. 3.

¹² Colorado Department of Agriculture. *Meat - Custom Processing*. Retrieved July 18, 2022, from ag.colorado.gov/ics/meat-custom-processing

¹³ Colorado Food Systems Advisory Council, *Colorado's Mid-Scale to Small Meat Value Chain*. September 2020, p. 4.

¹⁴ *Ibid.*

¹⁵ United States Bureau of Labor Statistics. *Occupational Employment and Wage Statistics: Industry Profile for Slaughterers and Meat Packers*. Retrieved July 18, 2022 from www.bls.gov/oes/current/oes513023.htm

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

Federal Regulations

The Meat Inspection Act was passed by Congress in 1906 to regulate the processing of livestock including cattle, swine, goats, and sheep.¹⁶ Additionally, this Act required that meat products be produced under sanitary conditions and prohibited misbranding or adulteration of meat products utilized for food.¹⁷

In 1946, the passage of the Agricultural Marketing Act authorized the United States Department of Agriculture (USDA) to provide inspections and class identifications to determine the quality of agricultural products.¹⁸

The Poultry Productions Inspection Act of 1957 was signed into law to protect the health and welfare of consumers through the implementation of requirements to ensure the wholesomeness of poultry products through labeling, packaging, sanitation, and inspection requirements.¹⁹ This act oversees the processing of poultry products including, but not limited to, chickens, turkeys, ducks, and geese.²⁰

Both the Meat Inspection Act and the Poultry Productions Inspection Act provide the USDA with the primary authority to provide regulatory oversight, including through the requirement of regular inspections to ensure compliance in meat and poultry production.²¹ Further, both Acts provide an exemption from federal inspection for the

¹⁶ The National Agricultural Law Center. *Meat Processing Laws in the United States: A State Compilation*. Retrieved July 18, 2022, from nationalaglawcenter.org/state-compilations/meatprocessing/

¹⁷ United States Department of Agriculture, Food Safety and Inspection Service. *Our History*. Retrieved July 28, 2022, from www.fsis.usda.gov/about-fsis/history

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ The National Agricultural Law Center. *Meat Processing Laws in the United States: A State Compilation*. Retrieved July 18, 2022, from nationalaglawcenter.org/state-compilations/meatprocessing/

²¹ Ibid.

slaughtering and preparation of an owner's animals that are to be used within the owner's household.²²

In 1958, Congress passed the Humane Methods of Slaughter Act, which provides requirements for all livestock, with the exception of poultry, for the humane treatment of meat animals while at a slaughter facility. This act was amended in 1978 to allow USDA inspectors to cease slaughter activities at a plant if it is determined that humane treatment is not occurring and allows the USDA to establish and implement regulations that adhere to the provisions of this act.²³

Congress subsequently passed two additional laws that required states to provide regulatory mechanisms for state inspections of poultry and meat that are at least as stringent as federal inspection programs. These are the Wholesome Meat Act of 1967 and the Wholesome Poultry Act of 1968.²⁴

As a result of these two acts, a state agency may apply to be designated to administer a state inspection program through a cooperative agreement with the USDA. In these instances, the state program would be required to regulate and provide inspections in a manner that is at least equal to USDA requirements. However, states that utilize the USDA for inspections can allow meat processors to sell their products across state borders (interstate) while those states that utilize a state inspection program can only allow their producers to sell their products within the state (intrastate)²⁵ unless the state is included in a cooperative interstate shipping program.

State Regulations

Originally enacted as the Frozen Food Provisioner's Law, the statute regulated the licensure of locker plants, food plan operators, and any processing operations regarding the cutting, wrapping, and packaging of meat intended to be stored in freezers at home or in storage facilities.

In 1989, the law was repealed and reenacted, with an emphasis on construction and operation of processing facilities. Further, the General Assembly consolidated statutory provisions regarding the slaughter and processing of meat animals and authorized the Commissioner of Agriculture to promulgate rules.

²² United States Department of Agriculture, Food Safety Inspection Service. *FSIS Directive: Custom Exempt Review Process*, pg. 2. Retrieved July 1, 2022, from www.fsis.usda.gov/sites/default/files/media_file/2021-02/8160.1.pdf

²³ United States Department of Agriculture, National Agricultural Library. *Humane Methods of Slaughter Act*. Retrieved July 28, 2022, from [www.nal.usda.gov/animal-health-and-welfare/humane-methods-slaughter-act#:~:text=The%20Humane%20Methods%20of%20Slaughter,and%20Inspection%20Service%20\(FSIS\).](http://www.nal.usda.gov/animal-health-and-welfare/humane-methods-slaughter-act#:~:text=The%20Humane%20Methods%20of%20Slaughter,and%20Inspection%20Service%20(FSIS).)

²⁴ United States Department of Agriculture, Food Safety and Inspection Service. *Our History*. Retrieved July 28, 2022, from www.fsis.usda.gov/about-fsis/history

²⁵ The National Agricultural Law Center. *Meat Processing Laws in the United States: A State Compilation*. Retrieved July 18, 2022, from nationalaglawcenter.org/state-compilations/meatprocessing/

Since the establishment of regulatory oversight, COPRRR has conducted multiple sunset reviews relating to custom meat processing. Most recently, COPRRR conducted sunset reviews in 2008 and 2017.

In the 2008 sunset report, recommendations were made, among other things, to add a definition of custom processing and clarify the distinction between custom meat processors and those who sell home food service plans by severing the two statutes. The General Assembly subsequently enacted Senate Bill 09-117, which established the Custom Processing of Meat Animals Act (Act) in its current form.

In 2017, COPRRR provided additional recommendations in its sunset report, which included a recommendation to amend the law to allow poultry producers to be exempt from the Act to sell their products to retail establishments. House Bill 18-1235 implemented this recommended change.

Senate Bill 21-079, also referred to as the Ranch to Plate Act, was passed in 2021 and provided additional clarification that shares of at least one percent of whole live animals may be sold to consumers which may be processed for food by the owner or owners through custom exempt processing.

Most recently, in 2022, the General Assembly passed Senate Bill 22-209, which provided assistance through the Colorado Department of Agriculture to small meat processors in applying for and obtaining loans and grants offered by the USDA to start or expand small USDA-inspected meat processing businesses in Colorado.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

The regulation of custom meat processing is established in Colorado through the Custom Processing of Meat Animals Act (Act) located in section 35-33-101, *et seq.*, C.R.S. The

Colorado Commissioner of Agriculture (Commissioner) is directed through the Act with the development of,

...reasonable rules and standards of construction, labeling, operation, and record keeping, and sanitation for all processing facilities and shall establish rules and standards pertaining to containers, packaging materials, mobile slaughter units, slaughter rooms, processing rooms, chill rooms, storage and locker rooms, sharp freezing facilities, and premises of processing facilities, with respect to the service of slaughtering, cutting, preparing, wrapping, and packaging meat and meat products necessary for the proper preservation of food.²⁶

The Commissioner regulates and enforces the Act and any applicable regulations through the Colorado Department of Agriculture's (Department) Division of Inspection and Consumer Services (Division), which oversees the Custom Exempt Meat Program (Program).

The Department may enter into agreements or receive grants from any agency of the United States, the State of Colorado, or other states' agencies to, among other things, implement the Act and prevent duplicate enforcement efforts.²⁷

The Act defines custom processing as,

...the slaughter or processing, for a fee or other compensation, 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.²⁸

Both meat processors whose products are USDA inspected as well as any religious practices where animals are slaughtered are exempt from the requirements of the Act.²⁹

Additionally, poultry producers who raise and slaughter no more than 1,000 poultry animals per year are exempt from the Act except for any record keeping and labeling requirements if:³⁰

- The producer does not buy or sell any poultry products to or from any other producer;
- The poultry are not a part of interstate commerce;
- The poultry are slaughtered utilizing sanitary methods; and
- The poultry are labelled properly.

²⁶ § 35-33-104(1), C.R.S.

²⁷ § 35-33-106(2), C.R.S.

²⁸ § 35-33-103(4), C.R.S.

²⁹ §§ 35-33-107(3) and (4), C.R.S.

³⁰ § 35-33-107(6), C.R.S.

Custom meat processors are required to obtain a license from the Program. In order to obtain a license to conduct custom processing, the applicant must:³¹

- Submit an application for licensure,
- Pay the appropriate license fee, and
- Submit to an inspection by the Department of the premises where the custom processing is to occur.

All license fees collected are deposited into the state treasury and credited into the Inspection and Consumer Services Cash Fund.³²

Custom processing licenses are renewed on an annual basis and may not be transferred to another processing location or owner.³³ Additionally, any individual who performs custom meat processing without a license is guilty of a petty offense.³⁴

Licensees must maintain custom processing facilities in a manner that meets sanitation requirements and prevents the adulteration of meat products.³⁵ Meat products must be coded with the owner's name and marked "not for sale" and contain a description of the package contents and the date of the wrapping of the meat product. In addition, all meat products must be returned to the owner or must be properly disposed of through methods approved by the Commissioner.³⁶

Processed custom meat products are exempted from USDA inspection in custom processing facilities. However, the Program operates under an agreement with the USDA, and the Program oversees the inspection of custom processing facilities to ensure that licensees adhere to specific rules established by the Commissioner, including, but not limited to:

- Requirements for processing facilities,³⁷
- Requirements for processing facilities that process large game animals,³⁸
- Requirements for mobile slaughtering units,³⁹
- Additional sanitary requirements,⁴⁰ and
- Requirements for the disposal of inedible waste.⁴¹

³¹ §§ 35-33-206(1) and (2), C.R.S.

³² § 35-33-207(3), C.R.S.

³³ §§ 35-33-206(3) and (4), C.R.S.

³⁴ § 35-33-206(5), C.R.S.

³⁵ § 35-33-201(1), C.R.S.

³⁶ § 35-33-201(10)(c), C.R.S.

³⁷ 8 CCR § 1202-13 Part 2, Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act.

³⁸ 8 CCR § 1202-13 Part 3, Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act.

³⁹ 8 CCR § 1202-13 Part 4, Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act.

⁴⁰ 8 CCR § 1202-13 Part 5, Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act.

⁴¹ 8 CCR § 1202-13 Part 7, Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act.

All custom exempt licensees are required to maintain records regarding all processed meat products, including, at a minimum:⁴²

- The name and address of the animal owner;
- A description of the meat or meat products that were processed, including the quantity and species of the animal;
- The date of the transaction; and
- Any other information required by the Commissioner.

All custom meat processors are further required to comply with a variety of safety and sanitation requirements as they complete their work.⁴³ Additionally, all custom processing licensees are required to conform to the rules promulgated by the Commissioner regarding requirements of the Humane Methods Slaughter Act of 1958,⁴⁴ and all meat products must be sharp frozen (all meat products frozen to zero degrees Fahrenheit or less within five hours or less) prior to their delivery.⁴⁵

Custom processing facilities must be equipped with specific features including, but not limited to:⁴⁶

- Sloped concrete floors or surfaces;
- Slaughtering and dressing must be completed in rooms separate from where any other meat processing is performed. However, slaughtering and dressing may be completed in the same room where cutting, wrapping and other types of processing occurs as long as the slaughtering and dressing do not occur at the same time as other meat processing procedures and if utensils are thoroughly sanitized before processing is performed;
- Durable, water-resistant materials that can be easily cleaned must cover the walls, columns, ceilings, and any other structural components of a room in which processing occurs;
- Coolers and freezers are required for holding and storing meat products;
- Lighting must provide sufficient illumination in work areas, and must utilize safety shielded light bulbs;
- All equipment utilized for meat processing must be constructed of a material that can be easily and thoroughly cleaned; and
- All rooms where processing is performed must be equipped with a hand washing facility.

⁴² § 35-33-202(1)(a), C.R.S.

⁴³ § 35-33-201(3), C.R.S.

⁴⁴ § 35-33-203(2), C.R.S.

⁴⁵ § 35-33-203.5, C.R.S.

⁴⁶ 8 CCR § 1202-13 Part 2, Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act.

Additionally, custom meat processors who process large game animals must adhere to additional requirements if the large game animal carcass has not been in the possession of the processor for more than four hours, including, but not limited to:⁴⁷

- Any large game animal carcass received by a custom facility for meat processing must be tagged at the time of delivery with a Division of Wildlife tag or a similar tag issued by another state or government agency;
- A receipt must be provided to the owner of the large game animal containing the name, address, and telephone number of both the owner and the processor, the date and time that the carcass was received, a description of the large game animal, and the number of the Colorado Division of Parks and Wildlife tag (or similar tag issued by an appropriate governmental agency in another state) affixed to the large game animal carcass. The processor must maintain a copy of this receipt for not less than two years from the date issued; and
- Any large game animal carcass must be processed in an enclosed area separate from the rest of the processing facility.

Custom processors may also operate mobile custom slaughtering units, which must adhere to specific standards, including, but not limited to:⁴⁸

- Contain a fully enclosed work room to keep out dust and other types of contaminants;
- Have a functioning refrigeration unit in the work room that must be kept at a temperature that does not exceed 38 degrees Fahrenheit;
- Have durable, water-resistant materials that can be easily cleaned covering all surfaces within the interior of the work room, and all joints must be sealed, and the floor must be coved to prevent meat products, waste products, or liquids from penetrating between or under any wall; and
- Be equipped with containers for the transport of waste materials with well-fitting lids that are secured to the mobile processing unit to prevent spillage. The containers must be made of durable materials that can be thoroughly cleaned.

Custom meat processors must also adhere to a variety of sanitation requirements, which are evaluated as a part of the inspection process. These sanitation requirements may include, but are not limited to:⁴⁹

- All work rooms and interior features and any utensils used at the custom processing facility must be cleaned at the end of the day after the completion of custom meat processing;
- Equipment and utensils utilized for processing must be cleaned regularly,

⁴⁷ 8 CCR § 1202-13 Part 3, Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act.

⁴⁸ 8 CCR § 1202-13 Part 4, Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act.

⁴⁹ 8 CCR § 1202-13 Part 5, Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act.

including any time that there is a change from processing raw pork or poultry to raw meat, or after four hours if the ambient temperature of the room housing the utensils is allowed to exceed 50 degrees Fahrenheit; and

- All catch basins and waste removal systems must be kept in a clean and orderly condition.

Further, the Act provides additional requirements for adulterated meat—or meat products that may be unfit for food—⁵⁰ which includes freely slashing the surface of the adulterated product with charcoal, edible green dye, or any other method approved by the Commissioner.⁵¹

The Act also provides regulatory requirements for custom poultry producers who are exempted from federal inspection under the Act. These poultry producers may sell their products directly to individuals, and licensed poultry producers may sell poultry products to retail establishments or to individual consumers.⁵² The Department was required to convene stakeholder meetings to develop a regulatory framework for the selling of exempt poultry products to retail food establishments.⁵³ Further, the Act required the Commissioner to produce a report containing the findings of the stakeholder meetings on or before November 16, 2016.⁵⁴ Since this provision was added to the Act, the Commissioner has completed the stakeholder meeting requirements and has promulgated rules regarding custom poultry producers.

The Commissioner may deny, revoke, refuse to renew, place on probation, or restrict a license for violations of the Act, including:⁵⁵

- False statements or misrepresentations made during the application process;
- Revocation, suspension, or denial of a previous license issued under the Act or a revocation, suspension, or denial of an equivalent license in another state;
- Failure to comply with, or the violation of any provision within the Act or any rule promulgated by the Commissioner; or
- Failure to obey a lawful order of the Commissioner.

The Act further provides that the Commissioner has the right to access any premises related to the license issued to examine or inspect and may also inspect and copy relevant records. The Commissioner may also issue subpoenas, take statements, and administer oaths. If an individual fails to comply with a subpoena, the Commissioner may petition the district court to compel the witness to appear and/or to provide requested documentary evidence.⁵⁶

⁵⁰ § 25-5-410(1)(c), C.R.S.

⁵¹ § 35-33-201(9), C.R.S.

⁵² § 35-33-301(1), C.R.S.

⁵³ § 35-33-301(3)(d), C.R.S.

⁵⁴ § 35-33-301(3)(e), C.R.S.

⁵⁵ § 35-33-208, C.R.S.

⁵⁶ §§ 35-33-104(4)(a) and (b), C.R.S.

The Commissioner may also issue a written retention order if a licensee violates any part of the Act relating to the slaughtering, processing, or storage of meat or meat products. Within five days of the issuance of the written retention order, the Commissioner must hold a hearing regarding whether the meat products should be released back to the licensee or be condemned. Adulterated meat cannot be brought back into compliance and must be disposed of as inedible.⁵⁷

Additionally, the Commissioner can issue a cease-and-desist order if any person is found to have violated the Act and if it is determined that such an order is necessary to protect the public health and welfare.⁵⁸ The Commissioner may also seek injunctive relief by applying to any court with appropriate jurisdiction to restrain a specific act or practice temporarily or permanently to obtain compliance.⁵⁹

Any person who violates the Act or any rule promulgated by the Commissioner is guilty of a class two misdemeanor.⁶⁰

Additionally, violations of the Act may also include a civil penalty of not more than \$750 per violation, although the penalty may be doubled if determined—following an opportunity for a hearing—that the violation is a second offense. In this instance, each day is considered a separate violation.⁶¹

Any civil penalty collected is deposited into the Inspection and Consumer Services Cash Fund.⁶²

⁵⁷ § 35-33-104(6), C.R.S.

⁵⁸ § 35-33-104(5), C.R.S.

⁵⁹ § 35-33-105, C.R.S.

⁶⁰ § 35-33-406, C.R.S.

⁶¹ § 35-33-405(2), C.R.S.

⁶² § 35-33-405(6), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third and fourth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, practices and any other circumstances, including budgetary, resource and personnel matters; and

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Colorado Commissioner of Agriculture (Commissioner) regulates and enforces section 35-33-101, *et seq.*, C.R.S. (Act), and any applicable regulations through the Colorado Department of Agriculture's (Department) Division of Inspection and Consumer Services (Division), which oversees the Custom Exempt Meat Program (Program). In order to provide enforcement, the Department employs staff to provide professional support to the Program.

In addition to the regulation of the Program, staff employed at the Division oversee the administration of additional regulations relating to other programs administered by the Commissioner, including Measurement Standards, Feed, Fertilizer, Anhydrous Ammonia Safety, Produce Safety, and Egg programs.

Table 2 highlights the total Program expenditures and the number of full-time equivalent (FTE) employees dedicated to the Program for fiscal year 16-17 through fiscal year 20-21.

Table 2
Program Expenditures and FTE

Fiscal Year	Total Program Expenditure	FTE
16-17	\$30,000	0.29
17-18	\$30,472	0.29
18-19	\$30,472	0.29
19-20	\$29,012	0.28
20-21	\$28,813	0.25

This table indicates a slight decline in staffing for the Program in fiscal years 19-20 and 20-21. According to Program staff, the Division began to oversee the Produce Safety Program during this timeframe, and some staffing resources may have been reallocated due to this change.

In fiscal year 21-22, the Program had a combined total of 0.24 FTE to administer the Act, apportioned in the following manner:

- Compliance Specialist III - 0.04 FTE. This position schedules, coordinates, and performs inspections of licensees in an assigned geographic area to ensure compliance with the Act and subsequent rules promulgated by the Commissioner.
- Administrator IV - 0.18 FTE. This position oversees administrative operations, program performance and strategic direction for the Program. Additionally, this position oversees licensing, revenue receipts, and functions as the initial point of contact for licensees and members of the public.
- Administrative Assistant II - 0.02 FTE. This position provides administrative support to the Program and other Division programs. Additionally, this position is responsible for providing customer service and corresponding with licensees, Department personnel, industry professionals, and members of the public.

Licensing

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the Program according to this criterion.

Custom meat products are exempted from United States Department of Agriculture (USDA) inspection in custom processing facilities. However, the Program operates under an agreement with the USDA and oversees the licensure and inspection of custom processing facilities to ensure that these facilities adhere to the requirements of the Act and the rules established by the Commissioner.

Custom meat processors are required to obtain a license from the Program. In order to obtain a license to conduct custom processing, the applicant must:

- Submit an application for licensure;
- Pay the appropriate license fee for the specific license type as follows:⁶³
 - Custom processor of domestic livestock - \$300;
 - Custom processor of wild game only - \$250;
 - Livestock mobile slaughter unit only - \$250;

⁶³ Colorado Department of Agriculture, Inspection and Consumer Services Division. *Application for Custom Meat Processor License*. Retrieved May 26, 2022, from ag.colorado.gov/ics/meat-custom-processing

- USDA Official Plant if also performing custom meat processing - \$50; and
- Submit to a pre-inspection by the Department of the proposed premises listed on the custom processing application.⁶⁴

Further, the Program has indicated that only one application and application fee is required to obtain a license to process both domestic livestock and wild game in the same facility. In this instance, the license fee required is \$300, and the license issued would reflect that the license holder can process both wild game and domestic livestock.

All license fees collected are credited into the Inspection and Consumer Services Cash Fund.⁶⁵

Additionally, custom processing licenses are renewed on an annual basis and may not be transferred to another processing location or owner.⁶⁶

Table 3 provides the total number of licenses issued during fiscal years 16-17 through 20-21.

**Table 3
Number of Licenses Issued**

Fiscal Year	New	Renewal	Total
16-17	Not available	102	102
17-18	Not available	102	102
18-19	4	102	106
19-20	11	106	117
20-21	8	102	110

During fiscal years 16-17 and 17-18, the table above depicts that new licensing data were not available. According to the Program, a new licensing database has been utilized since fiscal year 18-19. Prior to that year, licensing data was maintained using a computer system that is no longer available for query. Therefore, the Program does not currently have access to this information.

The table also indicates that there was a slight increase in the number of new licenses issued in fiscal year 19-20. According to the Program, the meat supply chain shortages experienced during the COVID-19 pandemic led to an increase in the number of applicants for new licenses, largely due to an increased demand by consumers for additional options to process meat animals.

⁶⁴ § 35-33-206, C.R.S.

⁶⁵ § 35-33-207(3), C.R.S.

⁶⁶ §§ 35-33-206(3) and (4), C.R.S.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the Program according to this criterion.

Only one complaint was received during the years reviewed (fiscal year 20-21) in the category of Standard of Practice.

The Commissioner can revoke, suspend, refuse to renew, place on probation, or restrict a license for violations of the Act. However, no disciplinary actions were pursued during the years reviewed.

Any person who violates the Act or any rule promulgated by the Commissioner is guilty of a class two misdemeanor.⁶⁷

No written retention orders or cease-and-desist orders were issued by the Commissioner during the years reviewed. Program staff has indicated that custom meat processors typically work well with the Program to resolve any issues or violations that may arise when inspections are performed.

Table 4 provides the average time for case closure during the years reviewed. Case lifespan is tabulated from the filing of the initial complaint through the closing of the complaint or through the final agency action taken.

Table 4
Average Time to Case Closure

Fiscal Year	Number of Days
16-17	Not applicable
17-18	Not applicable
18-19	Not applicable
19-20	Not applicable
20-21	45

Only one complaint was received during the years reviewed in fiscal year 20-21 which was completed in 45 days and resulted in no action.

⁶⁷ § 35-33-406, C.R.S.

Inspections

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the Program according to this criterion.

According to the Program, inspections are performed twice per year for each licensed facility.

Table 5 provides information regarding the total number of custom meat processing facility inspections performed by the Program during the years reviewed.

Table 5
Audit/Inspection Information

	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21
Number of Inspections	158	54	177	152	190

The table above indicates that the number of inspections performed has increased during the years reviewed, which appears to correlate with the gradual increase in licensed custom processing facilities. There was a substantial decrease in inspections during fiscal year 17-18 and the Program has indicated that there is no known reason for this decrease.

The Program operates under an agreement with the USDA, and the number of inspections increased from one time per year to two times per year in October of fiscal year 18-19 as a result of changes to this agreement.

Additionally, in order to ensure uniformity among the 50 states, the USDA will begin additional custom processing facility inspections as of October 2022. According to the Program, these additional inspections will not change the scope or frequency of the Program's facility inspections and may slightly increase the number of inspections performed at each custom processing facility.

Fining Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the Program according to this criterion.

Violations of the Act may include a civil penalty of not more than \$750 per violation, although the penalty may be doubled if determined, following an opportunity for a hearing, that the violation is a second offense. In this instance, each day is considered a separate violation.⁶⁸

Any civil penalty collected is deposited into the Inspection and Consumer Services Cash Fund.⁶⁹

No fines were issued during the years reviewed. According to the Program, due to the frequency of the facility inspections performed, most violations are quickly addressed and do not escalate to a need to impose a fine.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

Currently, no statutory authority exists within the Act for the Commissioner to impose sanctions or disqualifications based upon criminal history.

⁶⁸ § 35-33-405(2), C.R.S.

⁶⁹ § 35-33-405(6), C.R.S.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the Custom Processing of Meat Animals Act for nine years, until 2032.

Unless specified under federal law, all meat products that are sold commercially for human consumption are required to undergo inspection. Custom exemption is a federally recognized option in which the requirements of the Federal Meat Inspection Act and subsequent United States Department of Agriculture (USDA) regulations regarding meat product inspection do not apply.⁷⁰

Through the utilization of this federal exemption, the Custom Processing of Meat Animals Act (Act) clarifies that consumers who are owners of live meat animals have the option to process the animal for personal or household consumption without meat product inspection. The Act, in tandem with the Ranch to Plate Act (which creates opportunities for smaller livestock producers to sell live shares of meat animals directly to consumers), provides accessibility for many Coloradans to affordable, wholesome meat products by increasing supply chain opportunities and providing additional options for meat processing at a local level.

However, if processed or stored incorrectly, meat products may contain pathogens that can cause severe illness when ingested. Custom processing facilities are exempt from federal requirements for meat product inspection but must meet the regulatory requirements of the Act and the rules promulgated by the Commissioner of Agriculture (Commissioner) to protect the public welfare.

Further, custom meat processing facilities must be licensed through the Colorado Department of Agriculture's Custom Exempt Program (Department and Program, respectively). As of fiscal year 20-21, there were 110 licensed custom meat processors within the state.

The Program protects consumers from harm through licensure and regular inspection requirements to ensure that custom processing facilities maintain minimum sanitation and safety requirements and have the necessary tools and equipment for safe handling and processing of meat products. The Program also reviews complaints and may discipline licensees for violations of the Act.

The first sunset criterion asks if regulation is necessary to protect the public health, safety, and welfare. Through the application of the regulatory framework established

⁷⁰ 9 CFR § 303.1(a)(2)

in the Act, the Program provides effective oversight to protect the public interest. With only one complaint and no disciplinary actions in five years, a longer renewal period seems justified. However, given the growing demand on the Colorado food supply chain, the General Assembly should continue the Act for nine years, until 2032.

Recommendation 2 - Repeal obsolete provisions relating to the development of poultry labeling requirements.

Section 35-33-301, Colorado Revised Statutes (C.R.S.), addresses the sale of poultry products and poultry labeling requirements for poultry producers, and directs the Commissioner to work with the Colorado Department of Public Health and Environment to promulgate rules regarding labeling for poultry sold under the Act.

Further, section 35-33-301(3), C.R.S., specifies a process for the development of rules regarding labeling requirements, including:

- (3)(a) The Commissioner or his or her designee shall convene a stakeholder group, including representatives from the Colorado Department of Public Health and Environment, retail food establishments, liability insurance companies, poultry farmers, poultry suppliers, processors operating under this article, and any other interested party;
- (b) The Department shall keep and maintain a list of stakeholders;
- (c) The Department shall convene the first meeting with stakeholders no later than July 1, 2016, and as needed thereafter;
- (d) The Department shall meet with stakeholders to develop a regulatory framework for the processing of poultry that is sold to retail establishments, as defined in section 25-4-1602 (14), C.R.S.; and
- (e) On or before November 30, 2016, the Commissioner or his or her designee shall prepare a report of the findings and conclusions of the study and shall present the report to all stakeholders and others upon request.

According to the Program, the required stakeholder meetings and subsequent reporting have already taken place, and the Commissioner has promulgated related rules.

Although the Commissioner could continue to convene stakeholder groups when needed as specified in paragraph (a) and the Department could continue to maintain a list of stakeholders as specified in paragraph (b), the remaining paragraphs (c), (d) and (e) have been completed and the dates established in statute have elapsed.

The tenth criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Since this subsection was added to the Act, the Commissioner has completed the stakeholder meeting requirements and has promulgated rules regarding custom poultry producers.

Removing obsolete provisions from the Act reduces unnecessary statutory language and increases the ease with which the Act can be read and understood, which is in the public interest. Therefore, the General Assembly should repeal sections 35-33-301(3)(c), (d) and (e), C.R.S., as obsolete.

Recommendation 3 - Consolidate statutory sections relating to civil penalties.

Section 35-33-405, C.R.S., addresses violations for civil penalties. Specifically, section 35-33-405(1), C.R.S., states,

In addition to the penalty described in section 35-33-406, C.R.S., any person who violates this article shall also be subject to a civil penalty of not more than \$750 per violation for each day of violation.

However, section 35-33-405(2), C.R.S., addresses the same civil penalty, but also includes additional information regarding civil penalty violations,

Any person who violates this article or any rule promulgated under this article is subject to a civil penalty by the Commissioner or a court of competent jurisdiction. The maximum penalty shall not exceed \$750 per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision or rule for the second time. Each day the violation occurs shall constitute a separate violation. [emphasis added]

The second subsection details the same information as the first subsection and provides further information regarding the assessment of civil penalties.

Therefore, these two statutory provisions could be combined to read:

In addition to the criminal penalty prescribed in section 35-33-406, any person who violates this article or any rule promulgated under this article is subject to a civil penalty, as determined by the Commissioner or a court of competent jurisdiction. The maximum penalty shall not exceed seven hundred fifty dollars per violation; except that such penalty may be doubled if it is determined, after notice and an opportunity for hearing, that the person has violated the provision or rule for the second time. Each day the violation occurs shall constitute a separate violation.

The tenth criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

By combining relevant information in sections 35-33-301(1) and (2), C.R.S., additional clarity would be provided to the Act and reduce any potential confusion that these two subsections regarding civil penalties may cause for a reader, which is in the public interest. Therefore, the General Assembly should consolidate these statutory sections relating to civil penalties.

Recommendation 4 - Standardize criminal penalties for violations of the Act.

In 2021, the General Assembly passed Senate Bill 21-271 (SB 271), which reflected the recommendations of the Commission on Criminal and Juvenile Justice to revise sentencing provisions in a variety of statutes to, among other things, create statutory consistency.

The Act was among those statutes included in the revision, and effective March 1, 2022, the penalty for a violation of the Act in section 35-33-206(5), C.R.S., was amended from a prior penalty of a class 2 misdemeanor to read,

Any person who operates a custom processing facility without a valid license therefore commits a petty offense and shall be punished as provided in section 18-1.3-503 [C.R.S.]. [Emphasis added]

However, section 35-33-406, C.R.S., also addresses criminal penalties for violations of the Act, but was not amended as a part of the implemented revisions from SB 271. Section 35-33-406, C.R.S., states,

Any person who violates this article or any rule promulgated under this article commits a class 2 misdemeanor and shall be punished as provided in 18-1.3-503, C.R.S. [Emphasis added]

The discrepancy between these two statutory provisions currently provides two separate penalties for violations of the Act, which is not only confusing, but may create a variety of legal challenges if a violation of the Act were to occur.

In order to conform to the amended penalty provided in SB 271, section 35-33-406, C.R.S., should also be amended to reflect that the penalty for a violation of the Act is a petty offense.

The third and tenth criteria ask,

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters; and

Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Since the intent of SB 271 was to create statutory uniformity by adjusting the penalty for a violation of the Act to a petty offense, this adjustment should be reflected in a standardized manner throughout the Act to provide further statutory consistency, which is in the public interest.

Therefore, the General Assembly should standardize criminal penalties for violations of the Act.

Recommendation 5 - Direct that all monies collected by the Program resulting from civil penalties be deposited in the state's General Fund.

Section 35-33-405, C.R.S., states that violations of the Act may include a civil penalty of not more than \$750 per violation, although the penalty may be doubled if determined—following an opportunity for a hearing—that the violation is a second offense. Additionally, any civil penalty collected is deposited into the Inspection and Consumer Services Cash Fund.

Typically, when an agency is given fining authority, or the authority to assess civil penalties, such funds are credited to the state's General Fund. This is done so that the agency has no incentive to impose fines, other than taking legitimate disciplinary action. When fines are credited to the agency's cash fund, there can be a perceived conflict of interest that the agency may be attempting to increase revenue. Although the Colorado Office of Policy, Research and Regulatory Reform has absolutely no reason to believe that the Program administration as acted improperly, nor were any civil penalties collected during the years reviewed for this sunset report, this recommendation is important as a policy matter to prevent any such allegations in the future.

The third sunset criterion asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.

The public interest would be enhanced by directing the funds generated through the imposition of civil penalties to the General Fund, creating further budgetary

transparency and financial efficiency. Therefore, the General Assembly should direct that all monies collected by the Program resulting from civil penalties be deposited in the state's General Fund.

Administrative Recommendation 1 - The Program should work with the Composting Program at the Colorado Department of Public Health and Environment to provide assistance and outreach to custom processing facilities that may be interested in utilizing grants to establish compost facilities.

Meat processing creates a variety of meat products that are desirable for consumption. However, a variety of products are often left over after processing occurs, including bones and organs.

Through custom meat processing, the owner of a meat animal can request to retain for their own personal use any of the aforementioned items, which would be provided to the meat animal owner once the animal is processed.

However, stakeholders have indicated that the majority of meat animal owners do not request to receive these products after custom processing occurs. As a result, these animal byproducts become waste, since the meat animals processed in custom facilities are not inspected and are not eligible for resale under federal regulations.

Custom meat processors are typically left with two possible disposal methods for the waste products generated: deliver them to either a composting facility or a landfill. Further, stakeholders have indicated that after a full day of custom meat processing, several tons of waste products may result, the majority of which are deposited in landfills across the state due to the lack of available composting alternatives.

Composting facilities are typically private, for-profit businesses, and the majority of composting facilities in the state currently do not accept meat waste products, which has been a source of frustration for some stakeholders.

Alternatively, some stakeholders have expressed interest in composting these waste products themselves. However, due to the complexity of regulation of applicable state, county, municipal, and/or city requirements, and due to the lack of startup capital that would be required, many custom meat processors are not currently able to establish their own large-scale composting operations.

Throughout the course of the sunset review, a variety of substantial federal and state grant opportunities have been identified which could assist in the establishment of composting facilities. However, the myriad of requirements for application may be confusing and frustrating to some stakeholders and may prevent some interested parties from applying to receive grant funding.

The third, sixth, and tenth sunset criteria ask,

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition; and

Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

As was previously mentioned, some stakeholders have indicated that a full day of custom meat processing may lead to the generation of several tons of waste products. If multiplied by the total number of custom meat processors currently in the state (110 as of fiscal year 20-21), one can only fathom the many tons of waste products generated from custom meat processing within a single day around the state.

As an alternative, these waste byproducts could be transformed through composting into fertilizer, which could potentially provide alternative revenue for custom meat processors who compost byproducts to produce fertilizer and generate another sellable commodity to enrich Colorado's economy, while mitigating the amount of waste added to Colorado's landfills.

In 2022, the General Assembly passed Senate Bill 22-209, which provided assistance through the Colorado Department of Agriculture to small meat processors in applying for and obtaining loans and grants offered by the USDA to start and/or expand small USDA-inspected meat processing businesses in Colorado. However, this additional assistance is limited to applications for loans and grants in the event that a custom meat processing facility should choose to become an inspected facility but does not require assistance be provided with composting grants.

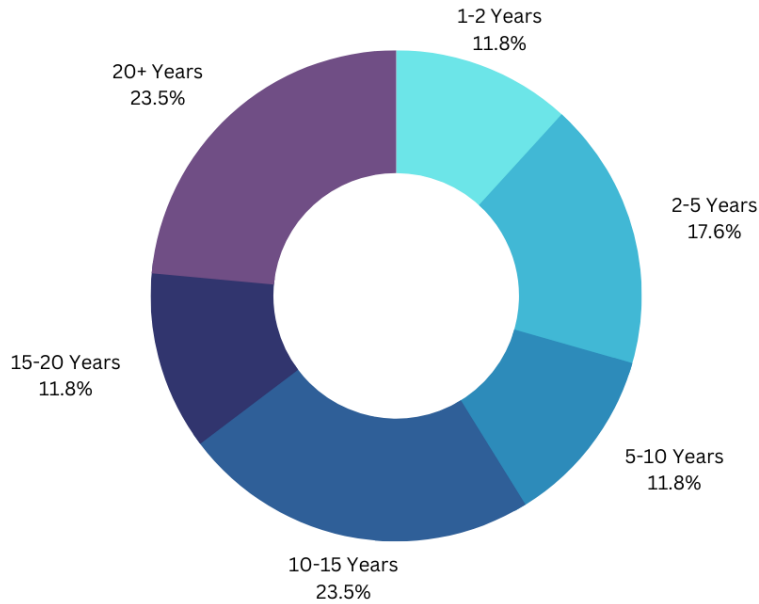
The Composting Program at the Colorado Department of Public Health and Environment (CDPHE) oversees state regulatory requirements for composting. In working with the Composting Program to assist custom processing facilities with navigating application processes to obtain federal and state composting grants, the Program could act as an intermediary and provide information and outreach to custom processing facilities around the state that are interested in undertaking their own composting, which would reduce waste and would be in the public interest.

Therefore, the Program should work with the Composting Program at CDPHE to provide assistance and outreach to custom processing facilities that may be interested in utilizing grants to establish compost facilities.

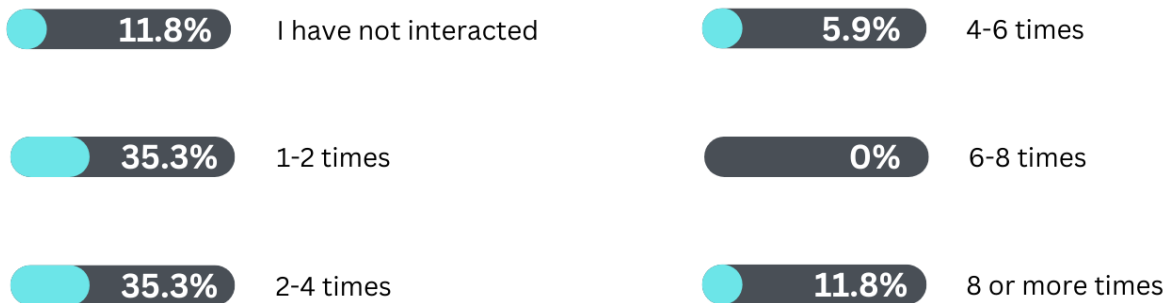
Appendix A - Customer Service Survey

In the spring of 2022, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of all custom meat processors who are licensed by the Commissioner. The survey was sent to 102 custom meat processing facilities; no emails were returned as undeliverable. The survey received 17 responses, which is a 16.6 percent response rate. Survey results may be found in Appendix A.

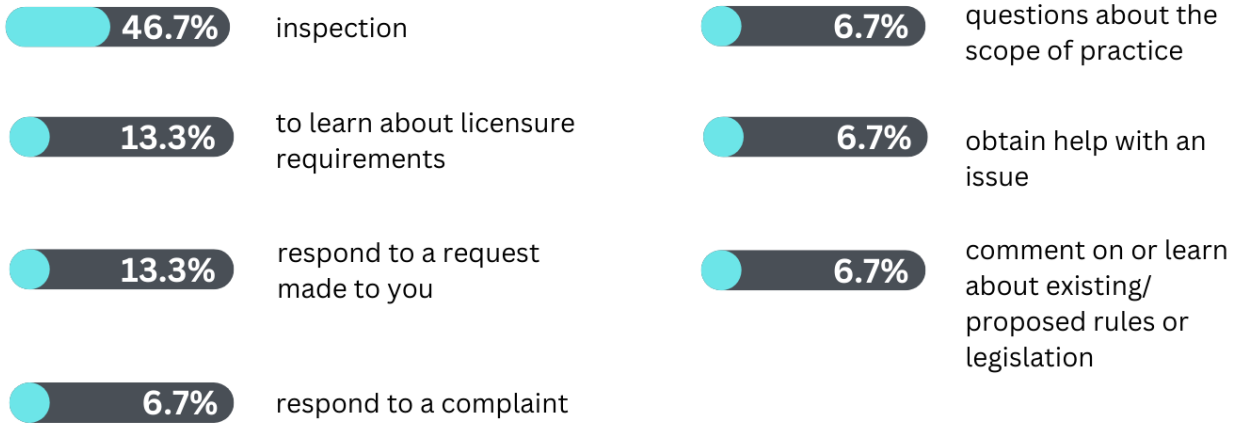
If you are a licensed custom processor approved by the Colorado Custom Meat Processing Program , please indicate the number of years since you were first licensed.



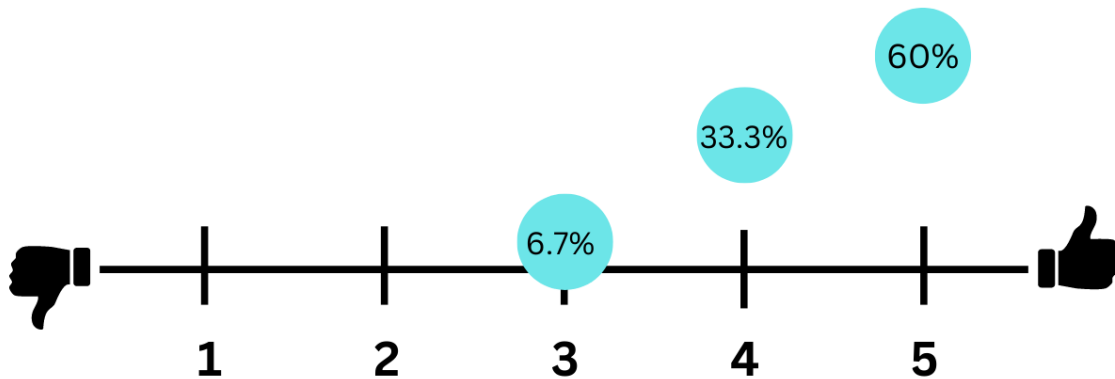
In the past year, how many times have you interacted with the Colorado Custom Meat Processing Program? Please count all forms of interaction (telephone, e-mail, internet or website, regular mail, in person).



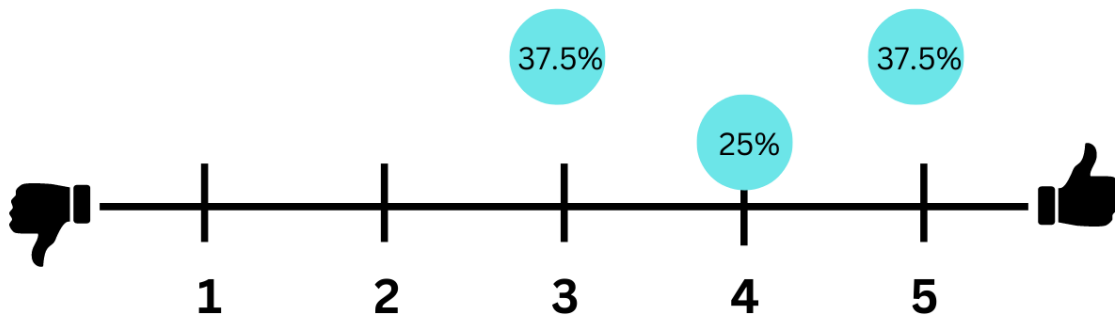
What was your primary purpose in interacting with the Colorado Custom Meat Processing Program?



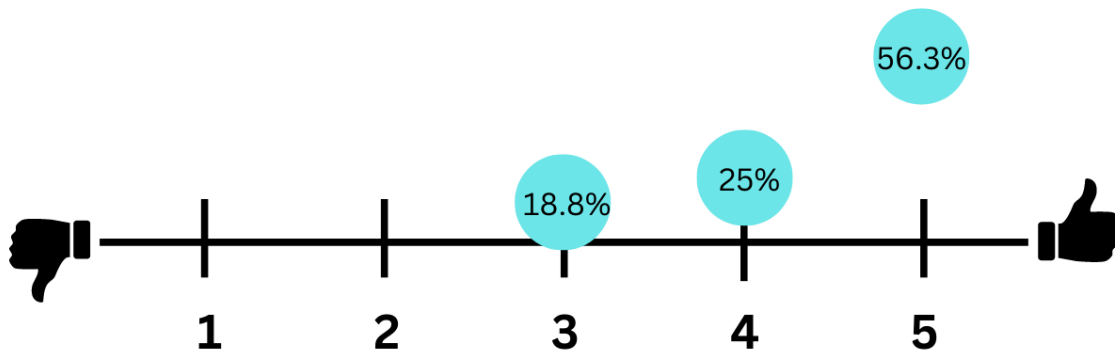
Overall please rate the service provided by the Colorado Custom Meat Processing Program on a scale of 1 to 5 with 1 being unacceptable and 5 being very acceptable.



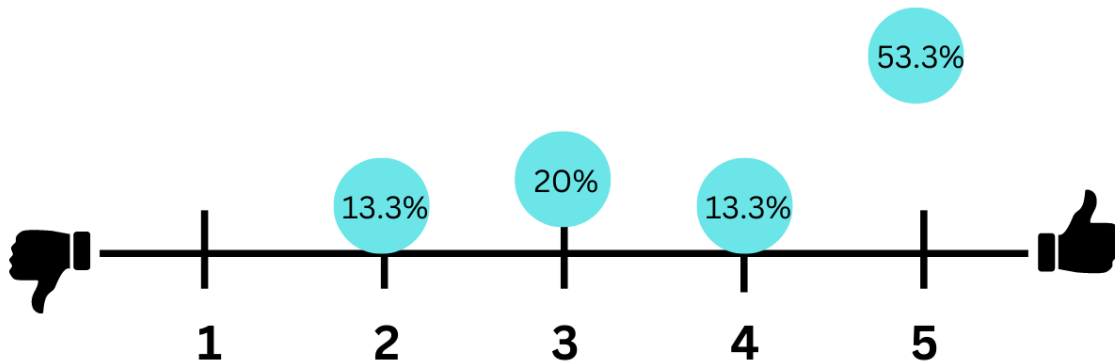
Please rate the the usefulness of the Colorado Custom Meat Processing Program's website in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.



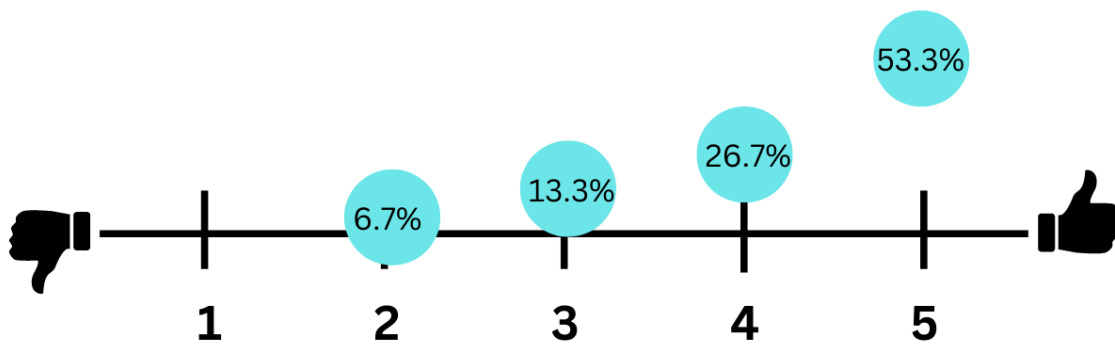
Please rate the the usefulness of the Colorado Custom Meat Processing Program's communications in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.



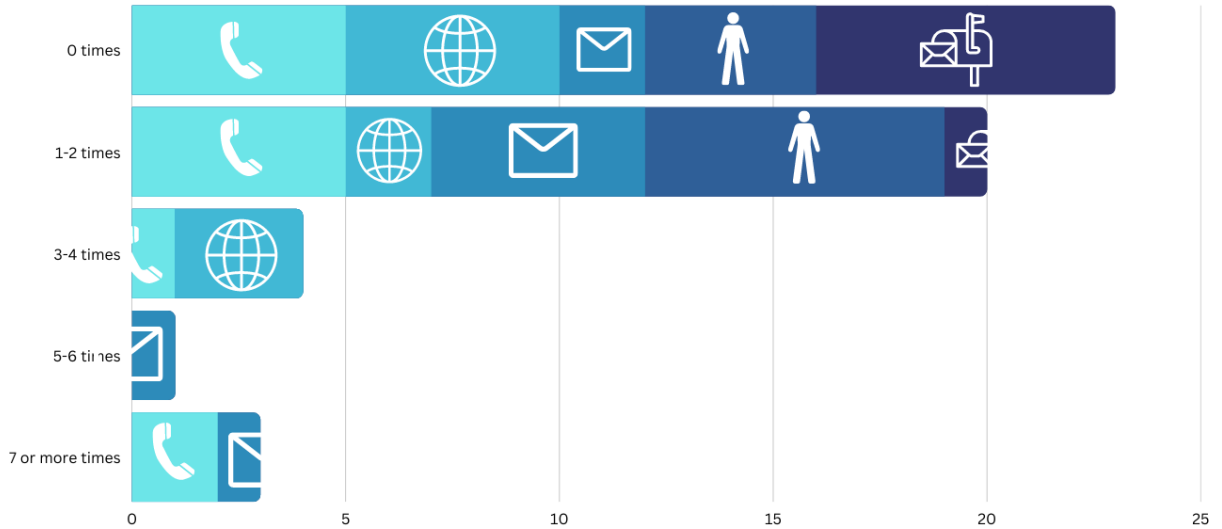
Regardless of the outcome of your most recent issue, do you feel the Colorado Custom Meat Processing Program listened to your concerns? Please use a scale of 1 to 5, with 1 being none of my concerns were heard and 5 being all of my concerns were heard.



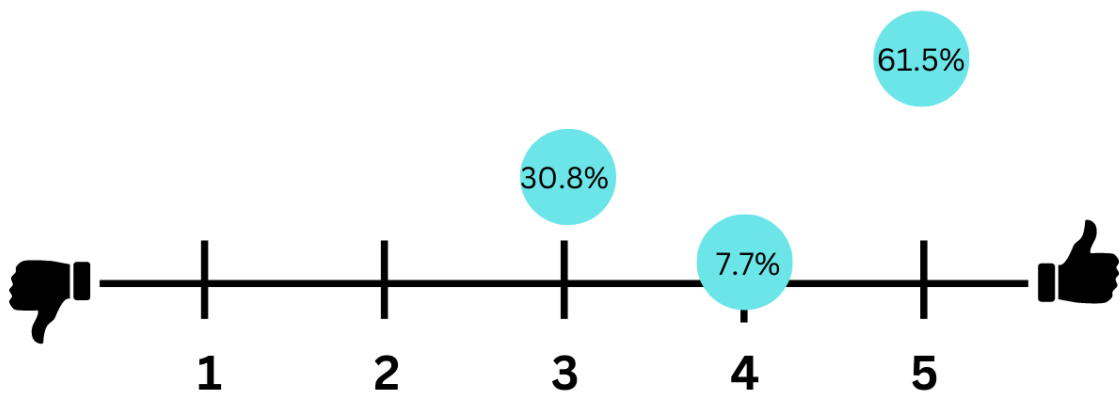
Please rate the timeliness of the Colorado Custom Meat Processing Program in responding to your issues on a scale of 1 to 5 with 1 being very untimely and 5 being very timely.



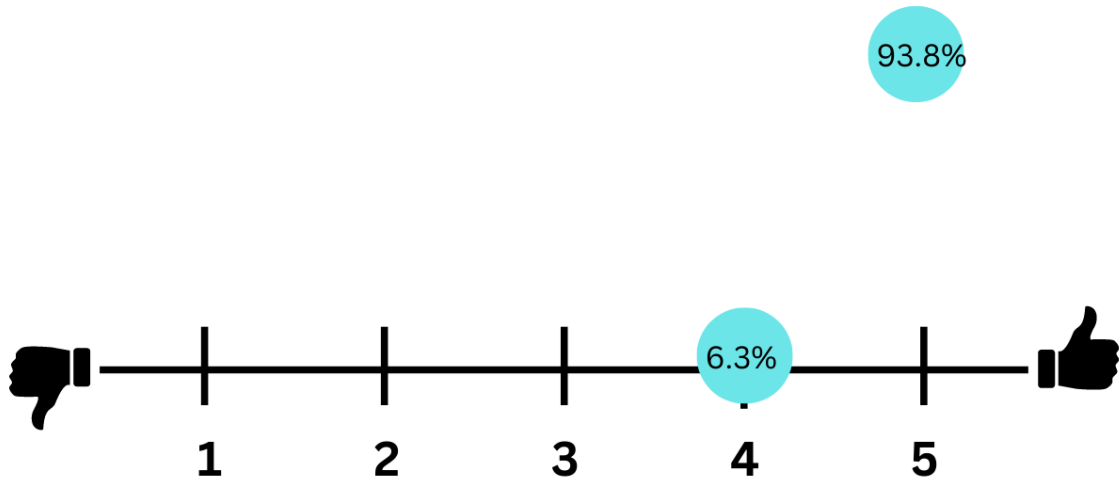
Please provide the number and types of interactions that were required to resolve or address your most recent issue. (Please select all applicable types of interactions used AND the number times for each type interaction selected.)



Please rate the helpfulness of the Colorado Custom Meat Processing Program in resolving your issue or need with 1 being not very helpful and 5 being very helpful.



Please rate the professionalism of the program's staff on a scale of 1 to 5 with 1 being very unprofessional and 5 being very professional.



On a scale of 1 to 5 please rate the accuracy of information provided by the Colorado Custom Meat Processing Program with 1 being not very accurate and 5 being very accurate.

