

## **GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION (GIPSA)**

### **1. UNFAIR PRACTICES**

**What does it mean when a producer encounters an unfair practice, discrimination or retaliation in the marketplace?**

**The following are real examples from producers, which the proposed rule would be designed to address:**

*[N]umerous growers are not attending these workshops because of being afraid of retaliation on them by their integrator. A grower this morning has already been threatened by his service person if he attends and speaks at this forum. All the integrator has to do is make sure that particular grower receives inferior chicks to start a grow out with and maybe short his feed delivery, which can lead to a higher feed conversion rate. This happens, really it does. (§201.210 would be applicable to this) (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*I've spoken to numerous growers about attending this meeting, but most of them were afraid to come for fear of retribution from their poultry company. You have to do as you are told or you could be refused placement of birds or could face a drop in the number of birds places or worse. (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*I cannot reveal my identity for fear of severe consequences, like no more chickens. There is, incidentally, a blacklist among integrators so any grower cut off will not be picked up by another integrator. (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*And although I came here on my own today, it's not without a lot of worry when I leave that I'll have some retaliation. (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*I've been in the business for nine years. At that time I had a 7-year contract. Four years ago I changed integrators and I was given a 3-year contract. Last year I signed a new contract, flock-to-flock. What that means is every 60 days that's the only time I'm actually under contract to grow chickens. At the end of that 60 days, I can be terminated. I've personally borrowed a million and a half dollars. And everything I've got is mortgaged so I can be a poultry grower. I've got eight poultry houses, two dwelling houses, a hundred and eighty acres of land and all the life insurance policies I've got. As a poultry grower with everything I've been mortgaged, I had no choice but to sign that flock-to-flock contract. Like many of them of said, either I sign it or I ain't got no chickens. Without any chickens, I can't pay any bills. I can't pay my mortgage because chicken houses are designed for one thing, grow chickens. (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*The extreme debt required to get into the poultry growing business and the fact that there are not alternative uses for the poultry houses, give the poultry company total control. For most growers, you cannot shop around for other poultry companies if you disagree with your company's practices. There is very little competition in local areas. Even in those unusual instances where two companies overlap a certain area, companies are very reluctant to pick up a grower who has disagreed in any way with another company. (Poultry grower witness testimony, hearing of the U.S.Senate Committee on Agriculture, Nutrition and Forestry; April 18, 2007.*

*In our area we have more than one company, but it seems to be a written rule that if you go grow for one company, you really don't have the opportunity to even cross those lines to go to another company. (Former poultry grower, USDA DOJ Workshop; May 21, 2010)*

*An anonymous grower commented that he was glad to see the arbitration opt-out provision included in the Farm Bill. He noted that arbitration provisions should apply to flock-to-flock contracts, as they are extended each time a grower gets a new flock. This grower was not given an opportunity to opt out of arbitration after the Farm Bill was enacted. He feels that he cannot complain about this because he might suffer retaliation. (§201.219 and §201.210 would be applicable to this) (USDA DOJ Workshop, May 21, 2010)*

*In my county alone, we've got two....they do not cross lines at this time anyway.....as it stands now with the contracts that we're offered now it's either a take it or leave it situation. So it really puts us in a bind as growers. (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*If you're a poultry grower in a region with one integrator [and you're cut off], you have no hope of ever filling that barn again...bank note comes due, and you're done. It's foreclosed and you're done. (Rural Advocate, GIPSA Town Hall Meeting, October 16, 2008)*

*In 2006, employees of ... came to my farm and accused me of wrongly disposing of a few of my chickens that had died. They claimed that I did not comply with a regulation of the Board of Animal Health. This was soon after Hurricane Katrina which caused extensive damage to my farm. I was struggling to keep the farm running as best I could. Of course after having an encounter with the company I was worried about the termination of my contract. I was told that this wasn't the type of offense that would get my contract terminated, but the servicemen were not quite sure what would happen. My original contract included a "deficiency" system, where six deficiencies would result in termination. What the company also did, though, was include a vague clause that said they could act immediately if they saw fit. At 6pm that evening I received a call from ...that my contract had been terminated. At no time then or since then did state inspectors ever get involved. I never had any official finding of wrongdoing, and never had any chance to plead my case or appeal the company's decision. This is how the poultry industry works; companies have all the power to do pretty much whatever they want to do. They know that farmers don't have other options and the contracts are designed to give the companies as much power as possible. USDA DOJ Workshop, May 21, 2010)*

## 2. UNDUE AND UNREASONABLE PREFERENCES

### **What does it mean when a producer cannot find a market due to undue or unreasonable preferences in the marketplace?**

*In one case, a Midwestern packer was offering a higher price to an individual producer who could deliver full truckloads of livestock. A group of producers approached the same packer and offered collectively to provide a full truckload of like livestock, but the packer refused to offer the same price terms to the group of producers. (GIPSA Town Hall Meeting, October 16, 2008)*

*...differentiating between true transactional cost and cost that the packers say optimizes their efficiency at the plant level...it doesn't matter if you pull five semi loads up or one semi load up...there are differences in transactional cost...but it ain't 6 cents a pound. (Rural advocate, GIPSA Town Hall Meeting, October 16, 2008)*

*For the most part, if you can deliver a semi load of pigs, you can negotiate pigs because you pretty much have the ability to deliver a scale of pigs that a packer is willing to negotiate with you. I will tell you, though, that it is -- it is true that the more loads you have to negotiate, the more willing they are to negotiate. I've had instances where I've offered two loads at a price or four loads at a higher price, and they'll take the four loads at a higher price versus if you didn't have the four loads when you got the higher price, so there is some of that going on. (Hog producer, USDA DOJ Workshop, March 12, 2010)*

*[T]he smaller producers have got to put up with [certain conduct], or they get left out. The big guy, he can ship loads all over, but the little guy, if he wants to deliver the contract when he should deliver it, you don't really have a lot of choices. They'll call and tell him when they're going to pull the contract, and if they're going to die on Monday, he has to be there on Sunday for no extra pay, and it's not right. (Independent hog producer, GIPSA Town Hall Meeting, October 16, 2008)*

### 3. TOURNAMENT OR RANKING SYSTEMS

#### **What does it mean for producers that are paid on a ranking system? How does it impact their farms?**

*A question often asked is, if returns are so low, why are people lined up to become contract producers? Well, there are few other job opportunities in the areas where poultry operations are located. Information presented to potential producers by some integrators is deceptive, in that not all costs are shown or they are underestimated. Many potential producers feel that they can be above average and they will never be below that, because they don't understand how little control they have over their ranking. The growers don't want anything that they are not entitled to, but they want things to be fair. (Poultry grower witness testimony, hearing of the U.S. House Agriculture Committee, April 17, 2007)*

*Most poultry growers are paid based on a "ranking system" which pays you in competition with other growers. Essentially, the company has you compete with other growers based on your success in putting weight on the bird during the 7-to-9 week grow-out period, relative to how much feed you used. This is called the feed conversion. But the catch is that all the inputs that determine your feed conversion are controlled and supplied by the company itself. From the day-old chicks, to the feed, to the specifications of your poultry house, all are controlled by the company. Often one grower will receive different inputs than another grower in the same "ranking," which can influence your feed conversion greatly. Yet those growers are still ranked together as if it were a straight-up, fair competition. The difference between a top ranking and a bottom ranking can mean many thousands of dollars to a grower for a 7-to-9 week flock. (Poultry grower witness testimony, hearing of the U.S. Senate Committee on Agriculture, Nutrition and Forestry, April 18, 2007)*

*...the [ranking] system is controlled by the company. I think it's unfair because the lack of transparency gives the company the ability to terminate or penalize growers based on false claims of poor performance that, in fact, is out of the grower's control....(Former poultry grower, USDA DOJ Workshop; May 21, 2010)*

*...the ranking system of payment is obsolete, it's broken, and it needs to be changed. There's too much room there for manipulation. And there's no checks and balances whatsoever. (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*...If I get more male birds on my farm and Joe down the road, you know, gets more females... if he's a halfway decent poultry farmer and sees after his chickens, I'm going to beat him out because I got the... more dominant bird, I got the male bird. Now, how fair is that? If I run out of feed during the course of a grow out and let's just say... I'm out of feed for 48 hours. Well, let's say Joe down the road, he's not out of feed, we're selling together under this so-called fair ranking system.... (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*...the [ranking] system is controlled by the company. I think it's unfair because the lack of transparency gives the company the ability to terminate or penalize growers based on false claims of poor performance that, in fact, is out of the grower's control....(former poultry grower, USDA DOJ Workshop; May 21, 2010).*

*I've had add some flocks of chickens that were delivered that were sick. One had aspergillosis and the company knew it, it come from the hatchery, and I had a high mortality and the birds*

*didn't perform. And I had one that had rickets and a high mortality and the birds really didn't perform. And I wound up with a, I think one of them was a hundred and sixty-seven and one of them was a hundred and eighty-four points below average. And the company knew that it wasn't anything I did, but I'm the one that suffered the loss. They took my performance and subtracted it from base pay and that's what I got. I've had them bring feed out that would be molded and you couldn't get it out of the bins. To them it doesn't matter, you know. It keeps you in debt one way of the other, you know. They may give you a raise, but they cut weights and you still can't make any more money. I made as much as \$50,000 the first year I put in a batch. Now, after I've spent close to \$200,000, I think my best check has been 52 or \$53,000. That's with the incentive pay. And that's been 12 years that I've been with them..... (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*Often the lack of transparency in the ranking system has been a tool for companies to retaliate against growers who attempt to speak out about the abuses or organize with other growers to try to bargain for better contract terms. It is very common for such outspoken growers to suddenly see their ranking fall drastically, costing them thousands of dollars. (Poultry grower witness testimony, hearing before the U.S. Senate Committee on Agriculture, Nutrition and Forestry; April 18, 2007)*

#### 4. CAPITAL INVESTMENT REQUIREMENTS

##### **What does it mean for producers when they are required to make additional capital investments? How does it impact them?**

*The company will come out say, "You have to do this, this and this or you get no more chickens in whatever contract you're in." That's no way to communicate with anybody, number one. It's going to make the person mad. Secondly...after 23 years of raising chickens, our contract was terminated because we refused to do demanded upgrades. And, you know, a few weeks... prior to receiving the termination letter for our contract, we were given an outstanding producer award by the very company that was terminating our contract. (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*Poultry houses are single-use structures and currently there is nothing else that can generate the revenue to equal poultry growing. You are completely at the company's demands. I personally know growers that have been cut off. Others have given in and borrowed the money to do the upgrades and are struggling under the additional debt to the point of bankruptcy. The small additional pay that the companies offer you to convert these houses does not even pay for the interest on the loans. (Poultry grower witness testimony, hearing of the U.S. House Agriculture Committee; April 17, 2007) (§201.216 and 201.217 would be applicable to this)*

*Growers without debt are growers that are in a position to say "no" to the company, or to insist on a better contract, because they have less to lose. So it's not surprising that as growers pay down their loans, the companies will often put pressure on them to take out new loans to upgrade their houses, even though the houses they originally built were constructed based on the company's own specifications. (Poultry grower witness testimony, hearing of the U.S. Senate Committee on Agriculture, Nutrition and Forestry; April 18, 2007)*

*Once I entered into my contract with ..... it became clear pretty quickly that there was nothing independent about this job. The companies mandate everything from farm upgrades to chicken disposal, and control every step of the process. They provide us with the chickens, the feed, and make sure that we are doing everything just how they say. Before they would even give me any chickens they insisted that I make improvements that cost over \$10,000. (USDA DOJ Workshop, May 21, 2010)*

*[Integrators] bring in a new grower's contract and you have to sign it before you can receive your next flock. And there's been no negotiation and no communication between the grower or a group growers for that company and negotiation of that contract with the integrator. So you either sign it or you don't receive your next flock. And when you have that kind of debt load over you, of course, you're going to choose to sign the contract. You feel that there's no other option when you owe, you know, a half a million dollars or a million dollars. (Seventh generation family farmer, USDA DOJ Workshop, May 21, 2010)*

*While growing for one of the 10 largest poultry companies at the time, the farmer contemplated making upgrades to his houses by switching from ventilating with positive pressure to negative pressure. In a consultation, the company's service technician suggested that it would be a waste of time. The farmer decided to not undertake the upgrades. The company was purchased by another company. The new company sent a letter to all growers dated Thursday, August 1, 2008, requiring negative pressure houses and stating that it would no longer place chickens in positive pressure houses effective August 18, 2008. The company never mentioned these upgrades to the*

*grower before he received the letter and was unwilling to extend the deadline to convert the houses. Unfortunately, the grower was unable to make the required upgrades in time. He is no longer growing birds and still owes money on his chicken houses as well as other related expenses.*

*If companies had to put up their own money for these expensive upgrades, I bet they'd think twice about doing it. They're using my money to test out expensive experiments. (Hog producer, GIPSA Town Hall Meeting, October 16, 2008)*

*And then the company... decide[s]...we're not going to grow this six pound bird anymore, we're going to grow a nine pound bird. So that means although you just built these houses four years ago, you're going to have to go back in debt \$80,000 because we want these big fans put in there. We want more cooling system put in there because we're going to this bigger bird and it's got to be cooled more. So the grower foots that expense for the company to grow the birds that's going to make them more money. And the thing about it is when you put those upgrades in sometimes like the companies will say, "Okay... you do this and we will give you a little bit extra." But that extra will never cash flow to the pay for that expense. And that's where the grower gets in pretty much debt problem. (Third generation farmer, USDA DOJ Workshop, May 21, 2010)*

*There's three growers in my county that were given a letter... on a Thursday that told them they had to make upgrades. The following Monday they got another letter. It said, "You're no longer an employee -- you're no longer a grower with this company". And since there's not another company in our area at that time, they were left without chickens and a mortgage that they could not pay. (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*I've been in the business for nine years. At that time I had a 7-year contract. Four years ago I changed integrators and I was given a 3-year contract. Last year I signed a new contract, flock-to-flock. What that means is every 60 days that's the only time I'm actually under contract to grow chickens. At the end of that 60 days, I can be terminated. I've personally borrowed a million and a half dollars. And everything I've got is mortgaged so I can be a poultry grower. I've got eight poultry houses, two dwelling houses, a hundred and eighty acres of land and all the life insurance policies I've got. As a poultry grower with everything I've been mortgaged, I had no choice but to sign that flock-to-flock contract. Like many of them of said, either I sign it or I ain't got no chickens. Without any chickens, I can't pay any bills. I can't pay my mortgage because chicken houses are designed for one thing, grow chickens. (Poultry grower, USDA DOJ Workshop, May 21, 2010)*

*Growers mortgage farms and homes based on an assumption that the relationship with the poultry company will be long term and mutually beneficial, but what we get is a growing agreement with no security at all. Contracts can be terminated at any time for any reason and as growers we have no recourse. Contracts can be changed at any time for any reason. And we're, you know, forced to sign a contract whether we like it or not on a take it leave it basis because, you know, we can either sign it or face bankruptcy. (Poultry grower, USDA DOJ Workshop, May 21, 2010 (§201.216 and §201.217 would be applicable to this)*

## 5. REASONABLE NOTICE

### **How does not getting reasonable notice of a suspension of birds impact poultry growers?**

*A grower explained that when he started raising chickens 3 years ago, the integrator with whom he contracted told him that he would be receiving at least six flocks per year. The first year, he received 6 flocks. The second and third years, he only received 5. His mortgage payments are based on receipt of 6 flocks a year, so he has fallen behind on payments. Had he received notice that he was going to have a longer layout time between flocks, this producer could have talked with his banker about rescheduling his payments. Some contracts are only for one flock and may provide for renewal as new flocks are delivered, but do not include any commitment to future flocks. Others may provide for a specified number of years in which the contract will apply, but do not establish how long the period between deliveries of flocks may be. This means that the company has the discretion as to when flocks will be delivered to the grower. When the companies choose to reduce their production levels due to market conditions or any other factors, they have the freedom to force longer periods between flocks. As the number of flocks per year decreases with the longer periods between flocks, growers' income is reduced dramatically, often causing them to default on loans and fail to pay their family living and farm operating expenses. (Rural advocate testimony, hearing of the U.S. Senate Committee on Agriculture, Nutrition and Forestry, April 18, 2007)*