Understanding the Regulations for Direct-Marketing Meat & Poultry

Rodney B. Holcomb

Professor, Dept. of Agricultural Economics

Charles B. Browning Endowed Professor of Food Studies

Robert M. Kerr Food & Agricultural Products Center

Oklahoma State University

ROBERT M. KERR FOOD AND AGRICULTURAL PRODUCTS CENTER

“Seek first to understand, then to be understood.” -Habit #5, Covey

- Types of meat slaughter facilities:
  - **Custom Exempt** – Your animal going in, your meat coming out; not for sale
  - **State inspected** – Not all states have this (ex: TN); equal to/better than USDA inspection standards; can be sold in any retail establishment or foodservice establishment **IN THE STATE**
  - **Federally inspected** – USDA Food Safety Inspection Service (FSIS); can be sold anywhere in the US and potentially exported
  - **TA plants** – Talmadge-Aiken Act; FSIS plant number but **STATE** inspector (only for states with a state meat inspection program)
- Mobile slaughter must still fit one of these categories

*__Retail Exempt__ – no slaughter; retail products (fresh cuts or processed meats) made from inspected meat and sold to consumers

"I saw it on the internet, so it must be true."

Just a Couple of Issues with That Mindset…

Small processors were booked months in advance prior to COVID-19 pandemic

- Local food movement greatly increased demand for small plant services.

Number of small processors declined over the past 40 years

- Economies of size/scale.
- Increased food safety requirements shut down small plants in the late 1990s.
- Skilled labor is hard to find.

COVID Resulted in Efforts to Support New/Expanded Meat Processing

- Some states targeted CARES Act funds for meat processing expansion
- Native American targeted CARES Act funds
- USDA Meat and Poultry Inspection Readiness Grant (MPIRG)
- USDA AMS & RD loans/grants
- USDA/ARPA Build Back Better Initiative funds
    - $500M to “increase competition and capacity in the meat and poultry processing markets”

USDA Invests $55.2 million in Grants to Increase Capacity and Expand Access in Meat and Poultry Inspection Operations

Press Release
Release No. 0141.21

Contact: USDA Press
Email: press@usda.gov

WASHINGTON, June 21, 2021 – The U.S. Department of Agriculture (USDA) today announced $55.2 million in competitive grant funding available through the new Meat and Poultry Inspection Readiness Grant (MPIRG) program. The new program is funded by the Consolidated Appropriations Act of 2021.

“We are building capacity and increasing economic opportunity for small and midsized meat and poultry processors and producers across the country.” Secretary Tom Vilsack said. “Through MPIRG, meat and poultry slaughter and processing facilities can cover the costs for necessary improvements to achieve a Federal Grant of Inspection under the Federal Meat Inspection

Monday, November 2nd 2020, 6:25 pm
By: Amelia Mugavero

Join the conversation ( )

USDA Announces $500 Million for Expanded Meat & Poultry Processing Capacity as Part of Efforts to Increase Competition, Level the Playing Field for Family Farmers and Ranchers, and Build a Better Food System

Press Release
Release No. 0154.21

Contact: USDA Press
Email: press@usda.gov

Council Bluffs, I.A., July 9, 2021 – Today, USDA is announcing it intends to make significant investments to expand processing capacity and increase competition in meat and poultry processing to make agricultural markets more accessible, fair, competitive, and resilient for American farmers and ranchers. This is one of several key steps that

Application Period Opens for Pandemic Response and Safety Grant Program to Provide Relief to Small Producers, Processors, Distributors and Farmers Markets Impacted by COVID-19

The U.S. Department of Agriculture (USDA) today announced a Request for Applications (RFA) for the new Pandemic Response and Safety (PRS) Grant program and encourages eligible entities to apply now for funds. Applications must be submitted electronically through the grant portal at https://usda-prs.grantsolutions.gov/usda by 11:59 p.m. Eastern Time on Monday, November 22, 2021. Approximately $650 million in funding is available for the PRS grants, which are funded by the Pandemic Assistance provided in the Consolidated Appropriations Act of 2021.

TN Does Not Have State Meat Inspection

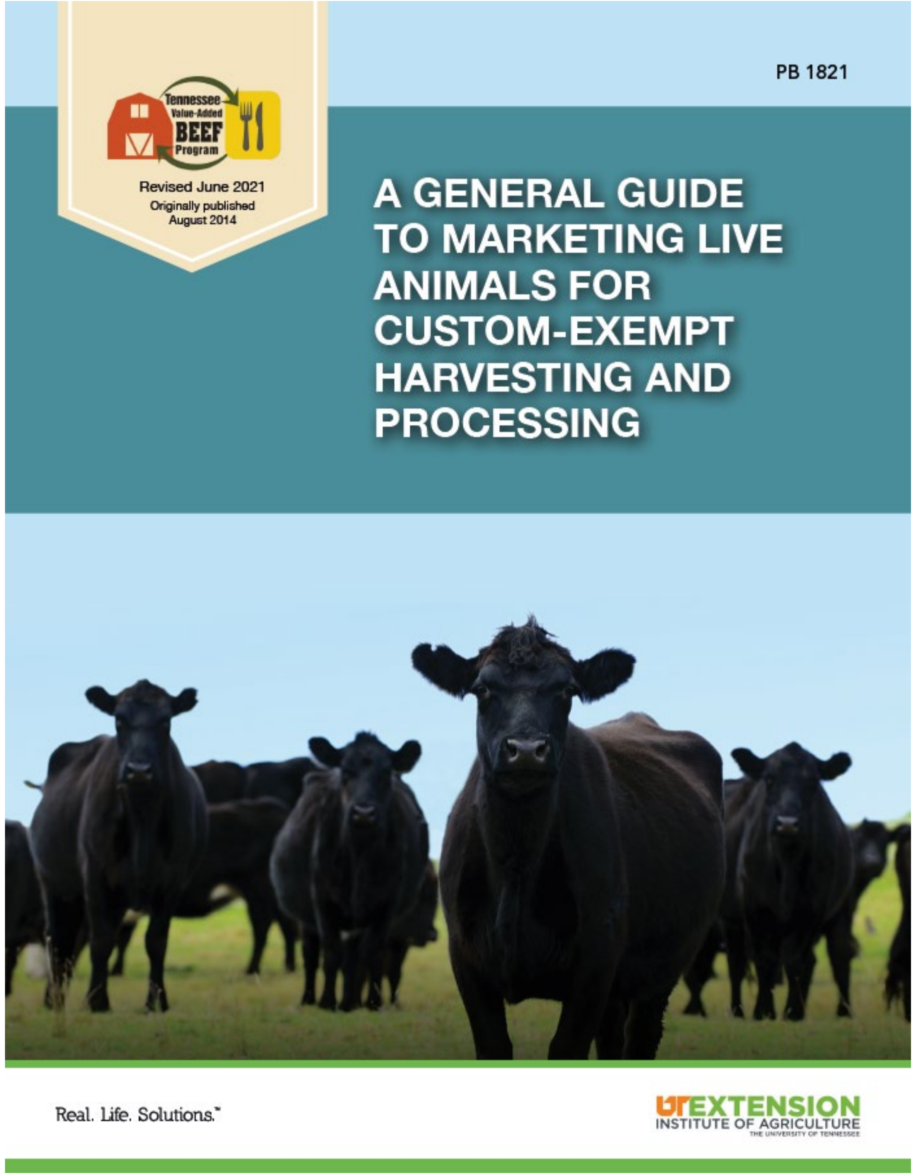
TN Department of Agriculture

Custom Slaughter and Deer Processing

Custom slaughter operations offer services for people who want an animal slaughtered or processed for their own personal use. The meat is cut, packaged, and labeled “not for sale.” **These meats are returned to the owner of the animal (who may have bought it from the producer just before slaughter) and cannot be sold.** People who buy "freezer" or "locker" meat from farmers, by buying a live animal, typically arrange for slaughter and processing to be done at a custom facility. If a producer wishes to sell meat by the cut, processing and packaging must be conducted at a USDA inspected facility. The Tennessee Department of Agriculture (TDA) inspects and permits custom slaughter facilities in the state. A custom slaughter facility does not have a state or federal inspector on duty, which means that the meats from these facilities are not considered state- or federally-inspected meats. While these establishments are regularly inspected by TDA for overall sanitation, the animals themselves are not inspected for disease. If you are interested in opening a custom slaughter facility in Tennessee, please contact 615-837-5193 or NewFood.Business@tn.gov for more information.

Tips for Custom-Exempt Meat Marketing

- You sell the LIVE animal, not the meat.
    - But can sell shares of the animal.
- Meat labeled as “Not For Sale”
    - Again, can’t sell by the cut
- Can have generic approved claims
    - Aged, pure, geographic claim, etc.
- No certified, natural, nutrition, and negative/free claims
    - Not allowed…or necessary
    - Those require USDA-FSIS approval



Considerations for Retail & Non-Retail/Foodservice Meat Marketing

- Farm-Based Retail Sales
  - Inspected slaughter, processing, and packaging
  - USDA-approved labels
  - Retail meat sales permit and TDA inspection
  - On-site sales
  - Refrigeration and transportation checkups
    - Can’t have both meat and poultry in the same container
  - Subject to sales/use taxation

- Foodservice/Non-Retail Sales
  - Inspected slaughter, processing, and packaging
  - USDA-approved labels
  - FSIS Form 5010-1 (handlers)
    - Storage, handling, pest control, safety/security, packaging, recall, recordkeeping, etc.
  - Establishment inspection by USDA
  - Subject to sales/use taxation

What About Poultry?

- Tennessee Meat & Poultry Inspection Act generally allows for exemptions according to the federal Poultry Products Inspection Act
    - “To qualify for any one of the poultry exemptions, a business must slaughter poultry or process poultry products under sanitary conditions using procedures that produce sound, clean poultry products fit for human food.” – USDA FSIS
- For your personal use? No limits.
- You can sell YOUR live birds to a customer and custom-slaughter those birds on YOUR premises under the custom slaughter exemption
    - IF the poultry are healthy, fit for human food, and slaughtered in accordance with sanitary standards/practices.
    - CANNOT sell or donate custom slaughtered poultry to another person or institution

Poultry Producer/ Grower 1,000 Limit Exemption

- “A person may slaughter and process on his or her premises poultry that he or she raised and they may distribute such poultry without mandatory inspection…” if:
  - Slaughter no more than 1,000 birds per year for human food purposes;
  - Do not engage in buying/selling poultry products other than those produced from poultry raised on your farm;
  - Conducted under sanitary standards, practices, and procedures;
  - Keep records necessary for enforcement of the Act (i.e. proves <1,000 birds/year);
  - Poultry products do not move in commerce (i.e. sold to the end consumer).

Producer/Grower 20,000 Limit Exemption

- "May slaughter and process more than 1,000 birds as exempt product for distribution as human food…" if:

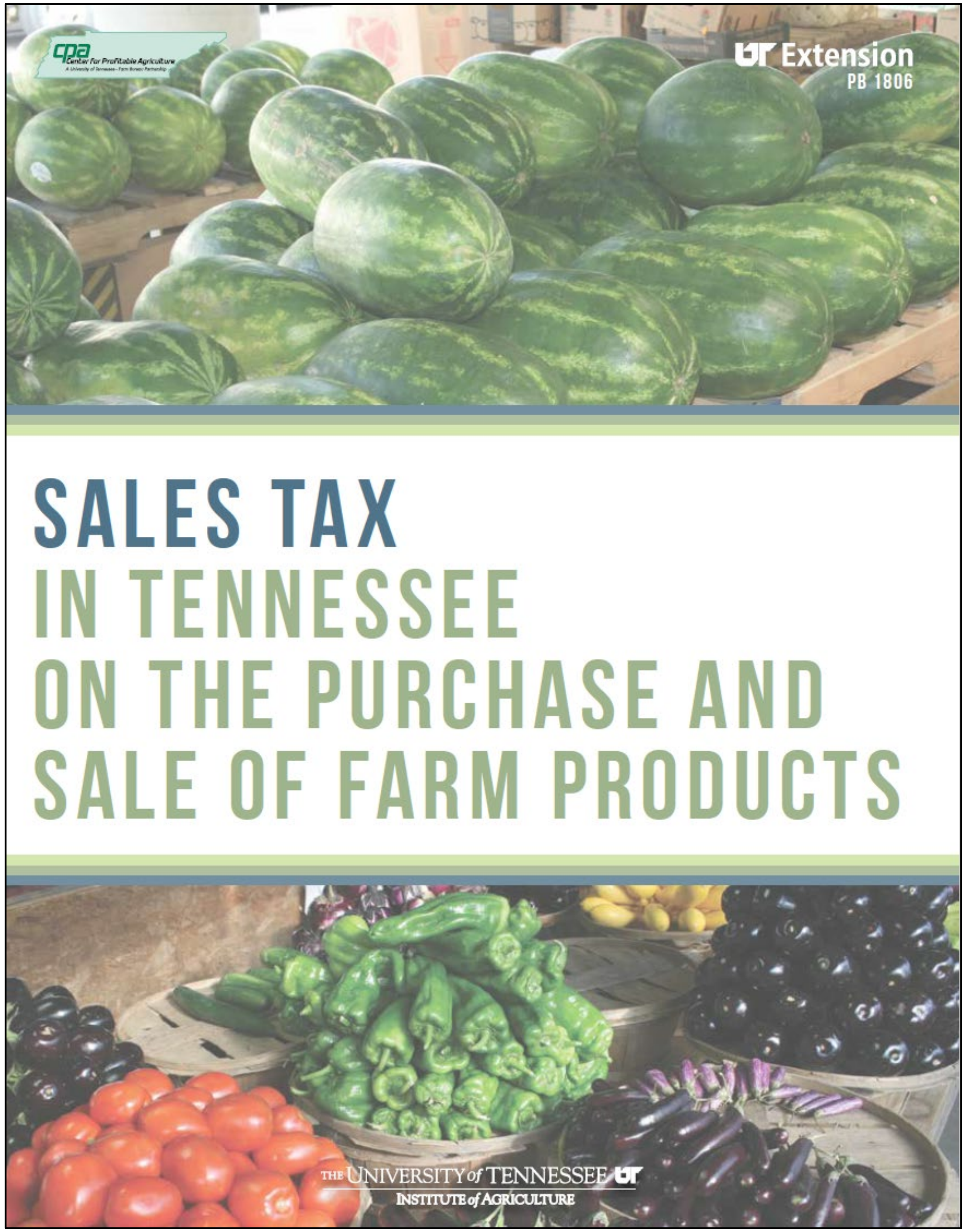
1. No more than 20,000 of YOUR birds/year;
2. Only products YOU prepare – can't buy/sell products under another exemption;
3. Distributed solely by YOU and only within the state;
4. Poultry are healthy when slaughtered;
5. Slaughter/processing on YOUR premises under sanitary conditions;
6. Only handle products YOU produced under the exemption;
7. Facility is not used to process others' birds (unless FSIS exemption);
8. Labeled with YOUR name/address and "Exempt P.L. 90-492"

Some Other Exemptions…

- Producer/Grower or Other Person (PGOP) Exemption
  - Similar to the 20,000 bird exemption for a single entity, and…
    - Poultry grower sells to "household consumers, restaurants, hotels, and boarding houses to be used in those homes and dining rooms for the preparation of meals…"
    - Person who purchases live poultry from a grower and then slaughters/processes poultry for sale to the same establishments listed above.
    - Cannot sell to a retail store.
- Small Enterprise Exemption
  - Processing is limited to slaughter/dress and simple cutting up of the carcass.
    - Own birds or purchased, still limited to in-state distribution
  - Can purchase inspected birds for cutting up, can handle "pass through" product.
  - Can sell to retail stores, but not to any entity operating under another exemption.

Sales and Income Taxes

- Note: Sales/use taxes apply everywhere.
- Livestock are considered commodities, but meat and poultry products are considered “food and food ingredients.”
  - Subject to 4% state sales tax
- Prepared food items (e.g., ready-to-eat meats) are not discussed in this presentation, but are subject to 7% state sales tax plus local rates.
- As with any other food or agricultural product, all local meat sales represent taxable income and should be disclosed on federal tax forms.



Product Liability Insurance

Insurance policies are…

- A necessary evil
  - Laws require it. Banks require it. Organizations require it.
- A risk management tool
  - Life is a gamble. So is business.
  - Anything can happen.
  - Proof of coverage vs. effectiveness of coverage
- Notoriously difficult to read and understand

Food Product Liability Insurance (FPLI) is no different.

Am I Covered by Other Policies?

<u>General Farm Liability Insurance Policy?</u>

- Protects against claims for bodily injury and property damage on the farm/ranch or resulting from farm/ranch operations
- Covers accidents that affect farmers/ranchers, employees (doesn’t replace workers comp), guests, and customers
- Does **<u>NOT</u>** cover the sale of your meat/poultry products
  - Meat/poultry is considered processed food – even if minimally processed
  - It’s not like selling raw, unprocessed fruits/vegetables

Am I Covered by Other Policies?

<u>Commercial Business Liability Insurance?</u>

- Works basically the same as GFLIP
- Might be needed if also involved in activities not considered "agricultural" or "farming"
  - Packing/processing
  - Selling meat/poultry with off-farm origins
  - Selling in multiple markets

What Makes FPLI Different?

- GFLIP doesn't protect against claims of contamination/foodborne illness (occur off-farm)
- FPLI protects against consumer injury claims and can cover legal fees (depending on the policy)
- FPLI coverage costs are hard to determine
  - No standard premiums for coverage
  - Very competitive industry
  - Based on detailed product/business descriptions
    - Production, marketing, and distribution details
    - Expected sales might play a role
- Ex: $1M policy for fruit pies
  - $330K medical, $335K pain/suffering, $335K punitive
  - Likelihood = 1 in 10,000 pies
  - $1M x 0.0001 = $100 premium

Am I <u>Required</u> to Have FPLI?

- It depends…
- Retailers and Wholesalers – <u>YES</u>
- Restaurants - <u>PROBABLY</u>
- Farm-To-School – <u>PROBABLY</u>?
  - No liability insurance requirements <u>at the federal level</u> for selling to school meal programs
  - In Tennessee, type and amount of FPLI coverage requested for farmers selling to school meal programs
  - But, FPLI may be required at the distributor or institutional level
    - Ex: Sysco requires FPLI
    - Ex: A school may require a certain level of FPLI coverage
- Farmers markets - <u>PROBABLY</u>
  - More frequently, farmers markets are requiring FPLI for their vendors

Farmers Market Regulations

- Choose carefully
  - Not all want/need more meat and poultry vendors
  - Not all have the same participation requirements or costs
- Meat:
  - Food Establishment/Retail Meat Sales Permit and TDA inspection
  - USDA-inspected meat only
  - Regs for cooler/refrigeration – and no combined products in coolers
- Poultry:
  - Either from USDA inspected slaughter plant or certified exempt entity
  - Note: TDA does not inspect or certify poultry processors operating under an exemption
- Once again: Sales tax rules apply.


Questions?