

SMALL FARMS:

Recommendations to Minimize Costs While Ensuring Food Safety

Presented to
The President of the Senate
and Speaker of the House
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EXECUTIVE SUMMARY

During its 2010 session, through implementing language in HB 5001, the Florida Legislature directed the Florida Department of Agriculture and Consumer Services (the Department) to “*assess federal, state and local regulations that may affect small farms when introducing their agricultural products into commerce. In accordance with section 500.033, Florida Statutes, the Florida Food Safety and Food Defense Advisory Council shall assess the food safety requirements for food permits that govern small farm facilities permitted as food establishments. The council will complete the assessment and report its findings to the Commissioner of Agriculture by December 1, 2010. The department shall submit recommendations to the President of the Senate and Speaker of the House of Representatives by December 31, 2010, focusing on the most efficient and effective ways to ensure food safety while minimizing the cost to small farmers.*” In response to that directive, the Commissioner of Agriculture offers this report to the President of the Senate and the Speaker of the House.

Whether defined in terms of volume of sales or by acreage, small farms make up the vast majority of farms in Florida. In keeping with national trends, the number of small farms continues to grow: in 2007 (year of the last agricultural census) farms of less than 50 acres comprised 70% of the 47,463 farms in Florida. When considering value of sales, nearly 84% of farms had sales values of less than \$50,000. Nearly 90% of these farms were identified as “family” versus corporate farms. And finally, small farms represent the fastest growing sector, increasing (between 2002 and 2007) at a rate nearly twice that of larger farms. Clearly, the small farm is a very important component of Florida agriculture.

The recent growth in small farms is due to many factors, including consumer interest in buying locally grown and produced food products, organic farms, “farm fresh” products, community supported agriculture, and similar issues. At the same time, Florida consumers consistently rank food safety as a primary concern. While the majority of our food supply comes to us through large and complex chains of distribution, all farms and businesses, regardless of size, have an obligation to produce a safe food product.

Under Chapter 500, Florida Statutes, businesses, including small farms, which manufacture (process), distribute, or sell food products must have a food permit to operate. Currently, there is no food permit category specific to small farms. Instead, small farms are typically permitted as either a processor (if selling product only on farm) or as a “semi-permanent vendor” (if selling products at venues such as a farmer’s market). In general, permit fees are based upon both the risk and size of the operations typically associated with a permit category (e.g. supermarkets vs. convenience stores). In addition, food establishments are inspected from one to four times per year, based on both risk and history of compliance. Under current regulations, farms operating as food establishments are subject to the same requirements as other establishments in the same category.

In response to the 2010 legislative directive, the Florida Food Safety and Food Defense Advisory Council (Advisory Council) appointed a Small Farms Subcommittee (Subcommittee), which met seven times over

the summer and early fall. In addition to accepting comments at each of its meetings, two of these public meetings, on July 22, 2010 (Gainesville, FL) and August 3, 2010 (Tallahassee, FL) were conducted specifically to obtain direct input from small farmers. During this process the Advisory Council first developed critical criteria to define a “small farm” and then identified the four commodities of highest interest for consideration of regulatory relief: fresh eggs; poultry; honey; and low-risk jams, jellies and preserves. The Department applauds these efforts to balance the small farm concerns related to the financial impacts of permit requirements with consumer concerns for locally produced foods which are safe to consume. The Department supports the goals of the Advisory Council recommendations, and believes it can achieve these objectives tailored to the unique needs of this fast growing sector while ensuring cost effectiveness and improved efficiencies. Building on the Advisory Council suggestions, the Department offers the following recommendations. Additional details in support of these recommendations are provided in subsequent sections of this report.

Definition of a small farm

The Department recommends that the definition of a small farm be addressed in rule, through the establishment of new permit categories based on the critical principles identified by the Advisory Council of direct-to-consumer sales, where the sales venue is on the farm, at roadside stands, or at farmers markets. These permit categories will simplify, modify, or reduce current permit requirements and will address additional issues appropriate to specific commodities as identified by the Advisory Council. Legislative action is not needed to implement this recommendation.

Sale of fresh eggs; poultry

The Department recommends that the legislature amend the definition of “dealer” in Chapter 583, Florida Statutes (Classification and Sale of Eggs and Poultry) to allow for the sale of shell eggs from flocks of 1,000 birds or less, and sale of poultry products from 20,000 birds or less without a dealer’s license. In addition, the Department recommends that new permit categories for small farms be developed by rule to simplify, modify or reduce existing permit requirements. These permit categories will encompass the critical principles identified by the Advisory Council of direct-to-consumer sales where the sales venue is on the farm, at roadside stands, or at farmers markets.

Sale of honey; low risk jams, jellies and preserves

The Department recommends that new permit categories be developed by rule based on the critical principles identified by the Advisory Council of direct-to-consumer sales, where the sales venue is on the farm, at roadside stands, or at farmers markets. These permit categories will simplify, modify, or reduce current permit requirements and will address additional issues appropriate to these commodities as identified by the Advisory Council. Legislative action is not needed to implement this recommendation.

Establishment of a Small Farms Advisory Group

In addition to those associated with the Food Safety and Food Defense Advisory Council report, the Department recommends the establishment of a small farms advisory group to address the unique needs of this community. In addition to food safety, other regulatory matters (such as waste disposal, pesticide use), business needs and practices (such as workers compensation, farm insurance), and marketing techniques are issues which often prove challenging for the small farmer. Formation of an advisory body

to hear these concerns and provide a single forum where experts and stakeholders can meet, discuss and focus on solutions, will support the small farm and help enhance the growth of these small businesses.

In conclusion, the Department accepts the primary recommendations put forth by the Food Safety and Food Defense Advisory Council. As discussed in greater detail below, small farms can be afforded relief from many current permit requirements (consistent with the criteria and conditions suggested by the Advisory Council) resulting in minimized cost while ensuring an efficient and effective food safety program for this industry. To minimize costs associated with a recommended registration program, the Department suggests modification of current food permit regulations to simplify or reduce certain requirements appropriately tailored to specific types of small farm operations as identified by the Advisory Council. Finally, the Department intends to continue working with and seeking input from the Advisory Council on ways to assist small operators develop and implement best food safety practices as they seek new markets and business opportunities.

SMALL FARMS

Recommendations to Minimize Costs

While Ensuring Food Safety

In response to the 2010 legislative directive to “*assess the food safety requirements for food permits that govern small farm facilities permitted as food establishments,*” the Food Safety and Food Defense Advisory Council, through a newly designated Small Farms Subcommittee, conducted a series of meetings: June 29, 2010 (full Advisory Council, Tallahassee, FL); July 16, 2010 (by conference call); July 22, 2010 (Gainesville, FL); August 3, 2010 (Tallahassee, FL); August 20, 2010 (by conference call); September 3, 2010 (Tallahassee, FL); September 27, 2010 (by conference call); and November 9, 2010 (full Advisory Council, Tallahassee, FL). While comments were taken at each meeting or teleconference call, two meetings (July 22 and August 3) were held specifically to receive input from the small farm community. During the course of these discussions the Advisory Council deliberations focused on development of a working concept of a “small farm”, and identified four commodities of highest interest for consideration of regulatory relief: fresh eggs; poultry; honey; and low risk jams, jellies and preserves. This report will discuss each of these issues and the Department’s recommendations below.

Background

Laws regulating foods offered for human consumption are found primarily in Chapter 500, Florida Statutes, collectively known as the Florida Food Safety Act. Under this law (Section 500.12, F.S.) facilities that manufacture, process, pack, hold, or prepare food; or sell food at wholesale or retail must be permitted by the Florida Department of Agriculture and Consumer Services. The Food Safety Act has been broadly written to assure the consuming public that all foods are safe, regardless of where they are purchased or offered for consumption. In particular, foods which require time and/or temperature controls to minimize or reduce harmful organisms (food pathogens) are more stringently regulated to ensure safety. Examples of these types of foods include seafood, meats, shell eggs, poultry, milk and milk products, and low acid canned foods. If not prepared and handled properly, these foods may place the consumer at risk for severe illness or death.

To obtain a permit, food establishments must meet certain minimum construction and sanitation standards. In addition, most food establishments are required to have an individual who has successfully completed a food protection manager certification exam.

In addition to permit requirements, all food establishments are subject to inspection by the Department to ensure food safety. While the foods/processes mentioned above are at greater risk for contamination than others, all foods, if handled in unsanitary conditions, may become contaminated with harmful bacteria or chemicals or be otherwise rendered unfit for human consumption due to filth. Similarly, foods which are not properly or accurately labeled may cause harm (such as a product which contains undeclared allergens, sugars, etc).

Through routine inspections, the Department ensures that food establishments maintain a safe and sanitary environment and food products are appropriately labeled. Inspections are conducted on a risk-based priority, with those establishments engaged in higher risk activities (e.g. food processing) and those establishments with a history of noncompliance receiving more frequent visits.

During the meetings held by the Advisory Council, the most frequent concerns expressed by the small farm community were those centered around the permit process, specifically:

- meeting the required minimum construction standards (due to costs associated with building a compliant facility);
- cost of the permit fee; and,
- difficulties in associated with handling of waste water. (Note: the latter is not within the Department's regulatory purview and was not further addressed by the Advisory Council.)

These issues will be discussed in the context of the recommendations offered by the Advisory Council and the Departments response and corresponding recommendations to the Legislature.

Criteria applicable to the definition of a “small farm”

To begin development of a mechanism to address issues noted above, the Advisory Council determined it needed first to better delineate the scope of its charge. There is no generally accepted definition of what constitutes a “small” farm. Historically small farms have been defined in terms of either volume of sales or size in terms of acreage. However, the Advisory Council, after examining these definitions and taking input from the small farmers themselves, felt a more appropriate approach was to **focus instead on the farm that only offers direct sales to the consumer.**

While the Advisory Council did not offer a specific definition, direct sale to the consumer was considered to be a primary criterion for identifying which farm operations would be subject to regulatory relief. Those farms which only offer direct sales to consumers provide a less complex chain of distribution, as well as providing significantly greater ease in traceback of the product, should it be associated with a food borne outbreak.

As regulatory relief for specific small farm operations were further deliberated by the Advisory Council, the venues at which products could be offered and the volume of product offered for sale were also determined to be critical factors for the protection of public health. Because a definition was not developed, and because recommended regulatory relief varies by commodity, the Department recommends that definitions be developed by rule that address the issues of direct sales, venue, and volume to allow for the variability in farm operations and which provide regulatory relief appropriate to the operation and the products offered for sale.

Commodities of interest for regulatory relief

As noted above the Advisory Council identified four commodities of greatest interest to small farm community for consideration of regulatory relief: fresh eggs, poultry; honey; and low risk jams, jellies and preserves. For consideration of regulatory relief for the small farm selling these products, the Council recommended a series of common conditions that should be met:

- the food (or, in the case of jams, jellies and preserves the primary ingredient) should be grown or produced on the small farm itself;
- direct sales to the consumer should take place only at the farm, at roadside stands, or at farmers markets;
- labeling should include “Not for Resale”;
- **the farm must be registered with the Department, and pay a nominal fee;** and,
- a food safety educational component should be developed specific to the commodities offered for sale

Except for the requirement for registration, the Department concurs with these common conditions recommended by the Advisory Council. However, due to the costs associated with development and implementation of a farm registration program, and for increased efficiency and more effective use of limited resources, the Department recommends simplification, modification or reduction of existing permit requirements. This supports the Advisory Council’s objectives to identify the farms engaged in food processing and sale and assist in tracing a product to its source in the event it is implicated in a foodborne illness. A nominal permit fee will provide for recovery of costs of an inspection in the event of consumer complaints, and maintain the Department’s existing authority to impose situation specific requirements if egregious deviation from food safety practices is observed.

In keeping with the spirit of the Advisory Council suggestions, the Department would establish new small farm permit categories which will provide regulatory relief in the form of reduced permit fees and associated permit requirements. These new permit categories will provide for reduction or elimination of an opening inspection, minimum construction standards, and an annual inspection. In addition, small farms operating within these permit categories could “self certify” compliance with food safety principles. As noted above, Department inspections would be complaint driven.

In addition to direct-to-consumer sales and labeling requirements, the Department would further ensure consumer protection by directing a portion of the permit fee to the development of food safety training materials for these permit categories. Finally, consumers have the reassurance that the Department retains its authority for more stringent oversight of an operation in the event a complaint leads to the discovery of egregious deviation from food safety principles.

Additional criteria were recommended specific to each commodity and will be discussed individually below for incorporation into new small farm permit categories.

Sale of Fresh Eggs

Sale of fresh eggs is regulated by both the Department and the U.S. Food and Drug Administration (FDA). Changes to Florida’s regulatory oversight will have no effect on FDA requirements.

For sale of fresh eggs, the Advisory Council offered the following additional recommendations:

- FDA guidelines for safe handling, labeling and storage of shell eggs should be followed;
- labeling should include the contact information of the producer;

- to be considered for regulatory relief, small farms may maintain laying flocks no larger than 1000 birds, and the flock must be maintained on the small farm; and
- single use cartons should be required.

The Department supports these proposals and recommends that the legislature amend the statutory definition of a “dealer” in section 583.01(4), Florida Statutes, to allow for the sale of eggs, from flocks of less than 1,000 birds, without a dealer’s license as indicated above. Following this legislative action, the Department will be able to implement these Advisory Council principles through the establishment of new permit categories, provide regulatory relief, and improved cost efficiency and effectiveness as previously discussed.

Sale of Poultry Products

As with fresh eggs, the sale of poultry products is regulated federally, in this case, by the U.S. Department of Agriculture (USDA). Changes to Florida’s regulatory oversight will have no effect on USDA requirements.

For the sale of poultry products, the Advisory Council offered the following additional recommendations:

- the small farm may slaughter and processes, on its premises, no more than 20,000 poultry raised on that farm in a calendar year;
- the small farm must comply with pertinent USDA requirements;
- direct sales to the consumer may take place only at the farm, at roadside stands, or at farmers markets; and
- products may only be sold by the farmer or a family member.

Again, the Department supports these proposals and recommends that that the legislature amend the statutory definition of a “dealer” in section 583.01(4), Florida Statutes, to allow for the sale of poultry, limited to 20,000 birds, without a dealer’s license as indicated above. Following this legislative action, the Department will be able to implement these Advisory Council principles through the establishment of new permit categories, provide regulatory relief, and improved cost efficiency and effectiveness as previously discussed.

Sale of Honey

As with eggs and poultry products the Advisory Council recommended that regulatory relief for beekeepers processing honey be restricted to a limited volume of sales; however, for this commodity the Advisory Council did not offer a specific volume. The Council noted that honey is a lower risk product which does not require pasteurization or other specialized preservation procedures, and does not require refrigeration for storage. Additional criteria for consideration of regulatory relief were recommended by the Advisory Council as follows:

- required labeling should include “Not for Resale” and “This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services;” and,
- require primary ingredients from exempt products be grown on the seller’s property. (The Department believes this will be further refined as bees are typically placed on lands not owned

by the beekeeper for purposes of pollination, desired floral makeup, etc.)

The Department supports the proposals offered by the Council, and as previously discussed, believes it can most efficiently provide reduced costs to the small farmer while maintaining consumer protection through the establishment of new permit categories and simplification, modification or reduction of the associated permit requirements. Legislative action is not required for implementation of these recommendations.

Sale of low risk jams, jellies and preserves

The Advisory Council report notes the growing interest by Floridians in offering “value added” foods produced in their homes. It also observes that very few value-added agricultural products are considered to be completely low risk, that is, shelf stable products which do not support the rapid growth of disease causing organisms at room temperatures. To ensure consumers are appropriately protected from risk of food borne illness, the Advisory Council emphasized that small farms producing products other than low risk jams, jellies and preserves must conduct their processing in a commercial operation, which meets current rule requirements for minimum construction standards, and which are separate from the living quarters of the home. In addition the Advisory Council recommended:

- required labeling should include “Not for Resale” and “This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services;” (note, the Department recommends replacing “permitted by” with “inspected by”)
- require that primary ingredients be grown on the seller’s property; and,
- products may only be sold by the farmer or family member.

The Department supports the proposals offered by the Council, and as previously discussed, believes it can most efficiently provide reduced costs to the small farmer while maintaining consumer protection through the establishment of new permit categories and simplification, modification or reduction of the associated permit requirements. Legislative action is not required for implementation of these recommendations.

Conclusion

The Food Safety and Food Defense Advisory Council has provided the Florida Department of Agriculture and Consumer Services with excellent guidance outlining specific principles for assisting the small farm community in bringing their products to market. These principles provide reduced cost to the farmer while protecting Florida consumers and ensuring public health. The Department believes it can further this guidance with greater cost efficiencies through its existing rule making authorities; and in so doing, ensure that the variability in farm operations receive appropriate regulatory oversight scaled to the risks associated with specific commodities and scaled to the size of these operations. This approach also provides assurances to the general public that the Department retains its authority to impose more stringent requirements in the face of egregious deviation of food safety principles by an individual operation.

To fully realize this objective the Department recommends additional legislative action to amend the definition of an egg or poultry “dealer”, thus eliminating the requirements associated with the classification and sale of eggs and poultry under Chapter 583, Florida Statutes.

Finally, the Department recommends establishment of a small farms advisory body to assist this community with the many different issues beyond food safety that confront the small farmer. Waste management, water management, environmental concerns, marketing, and worker safety, etc. are among the many concerns which often prove challenging to the small farmer. Formation of an advisory body to hear these concerns and provide a single forum to discuss solutions will support the small farm and help enhance the growth of these small businesses.