

PolicyPennings by Dr. Daryll E. Ray

New poultry contract rules designed to better protect growers

On December 3, 2009, the United States Department of Agriculture (USDA) issued a final rule regarding the records that live poultry dealers must furnish poultry growers, including requirements for the timing and contents of poultry growing arrangements. The USDA says the new rule, which takes effect January 4, 2010, will "increase fairness and equity in the poultry industry by amending regulations under the Packers and Stockyards Act of 1921 to provide poultry growers with new information and improve transparency in poultry growing arrangements."

"This new rule will provide much-needed information and basic protections for poultry growers that will enable them to make better business decisions and safeguard their livelihood," said USDA Secretary Thomas Vilsack. The final rule can be found at <http://archive.gipsa.usda.gov/rulemaking/fr09/12-3-09.pdf>.

The proposed rule was published in the "Federal Register" on August 1, 2007, and the comment period ended October 30, 2007. During the comment period, the USDA Grain Inspection, Packers, and Stockyards Administration (GIPSA) received 449 comments on the proposed rules. In some of the strongest language we have seen coming from GIPSA in recent years, the agency laid out the rationale for issuing the new rule.

The agency writes, "We believe that the failure to disclose certain terms in a poultry growing arrangement constitutes an unfair, discriminatory, or deceptive practice in violation of section 202 (7 U.S.C. 192) of the P&S Act (Packers and Stockyards Act).

"It is common knowledge in the industry that because of vertical integration and high concentration, live poultry dealers normally present poultry growers with poultry growing arrangements on a "take it or leave it" basis. The poultry growers do not realistically have the option of negotiating more favorable poultry growing arrangement terms with another live poultry dealer because there may be no other live poultry dealers in the poultry grower's immediate geographic area or there may be significant differences in equipment requirements among live poultry dealers.

"There is considerable asymmetry of information and an imbalance in market power. Growers sometimes do not know or understand the full content of their own poultry growing arrangement with the poultry companies and are constrained by confidentiality clauses from discussing their poultry growing arrangement with business advisers. This final rule en-

ures that all poultry growers are fully informed and can make sound business decisions prior to entering into a poultry growing arrangement with a live poultry dealer.

"In addition, growers often have much of their net worth invested in poultry houses, which have limited value for purposes other than raising and caring for poultry. At the same time, live poultry dealers may have a staff of accountants, economists, attorneys and other business advisors whose job is to perform market research and advise the live poultry dealers' management on how poultry growing arrangements with poultry growers should be structured to protect the live poultry dealers' financial interests.

"Growers who have invested heavily in poultry houses may face the choice of signing a poultry growing arrangements in which disclosure of terms is incomplete and/or not provided in a timely fashion or facing financial difficulties, including possibly exiting the poultry growing business or going bankrupt. In some cases, live poultry dealers already provide complete information in a timely fashion. This final rule, however, will level the playing field by requiring that all live poultry dealers adopt fair and transparent practices when dealing with poultry growers."

GIPSA describes the poultry market, noting, "The market for poultry is vertically integrated and highly concentrated. For example, USDA-GIPSA reported in 2005 that the top four poultry slaughterers represented 53 percent of the total market share based on volume of production." Further on in their justification for their rulemaking, the agency writes, "GIPSA records for 2007 indicated that there were 20,637 poultry growing arrangements of which 13,216, or 64 percent, were held by the largest 6 live poultry dealers, and 95 percent (19,605) were held by the largest 21 live poultry dealers."

At another point in the rule, GIPSA wrote "While this concentration of live poultry dealers represents certain economies of scale, it also represents a potential for asymmetrical information and a lack of transparency that can lead to market inefficiencies."

By way of contrast, the growers are all small businesses. Given this imbalance in power, "a majority of the nation's 20,637 poultry growers essentially receive poultry growing arrangements on a 'take it or leave it' basis from a small number of live poultry dealers." Elsewhere in the document, GIPSA says that

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while "live poultry dealers accept much of the short term financial risk [the] poultry growers take the longer term financial risk by investing in the poultry houses and equipment."

Before reviewing the four areas of change in the rule in next week's column, we want to take a few moments and consider the potential implications of this kind of USDA action on behalf of farmers by the current administration.

Will we see a greater willingness on the part of GIPSA to vigorously enforce the Packers and Stockyards Act under Vilsack's tenure as Secretary of Agriculture?

Contractual production has become increasingly prevalent in other agricultural sectors, particularly pork

and tobacco. Compared to poultry, those contractual arrangements are closer to the "honeymoon" period with fewer lapsed years that require re-negotiations and extensions.

The issuance of the poultry rules could telegraph a regulatory environment helpful to those other farmers using contractual arrangements, should similar problems arise.

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