

New Regulations Protect Contract Poultry Growers

Recent USDA regulations offer contract poultry growers protection from certain unfair practices. As a contract poultry grower, your relationship with the poultry company is governed by your contract. You have certain rights beyond that contract under a federal law called the Packers and Stockyards Act. The details of your rights under the Packers and Stockyards Act are described in regulations. The Packers and Stockyards Act is a law designed to prohibit unfair, deceptive, and unjust discriminatory practices in the livestock and poultry industries. On December 9, 2011, USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) published new regulations for poultry contracts that will take effect on February 7, 2012.

Understanding the New Regulations

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

Suspension of Delivery of Birds:

The USDA may consider the following items when determining whether or not a poultry company gave reasonable notice before it suspends delivery of birds to a grower:

- Was written notice given at least 90 days prior to the date the company intends to suspend delivery of birds?
- Does the notice adequately state the reason for the suspension, the length of the suspension, and the anticipated date the delivery of birds will resume?
- Did a catastrophic or natural disaster or other emergency, such as an unforeseen bankruptcy, occur to prevent the company from providing reasonable notice?

A suspension of delivery of birds occurs when the company has not delivered a new flock by the close of the fifteenth day following the week in which the previous flock of poultry was slaughtered.

Upgrades:

The USDA may consider several criteria when determining whether a poultry company's requirement that growers make costly upgrades to equipment or facilities is unlawful. These criteria include the age and number of recent upgrades to, or capital investments in, the grower's operation, and whether:

- The company allowed the grower to exercise his/her own discretion in deciding whether or not to make the upgrade;
- The grower was coerced, retaliated against, or threatened with retaliation or coercion in order to get him/her to make the upgrade;
- The company intends to or does close the processing facility or substantially reduces the production operations within 12 months of requiring the upgrade (absent a catastrophe or natural disaster, or other emergency, such as an unforeseen bankruptcy);
- Other growers with similar facilities are required to make similar upgrades;
- The grower can reasonably expect to recoup the cost of the upgrade;
- The grower was given a reasonable period of time to implement the upgrade; and
- The upgrade is to equipment that the company previously approved and accepted and that is functioning as it was intended to function, unless the company provides adequate compensation incentives to the grower.

An upgrade is defined as a combined amount of \$12,500 or more per structure paid by a grower over the life of the poultry growing arrangement. The USDA has said that it will interpret a poultry growing arrangement to mean the full duration of the relationship between a grower and a company, not necessarily duration of just one contract.



Reasonable Period of Time to Remedy a Breach of Contract:

The USDA may consider several criteria when determining whether a poultry company provided the grower with a reasonable period of time to remedy a breach. These criteria include whether the company gave the grower a written notice of the breach of contract upon initial discovery of the breach if the company intends to take an adverse action, such as termination of the contract or growing arrangement. The criteria also address whether the written notice contains the following information:

- A description of the act or omission believed to be a breach of contract,
- The date of the breach,
- Means by which the grower can remedy the breach, and
- A date that provides reasonable time by which the breach must be remedied.

Additional criteria that USDA may consider include:

- Whether the company took into account a grower's ongoing responsibilities related to the raising of the animals when establishing the date by which the breach should be remedied and
- Whether the grower was afforded adequate time from the date of the notice of the breach to rebut the allegation of a breach.

Arbitration Clauses:

Any poultry contract that is entered into, amended, altered, modified, renewed or extended after February 7, 2012, that requires the use of arbitration to resolve disputes between the grower and the company, must have the following language on the signature page of the contract in bold print:

Right to Decline Arbitration. A poultry grower, livestock producer or swine production contract grower has the right to decline to be bound by the arbitration provisions set forth in this agreement. A poultry grower, livestock producer or swine production contract grower shall indicate whether or not it [sic] desires to be bound by the arbitration provisions by signing one of the following statements; failure to choose an option will be treated as if the poultry grower, livestock producer or swine production contract grower declined to be bound by the arbitration provisions set forth in this Agreement:

- I decline to be bound by the arbitration provisions set forth in this Agreement _____
- I accept the arbitration provisions as set forth in this Agreement _____

Breeder and Pullet Hens Covered:

Breeder flock, laying hen, and pullet growers, except those involved in the table egg sector, are now covered under the Packers and Stockyards Act. Previously GIPSA interpreted the Act to apply in the chicken industry only to broiler growers. The new rule states that all of the regulations that generally apply to live poultry dealers apply to all stages of the dealer's poultry production, including to the pullet, laying hen, and breeder flock stages.

What if the company does not comply?

You can call the Grain Inspection, Packers and Stockyards Administration (GIPSA) toll-free at 1-800-998-3447 to report possible violations of the Packers & Stockyards Act. GIPSA is the agency authorized to investigate complaints of violations of the Act. Even if the particular situation that gives rise to your complaint is not described exactly in one of the above sections, you should still call GIPSA, because there are other regulations under the Packers and Stockyards Act that protect growers. You may report a complaint anonymously, but you need to leave your phone number for them to call you back. You can also contact a private attorney with experience in this area of the law.

For more information

These materials provide a general overview of the regulations that were issued by GIPSA on December 9, 2011. For further information about these rights and other rights protected by the Packers and Stockyards Act regulations, contact Becky Ceartas at RAFI-USA - 919-542-1396, x209, becky@rafiusa.org, PO Box 640, Pittsboro, NC 27312; consult an attorney with experience in this area of law; or go to <http://www.gipsa.usda.gov>.