
Background Information:

AN EXCERPT FROM

A NEW LOOK AT AGRICULTURE



Redefining agriculture's role in our
economy, landscape, environment
& social culture

EXCERPT #7

The Problems with Regulations

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The Problems with Regulations



The survival of agriculture will be influenced substantially — perhaps decisively — by the cumulative effects of government regulations and attitudes.¹

That was one of the principal conclusions of an extensive survey on the future of agriculture in the county that has done more than any other place in the U.S. to “preserve agriculture” through all available farmland protection measures. The other conclusion:

Without profitable agriculture, there will be no agriculture.²

The two concepts are closely tied, since government regulations and attitudes have a major impact on profits. Here’s why:

Would You Answer This Ad?

Imagine, for a moment, that you are job hunting. Think about your skills ... and your salary requirements. Now imagine how you would react if you came across this ad in the classifieds:

WANTED: Experienced Farm Owner. Self-starting, hard worker, willing to put in long hours. Physical outdoor labor required. Should have good grasp of business administration, labor relations, chemistry, biology, hydrology, animal science, welding and mechanics. Ability to understand wide variety of government regulations and deal with governmental agents a must. Law degree and sense of humor a plus. Annual income up to \$18,000, payable in years when company makes sufficient profit. Must be willing to donate salary to cover costs of additional employees that must be hired while you attend mandatory meetings. Must also meet all applicable government regulations and have all paperwork in order to start. (Note: advance preparation is useful. Paperwork to comply with applicable regulations may require 1-2 years to process, and can cost up to \$95,000³). Serious applicants only.

Far fetched? Hardly. Consider the following statistics from a study conducted by Farming for the Future, Inc. in Hillsborough County, Florida:

Farm Averages

The following information was drawn from the most recent *Census of Agriculture* report for Florida, compiled by the U.S. Department of Commerce, Bureau of Census:

- Hillsborough County has 2,760 farms
- The average farm size is 96 acres

- 67% of Hillsborough County's farmers live on their farms
- However, **54% must take jobs off the farm at least part time to support themselves and their families**
- The market value of agricultural products sold each year averages \$93,921 per farm
- The expenses for farm production average \$75,290 per farm per year
- That means the **average net cash return** from agricultural sales on a per farm basis in Hillsborough County **is only \$17,983 per year.**

For full time farmers, the net return is higher. As Tim W. Williams notes: "I unwittingly took the predecessor to this position about 14 years ago; the job has evolved, however, into your job description." Williams suggested adding the law degree and the necessity to donate one's salary to employees that must be hired so it is possible to attend mandatory meetings. "But, seriously," he noted, "most farmers around here do pay themselves more than \$18,000 per year, and are 'full time' farmers."

Number of Rules and Regulations

Hillsborough County farmers must deal at one time or another with 46 different governmental agencies and departments ...

- ◆ 13 on the local level;
- ◆ 1 on the regional level;
- ◆ 20 on the state level; and
- ◆ 12 on the federal level.

That works out to one per week ... with just six weeks left over to farm in a year.

Roger Newton, Environmental Horticulture Extension Agent for the Hillsborough County Extension Service, undertook a project in 1993 to compile a "Regulatory Agency Guide."

Newton began the project because he realized virtually every nursery grower he worked with was running afoul of one or more rules or regulations; not on purpose, but because the growers were unaware of many recent laws and regulatory changes and how these laws and changes applied to their operations.

Newton decided he would compile a **pamphlet** briefly describing each of the laws, regulations, ordinances and requirements that affect the ornamental plant production industry. He located 117 known county, state and federal laws, regulations, ordinances and requirements and began writing brief descriptions of each.

When completed in 1994, the pamphlet had grown into a thick loose-leaf binder more than 4 inches thick, weighing over 10 pounds, and requiring four high-density 1.44 MB computer diskettes to store the data. The loose-leaf binder contains *1,080 pages of small, 10 point type*. **Even so, the guide is only a summary.**

Responses to Requests for Information

Of the 46 agencies and departments contacted for the Hillsborough County study, only two cooperated fully. The regulatory costs for these two agencies ranged from a low of \$4,843 to establish a tropical fish operation on a 15-acre parcel up to \$95,324 to establish a vegetable operation with a packing house on a 955-acre parcel.

One third of the agencies contacted — 15 — did not respond to repeated requests for information. Of the 31 agencies responding:

- 11 sent copies of their regulations without any explanations or references to assist in locating the regulations that applied to the properties — or the proposed uses — in the study's request;
- 10 replied saying they do not regulate agriculture — even though some, like the Environmental Protection Commission (EPC), have rules and regulations governing impacts on wetlands, water quality, air quality and waste disposal, all of which greatly effect *every* agricultural operation in the county (It should be noted that, after some initial reluctance, EPC did provide a detailed response);
- 2 agencies required the purchase of their regulations
- 1 said “the information you requested is beyond the scope of services normally provided by [our agency] ... you may, instead, wish to consult the law library ...”;
- 5 agencies provided a partial response to the researchers' questions; but
- **Only 2 agencies** provided the information requested and addressed the conditions that related to the specific parcels of property on which the request was based.

From these responses, the researchers received:

- 5,082 pages of data, including cover letters and copies of regulations
- This accounted for 27 pounds of paper
- And included *90 multi-page forms that had to be completed by an agricultural operator.*

That's with one-third of the agencies and departments not responding!

As Philip K. Howard says in his best-selling book, *The Death of Common Sense: How Law is Suffocating America* (New York: Random House, 1994):

How can law function as a guide to action if almost no one knows it? Bob Hrasok believes that nobody, including the OSHA inspectors, knows all the OSHA regulations: "How can anybody know the fine print in four thousand rules?" (p. 30)

As a result, Howard says:

Several million small employers operate pursuant to their own moral code, comfortable only in the assurance that they could never figure out the letter of the law if they tried. This is a predicament one witness before Congress termed the syndrome of "involuntary noncompliance." (p. 31)

Possible Solutions

Gene Boules, Director, Hillsborough County Planning and Development Management Department does a lot of thinking about regulatory streamlining. “To streamline regulations,” he says, “will require a fundamental shift in how we view permitting. We need to rethink what our purpose is, what we are trying to accomplish.” Several promising developments are on the horizon, “where the emphasis is on results, instead of pieces,” Boules said.

In my experience, the major problem is that the bulk of rules are not understandable. Ninety-five percent of people will comply with rules if they understand them. Unfortunately, most regulatory agencies start off by telling people what they can't do, instead of what they can do. We also tend to get locked up in process. That creates a negative mindset and makes unnecessary adversaries of folks.

There are other problems as well:

Most development agencies never looked at rural areas as rural. We figure that, someday, they'll develop. And we plan accordingly. [For example, see comment from Gail C. Stern under Endnote ⁸²].

Zoning was not meant for agriculture. We need a better clarity in our plans, a way to recognize the unique features of rural areas and farming as permanent parts of the plan.

Performance standards create another set of problems. “They operate strictly on a permit process that’s very specific and highly technical,” Boules said. Problem is, no matter how tightly environmental issues are defined, something is always left out or overlooked. Because of this, many agencies want to reserve judgments until all the data is in, and that can take forever. For this reason, Boules said:

I believe the answer for ag lies in BMPs [Best Management Practices] and incentives to help farmers do a better job.

Richard Neill, a Fort Pierce attorney and farmer with his brother, David, agrees. “Gene Boules ... puts his finger on one major problem when he says, ‘Zoning was not meant for agriculture.’ His idea of BMPs makes a lot of sense to us.”

In the meantime, agriculture is paying for other people’s ignorance of its industry.

TONY LE YUNG CULTIVATES 30 DIFFERENT VARIETIES OF ORIENTAL VEGETABLES ON 1,000 ACRES. He says he has “no problems” with regulations “just a lot of extra work.”

He has “extra personnel to deal with extra paperwork on labor, water and chemical issues.”

He conducts “extra training to comply with new chemical labeling and worker safety rules.”

He owns and maintains “extra equipment to take water samples — not once or twice a year, but every month.”

TONY LE YUNG used to cultivate 2,500 acres of Oriental vegetables.

In 1994, he reduced the acreage to 1,500 acres.

In 1996, his production acreage dropped to 1,000 acres.

Now he’s cutting back to 400 acres.

“We’re making money,” Le Yung says. “Usually when you do well, you expand. But we’re going in the opposite direction. We’re downsizing the farm so we can manage its business side.

“A grower prefers to stick to marketing and producing. Rules and regulations are not our priority. They take up too much time. But we don’t have a choice. We’re made to feel like the bad guy. It’s impossible to comply with the book on some regulatory issues. Whoever wrote the rules did not understand farmers. In a factory, you can define things much better than you can in a farm. But most inspectors we see don’t understand that.

“Having to comply to code is not cost-effective. Many times it’s impractical to comply to code.

“Environment is a major issue for us. So is workman’s comp. We see that there’s a lot of liability for a business. But the definitions are not very clear. The law is not well defined. And there is no information to guide us on what to do.

“The best way to deal with uncertain laws is to avoid them. We are spending too many resources that are going into nonproductive activities. And we have far too many liabilities. The only way we can protect ourselves is to become smaller.”

Hence, a profitable, 2,500 farm was turned into a 400 acre farm as a direct result of regulations written by people who do not understand farming or the impact of their regulations on farming.

CARL GROOMES OF FANCEE FARMS, A PLANT CITY STRAWBERRY GROWER, says:

A rule is written and the interpretation is in the eye of the beholder ... and every beholders’ eye is different.

I'm out here trying to abide by the law and I don't know who to believe. Federal and state are not on the same playing field. When they disagree, it always takes up time, and I must take the harshest of their two rules.

Migrant housing laws have been changed every year for the past 15 to 16 years. You have to meet the criteria of first the county, then the state. Then OSHA comes in with a different set of criteria. Of course, you don't know a little new law that's key.

We cannot abide by all the rules all the time, so we do the best we can. We overlook some small detail, like a toilet pipe that is not the right height, and they come cruising in and give us a \$500 or \$600 fine.

Most people in ag were raised to be honest. It's a shame to know we're breaking laws everyday because we have no idea what they are. It's a modern-day pit and pendulum. You know the knives are up there whizzing above your head. You just don't know when one of them is going to slide down and slice you. It doesn't give you a good feeling. Yet I do the best I can.

The paperwork is just overwhelming. Right now, I'm upgrading my water system. I'm supposed to have meters attached to four wells. They're 20 years old. None met current thresholds for the meters, so I had to spend \$50,000 adapting the piping. I also had to change the nozzle sizes. Now I can run water only during certain times of day and have to send in a report on what I use every month.

The person who knows the water system best is me. I live here. Yet someone comes here, reads something out of a book and tells me what to do. And he treats me just like a filling station jockey.

Now my banker has an excuse to treat me the same way. If regulators come out and find problems, my banker can use that as an excuse to rate me as "substandard." Normally, you'd get a substandard loan classification only if you had two or three bad crop years. Now a couple of fines or letters is all that's needed to give a banker an opportunity to renege. And you ask him, and he says "the regulator won't let me do it."

The thing is, every regulation costs money. There's no means in agriculture to pass on any cost in the product. That's what kills us.

We're not making the kind of money society thinks we are to be able to abide by all the regulations that have piled up over the past 20 years.

Why have we been singled out? After 20 years of checking and not finding anything wrong, you'd think they'd leave me alone. But no, I'm scrutinized every which way. Document this. Document that. Put this pipe in over here. Put that one over there. And, oh yes, don't make it too short, because it will cost you extra.

American farm families built the U.S. But most people have forgotten that. We've given people the cheapest, most abundant food supply in the world. And the safest. Cheap food has given everybody more money to spend, so they can go buy \$100,000 homes, two cars and put their kids in college.

Society always thinks food is on the supermarket shelf. If not fresh, then it's either canned or frozen. Every bit of it comes from a seed that was poked in the ground.

Environmentalists have made people think we poison the land and all kinds of other critters.

All this kills the desire of my 15 year old son to want to be a fourth generation farmer. He hears about all these problems, and he thinks, as much as he likes the farm, he'd better do something else when he grows up.

Society in general does not give ag the respect its should. Lawyers, doctors and sports figures all are respected. But without us, a lot of people would be living their lives a lot different ... and you sure wouldn't need as many lawyers.

People think we get subsidies. Those programs don't apply to a lot of crops, especially not fruit and vegetables. I've never gotten a subsidy. Zero.

It used to be a real pleasure to get up on a tractor all day. Smell the soil. Wind in your hair. Work your parcel. But I can't do that anymore. There's too much business to take care of. Regulations are two-thirds of it. I have a secretary who does nothing but fill out forms and reports. It's just amazing what she has to do. Quarterly reports. Forms. Stamps. Three copies of this. It's no wonder government is the biggest employer there is.

These examples could go on and on. As one talks to farmers, one hears the same points, time and time again. All 15 growers, ranchers and producers interviewed for this paper relayed similar experiences ... and exhibited similar attitudes. This is much more than simple grouching. The problems described are universal among ag producers.

FARMERS' COMMENTS ABOUT REGULATIONS

Based on discussions conducted by
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with five panels of growers in five counties

Major Problems:

1. Regulatory compliance = paperwork (time and money)
2. Conflicting interpretation of rules (agency staff sometimes make their own rule interpretation and application)
3. Agencies exceed authority
4. Agency staff sometimes shows a bad attitude toward farmers
5. There seems to be duplication between agencies
6. Farmers have no reliable source of information on what rules they must comply with
7. Farmers often do not know who to contact (within an agency)
8. Costs of compliance cannot be passed on to buyers of farm commodities
9. Agency staff often know little about agriculture
10. Rules often lack common sense

Endnotes

1. Agricultural Advisory Committee and Robert Scarfo, *Future of Agriculture Study for Montgomery County, MD*, Montgomery County Office of Economic Development, Rockville, MD, February 1995, "Part I Table of Contents," p. v. Findings of an extensive study assessing a two-decade long experiment with purchasing development rights, transferring development rights and implementing strict agriculture land use planning and zoning.
2. Ibid, p. 5.
3. Craig Evans and Jean McGuire, *An Analysis of the Costs & Effects of Regulations on Hillsborough County Agricultural Operations*, Farming for the Future, Inc., Boca Raton, Florida, January 1997, p 3.