

Notice of Proposed Rule

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES Division of Food Safety

RULE NOS.: RULE TITLES: 5K-4.020 Food Permits; Requirements and Fees 5K-4.033 Limited Poultry and Egg Farm Operation

PURPOSE AND EFFECT: The purpose of this rulemaking is to clarify the permit application and to update the requirements for Limited Poultry and Egg Farm Operations. This rulemaking will also update adopted versions of federal laws and regulations.

SUMMARY: This rulemaking will address operation size limits for Limited Poultry and Egg Farm Operations and the water-related documentation requirements for permit applications. The most recent versions of 7 C.F.R part 57, 9 C.F.R. s. 381.10, and 21 U.S.C. s. 464 are being adopted by reference.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Agency's economic analysis indicates that adverse impacts or potential regulatory costs associated with the proposed rule revisions do not exceed any of the criteria established in Section 120.541(2)(a), Florida Statutes.

The revised rule expands the size limit for Limited Poultry and Egg Farm Operation permits to egg farms with up to 3,000 hens, which will require approximately 17 additional Limited Poultry and Egg Farm Operations to obtain a permit at a cost of \$100 per year. The rule revision also allows a Limited Poultry and Egg Farm Operation to submit alternative water source documentation when applying for a permit, reducing costs by accepting testing documentation that is already held by the operator. Additionally, no interested party submitted additional information regarding the economic impact.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice. RULEMAKING AUTHORITY: 500.09, (3), (4), (8), 500.12(1)(a), (b), (f), 570.07(23), 583.01, 583.04, F.S. LAW IMPLEMENTED: 500.04, 500.09, 500.10, 500.12, (1)(a), (b), (c), (d), (f), (2), (7), 500.121, 500.171, 500.172, 500.177, 570.15, 570.161, 583.09, F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:
Brenda Noble, Brenda.Noble@fdacs.gov

THE FULL TEXT OF THE PROPOSED RULE IS:

5K-4.020 Food Permits; Requirements and Fees.

(1) No change.

(2) Food permits. The Department shall not issue a food permit to a Food Establishment until the Department receives a complete application for food permit. A complete application for food permit must include the items provided in paragraphs (a) through (c):

(a) A complete Food Permit Application, FDACS-14306 (Rev. 05/25 08/2024) submitted to the Department, either online or by mail as indicated on the form. Food Permit Application, FDACS-14306 (Rev. 05/25 08/2024) is incorporated by reference and available online at <http://flrules.org/Gateway/reference.asp?No=Ref-18115> <http://www.flrules.org/Gateway/reference.asp?No=Ref-17084>, or by requesting a copy by emailing FoodSafety@FDACS.gov;

(b) through (e) No change.

(3) No change.

(4) Food Permit Fees and Renewal.

(a) No change.

(b) Food permits issued by the Department will be renewed on a rolling basis in accordance with Section 500.12, F.S., with permit expiration dates based on the month and date the food permit was first issued (“initial permit date”). To renew a

food permit, a complete Food Permit Renewal Application, FDACS-14373 (05/25 08/2024) must be submitted to the Department, either online or by mail as indicated on the form. Food Permit Renewal Application, FDACS-14373 (05/25 08/2024) is incorporated by reference and available online at <http://flrules.org/Gateway/reference.asp?No=Ref-18114> <http://www.flrules.org/Gateway/reference.asp?No=Ref-17085>, or by requesting a copy by emailing FoodSafety@FDACS.gov.

(c) through (j) No change.

(5) through (7) No change.

Rulemaking Authority 500.09, 500.12(1)(b), 500.12(1)(f), 570.07(23) FS. Law Implemented 500.04, 500.09, 500.10, 500.12(1)(a), (b), (c), (d), (f), 500.12(2), 500.12(7), 500.121, 500.171, 500.172, 500.177, 570.15, 570.161, FS. History—New 1-10-93, Formerly 5E-6.020, Amended 8-8-95, 3-11-98, 3-6-01, 10-30-01, 1-1-03, 11-1-04, 11-5-07, 10-28-08, 3-1-09, 3-24-14, 3-16-20, 3-14-22, 11-20-23, 10-29-24, .

5K-4.033 Limited Poultry and Egg Farm Operation.

(1) Purpose.

This rule establishes the regulatory parameters for a farm based Food Establishment, limited to the provision of whole shell eggs and dressed poultry products only. The basis for establishment of such parameters is the USDA Guidance for Determining Whether a Poultry Slaughter or

Processing Operation is Exempt from Inspection Requirements of the Poultry Products Inspection Act (revision date April 1, 2006), derived from language in Title 9, Code of Federal Regulations, Chapter 3, subsections 381.10(a)(5) and (b)(1) and (2) as administered by the USDA Food Safety Inspection Service and adopted by reference in paragraph 5K-4.002(1)(b), F.A.C., and, the Regulations Governing the Inspection of Eggs (Egg Products Inspection Act) as provided in Title 7, Code of Federal Regulations, Part 57, as administered by the USDA Food Safety Inspection Service and adopted by reference. in paragraph 5K-4.002(1)(a), F.A.C.

(2) Definitions.

(a) No change.

(b) “Farm” means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products. For purposes of this rule, “farm” has the same meaning as provided in Section 823.14, F.S.

(c) “Dressed Poultry” means slaughtered poultry for human food, with head, feet, and viscera intact, and from which the blood and feathers have been removed.

(d) “Poultry” as defined in section 583.01(19), Fla. Stat.

(3) Requirements – poultry.

(a) For purposes of this rule, when the criteria for a Producer/Grower – 20,000 Limit Exemption as identified in the USDA Guidance for Determining Whether a Poultry Slaughter or Processing Operation is Exempt from Inspection Requirements of the Poultry Products Inspection Act (revision date April 1, 2006), as adopted herein, are met as determined by the USDA Food Safety Inspection Service (FSIS), an operation a poultry grower that slaughters and minimally processes no more than 20,000 poultry birds in a calendar year, grown on his or her own farm in the State of Florida, and that does not sell, offer for sale, or hold for the purpose of sale in this state more than 384 dressed poultry in any one week shall be permitted as a limited poultry and egg farm operation pursuant to 5K-4.020(1)(n), F.A.C. Qualification for this exemption, as identified in the above guidance document, must be met in accordance with the Poultry and Poultry Product Inspection Act, Title 21, U.S. Code Chapter 10, subsection 464(c)(1)(C) & (c)(3) and Title 9, Code of Federal Regulations, Chapter 3, subsection 381.10(a)(5) and (b)(1) and (2) as administered by the USDA Food Safety Inspection Service and as adopted by reference herein in paragraph 5K-4.002(1)(b), F.A.C.

(b) An operation with more than Dressed poultry sold or offered for sale by a limited poultry and egg farm operation must also meet the applicable requirements of Chapter 583, F.S., and Chapter 5K-5, F.A.C. in accordance with the definition of a “Dealer” in Section 583.01(4), F.S. Poultry producers with flocks in excess of 20,000 poultry or an operation that sells, offers for sale, or holds for purposes of sale in excess of 384 dressed poultry in one week seek to process poultry shall be permitted as a processor in accordance with Section 583.09, F.S. and Rule 5K-4.020 paragraph 5K-4.020(1)(s), F.A.C., as required by s. 500.12, F.S.

(4) Requirements – shell eggs.

(a) For purposes of this rule and in compliance with the Regulations Governing the Inspection of Eggs (Egg Products Inspection Act) as provided in Title 7, Code of Federal Regulations, Part 57, administered by the USDA Food Safety and Inspection

Service, and as adopted by reference herein in paragraph 5K-4.002(1)(a), F.A.C., an operation a shell egg producer that maintains a flock of 3,000 hens or fewer less than 1,000 poultry within any calendar year, on his or her own farm in the State of Florida, for the purpose of producing shell eggs for human consumption, and

that does not sell, offer for sale, or hold for the purpose of sale in this state 30 dozen or more eggs in any one week shall be eligible to be permitted by this agency as a limited poultry and egg farm operation pursuant to Rule 5K-4.020, F.A.C.

(b) A limited poultry and egg farm operation that sells or offers for sale whole shell eggs must also meet the applicable requirements of Chapter 583, F.S., and Chapter 5K-6, F.A.C. Sale of shell eggs by a limited poultry and egg farm operator with a flock of less than 1,000 poultry shall be limited in accordance with the definition of a “Dealer” in Section 583.01(4), F.S. Shell egg producer producers with flocks of more than 3,000 hens or that sells, offers for sale, or holds for purposes of sale 30 dozen or more eggs in any one week in excess of 1,000 poultry shall be permitted as a shell egg processor in accordance with Section 583.09, F.S. and Rule 5K-4.020 paragraph 5K-4.020(1)(s), F.A.C., as required by s. 500.12, F.S.

(5) Requirements – general.

(a) Limited poultry and egg farm operation products shall only be sold within the State of Florida and must not be sold or offered for sale in interstate commerce.

(b) For purposes of this rule, a whole shell egg product or dressed poultry product includes chicken, turkey, duck, goose, guinea, or quail.

(a)(c) A limited poultry and egg farm operation shall not sell dressed poultry or shell egg farm products by mail order or at wholesale.

(b)(d) Limited poultry and egg farm operations will be subject to an initial inspection pursuant to Rule 5K-4.020, F.A.C., and will be inspected on a complaint basis thereafter. Inspection of the premises of a limited poultry and egg farm operation to determine compliance with this rule will be to provide information during the opening inspection and permitting process or upon receipt of a valid complaint.

(c) An application or renewal application to permit a limited poultry and egg farm operation pursuant to Rule 5K-4.020, F.A.C. must be accompanied by documentation demonstrating the limited poultry and egg farm operation has either an approved water source as set forth in Rule 5K-4.020, F.A.C. or a private well that is an acceptable water source meeting basic sanitation requirements. Documentation

demonstrating a private well is an acceptable water source shall at a minimum include:

1. Written results from a test conducted by an approved Florida Department of Health and National Environmental Laboratory Accreditation Program (NELAP) certified drinking water laboratory within the 6 months prior to submitting the application or renewal application. The water sample to be tested shall be collected from the water source by the laboratory performing the test or by a third party that is not affiliated with the farm indicated on the test results. The test results must show the water source meets the following limits:

a. Analytes:

(I) Nitrate, 10 parts per million or less

(II) Nitrite, 1 part per million or less

(III) Arsenic, 10 parts per billion or less

(IV) Lead, 10 parts per billion or less

b. Total coliform level:

(I) Total coliforms shall not be greater than 2.2 organisms/100 mL using the Most Probable Number (MPN) method or shall not be greater than 1 organism/100 mL using the Membrane Filtration (MF) method

(II) Negative for fecal coliforms

2. Photographs taken within four weeks of submitting the application or renewal application showing a clear and complete view of the well head and the area within a 20-foot diameter of the well head.

(e) renumbered (d) No change.

(e) Shell eggs from a limited poultry and egg farm operation must be packaged in clean, un-used cartons and must be labeled with the name and address of the farm.

(6) Materials adopted by reference. All documents and materials referenced in this rule are hereby adopted and incorporated by reference and are available as follows:

(a) The Poultry and Poultry Product Inspection Act, Title 21, U.S. Code Chapter 10, subsection 464(c)(1)(C) & (c)(3) revision date January 3, 2024 2012, is accessible

through the internet at: <http://flrules.org/Gateway/reference.asp?No=Ref-18111>
<http://www.flrules.org/Gateway/reference.asp?No=Ref-03706>.

(b) No change.

(c) Regulations Governing the Inspection of Eggs (Egg Products Inspection Act) as provided in Title 7 Code of Federal Regulations, Part 57, revision date January 1, 2024 2006, is available through the internet at:

<http://flrules.org/Gateway/reference.asp?No=Ref-18112>

<http://www.flrules.org/Gateway/reference.asp?No=Ref-03708>.

(d) Title 9, Code of Federal Regulations, Chapter 3, section 381.10, revision date January 1, 2024 available at: <http://flrules.org/Gateway/reference.asp?No=Ref-18113>.

Rulemaking Authority 500.09(3), (4), (8), 500.12(1)(a), (b), 570.07(23), 583.01, 583.04 FS. Law Implemented 500.09, 500.12, 583.09 FS. History—New 3-24-14, Amended 3-16-20, .

NAME OF PERSON ORIGINATING PROPOSED RULE: Matthew D. Curran, PhD,
Director, Division of Food Safety

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:
Commissioner Wilton Simpson

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 2, 2025

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR:
June 11, 202