

Policy Pennings by Daryll E. Ray & Harwood D. Schaffer

Arbitration, adequate notice, required upgrades among issues addressed in GIPSA proposed rule

For the most part, the list of recommended actions offered by Taylor and Domina in their testimony before the Joint U.S. Department of Justice and U.S. Department of Agriculture/GIPSA Public Workshop on Competition Issues in the Poultry Industry, held May 21, 2010 in Normal, Alabama (<http://www.competitivemarkets.com/images/stories/2010Newsletters/taylorgipsa.pdf>), deals with different issues from the proposed rule published in the Federal Register on June 22, 2010 by the US Department of Agriculture (USDA) Grain Inspection, Packers, and Stockyards Administration (GIPSA) (<http://archive.gipsa.usda.gov/rulemaking/fr10/06-22-10.pdf>).

Taken together, they cover many of the issues that farmers involved in contract meat production have raised in numerous public hearings. It was pressure from contract growers that resulted in wording in the 2008 Farm Bill that required the USDA to develop and issue the June 22, 2010 proposed rule.

Taylor and Domina's first five recommendations, which we listed in an earlier column and are available in their paper, call for improvements in the information available to farmers—information that is currently available to the integrators, but not growers. The lack of its public availability puts prospective and current growers at a disadvantage. USDA's proposed rule does not deal with this important issue.

Likewise, the USDA proposed rule does not deal with Taylor and Domina's two recommendations dealing with bankers and bank regulation nor with their recommendations that growers be less trusting of representations made by integrators and that "contracts must clearly state who owns used litter and waste."

One could argue that Taylor and Domina's call for a "balance of power in contracting" is the reason the 2008 Farm Bill required the USDA to develop the proposed rule.

The proposed rule includes a lengthy section on arbitration that includes more than Taylor and Domina's recommendation that mandatory contract arbitration be ended. The proposed rule states that a producer has the right to decline to be bound by the arbitration agreement that is set forth in the contract offered by the integrator. What is not clear is if the companies can refuse to contract with those who decline arbitration or if the companies can offer a lower pay scale or be quicker to cancel the contracts for minor issues.

In addition, the proposed rule describes criteria that the Secretary may consider when determining whether the arbitration process provided in a contract provides a meaningful opportunity for the poultry grower, livestock producer, or swine production contract grower to participate fully in the arbitration process.

One criterion is whether the poultry grower, livestock producer, or swine production contract grower is provided access to and opportunity to engage in a reasonable discovery of information held by the packer, swine contractor, or live poultry dealer. This potential for "discovery" may provide growers with information they have previously lacked in defending themselves against accusations by the integrators.

Another issue touched on by both Taylor and Domina and the USDA is the public availability of contract information. If the proposed rule is finalized as written, it would require packers, swing contractors, and live poultry dealers to provide GIPSA with sample copies of contracts within 10 business days of entering into the agreement with a grower or producer to increase transparency in the use of contracts and allow producers to make more informed business decisions.

Because it is in the public interest that sample copies of each unique contract be made public, except for provisions containing trade secrets, confidential business information, and personally identifiable information, GIPSA may post on its website a copy of each unique contract it receives.

Any requirement that a poultry grower or swine production contract grower make capital investments as a condition to enter or continue a growing arrangement or production contract must be accompanied by a contract duration of a sufficient period of time for the grower to recoup 80 percent of the cost of the required capital investment. These contracts would still be subject to the contractual rights dealing with growers and producer misconduct.

This 80 percent requirement is in line with Taylor and Domina's recommendation that contracts be for longer time periods.

The proposed rule also states that no packer, swine contractor, or live poultry dealer may require an additional capital investment from a poul-

Cont. on p. 2

Arbitration, adequate notice, required upgrades among issues addressed. . .

Cont. from p. 1

try grower or swine production contract grower who has given to the packer, swine contractor, or live poultry dealer written notice of intent to sell the grower's or producer's farm and facilities, unless notice of such additional capital investment was given at least 90 days prior to the producer's or grower's notice of intent to sell.

In addition, no packer, swine contractor, or live poultry dealer shall require equipment changes on equipment previously approved and accepted by the packer, swine contractor, or live poultry dealer if existing equipment is in good working order unless the packer, swine contractor, or live poultry dealer provides adequate compensation incentives to the poultry grower or swine production contract grower.

No packer, swine contractor, or live poultry dealer shall reduce the number of birds/swine placed with a poultry grower or swine production contract grower or terminate a growing arrangement or production contract based solely on the failure of a grower or producer to make equipment changes so long as existing equipment is in good working order.

In the next column we will examine the remaining items in the proposed rule.

Daryll E. Ray holds the Blasingame Chair of Excellence in Agricultural Policy, Institute of Agriculture, University of Tennessee, and is the Director of UT's Agricultural Policy Analysis Center (APAC). Harwood D. Schaffer is a Research Assistant Professor at APAC. (865) 974-7407; Fax: (865) 974-7298; dray@utk.edu; <http://www.agpolicy.org>.