

RAFI-USA

Rural Advancement Foundation International - USA

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PRESS RELEASE

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POULTRY GROWERS GAIN NEW PROTECTIONS

New rule issued by the USDA addresses unfair industry practices, leaves gaps

A new rule issued by the Department of Agriculture protects contract poultry farmers from unfair practices, but restrictions placed on the USDA by Congress mean important sections were left out, growers and advocates say.

The rule was released this morning by the USDA Grain Inspectors, Packers and Stockyards Administration. The 2008 Farm Bill required the USDA to write the rule but, in 2011, Congress prohibited the Administration from finalizing certain sections of its proposed rules.

“The protections in this rule are an over-due and hard-won step in the right direction,” said Becky Ceartas, contract agriculture reform program director at the Rural Advancement Foundation International – USA. “Hundreds of farmers have risked their livelihoods to speak up for this rule despite the threat of retaliation.”

“The Administration responded to farmers’ concerns and introduced some fairness and transparency into an industry that is plagued by exploitative contracts and an unequal balance of power between companies and farmers,” Ceartas said.

“We are disappointed that Congress chose to use a back-door channel in the appropriations process to limit the USDA’s ability to more fully address unfair practices by poultry companies,” said Ceartas. “Protecting farmers’ rights and providing them the information needed to make sound business decisions can only strengthen the industry.”

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Some of the sections that were not allowed to be written would have addressed retaliation by the companies against farmers, erosion of growers' rights to a trial by jury, and whether contracts are long enough for farmers to recoup at least 80 percent of their sizable investments.

"Today's rule is a good start, but this isn't over for us growers," said Arkansas poultry grower Mickey Box. "We are going to continue fighting for the rights that we deserve, and we are going to make sure that the rule we have is applied in a way that protects our farms."

The rule sets forth new criteria that the USDA will consider when determining if companies are acting in violation of the law when a poultry company suspends delivery of birds to a farmer, requires the farmer to make significant capital investments in upgrading equipment or facilities, takes action against the farmer for breach of contract, or includes provisions in their contracts with farmers that require disputes to be resolved through arbitration.

- *Suspension of Delivery of Birds:* Poultry companies' suspension of delivery of birds can cause severe financial harm to the farmers. Farmers' income and ability to make payments on loans to build and operate their poultry facilities are based on the number of flocks they receive each year.

The rules say that USDA will consider whether a poultry company gave the farmer an adequate written notice 90 days before the suspension when determining whether the suspension was unlawful. With 90 days notice, farmers can expect to have time to plan for the financial impact of suspended delivery of birds.

- *Additional Capital Investments:* If a poultry company requires farmers to make costly upgrades in equipment or facilities, it can have a severe impact on the profitability of the farmers' operations.

The rules say that USDA may consider several criteria when determining whether the company's requirement that farmers make costly upgrades is unlawful. These criteria include whether the company intends to or does close their processing facility within 12 months of the upgrade, if other farmers with similar facilities are required to make similar upgrades, if farmers were coerced or threatened with retaliation in order to get them to make the upgrades, or if farmers can reasonably expect to recoup their investment. Under these rules farmer may have more choice in when and how to invest additional money in upgrading their equipment and facilities.

- *Notice of Breach of Contract:* When poultry companies terminate a farmer's contract or take other adverse action due to an alleged breach of the contract the farmer's operation can be devastated.

The rules say that USDA may consider several criteria when determining whether the company provided the farmer with a reasonable period of time to remedy a breach. These criteria include whether the company gave the farmer a written notice explaining what the breach was and how it could be cured and whether the company provided a reasonable time to cure that breach or to rebut the allegation that there was a breach.

- *Arbitration Clauses:* Resolving contract disputes through arbitration can be costly for farmers and may fail to provide them with the full benefits of a court resolution. By establishing specific language that must be used to allow farmers to choose whether to be bound by an arbitration clause the rules provide a clear way for farmers to choose to keep their right to be heard in court without facing retaliation. Congress gave growers this right in 2008, but confusing contracts and complicated processes have made it hard for farmers to opt out of binding mandatory arbitration.

“The new rule addresses some very common and longstanding problems that farmers experience in this industry,” said North Carolina farmer Craig Watts. “There is still work to be done. But for now at least some ground rules have been established.”

Find more information at www.rafiusa.org/rule.

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