

GIPSA Farm Bill Final Rule



- **Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008 (Farm Bill);**
 - Suspension of Delivery of Birds,
 - Additional Capital Investment Criteria,
 - Breach of Contract, and
 - Arbitration.

GIPSA Farm Bill Rule History



- **2008 Farm Bill** June 2008
- **Public Meetings** Fall 2008
- **Proposed Rule Published** June 2010
- **Comment Period Closes** November 2010
- **Final Rule Published** December 2011
- **Effective Date** February 7, 2012

Agriculture Appropriations Rider (Sec. 721)



- No funds may be used to write, prepare, or publish regulations required Under Title XI, of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act
 - Annual cost must be less than \$100,000,000
 - May not be used to publish a final or proposed sections:
 - ✦ 201.2(1), 201.2(t), 201.2(u) – Definitions (tournament system, competitive injury, and likelihood of competitive injury)
 - ✦ 201.3(c) – Competitive injury
 - ✦ 201.210 – Unfair practices
 - ✦ 201.211 – Unreasonable preference
 - ✦ 201.213 – Sample contracts
 - ✦ 201.214 – Tournament system
 - Must be published no later than December 9, 2011
 - Must provide 60 days from the publication date to effective date

§201.2 Terms defined



- (m) *Principal part of performance*
 - means the raising of, and caring for livestock or poultry, when used in connection with a livestock or poultry production contract.
- (n) *Additional capital investment*
 - means a combined amount of \$12,500 or more per structure paid by a poultry grower or swine production contract grower over the life of the poultry growing arrangement or swine production contract beyond the initial investment for facilities used to grow, raise and care for poultry or swine. Such term includes the total cost of upgrades to the structure, upgrades of equipment located in and around each structure, goods and professional services that are directly attributable to the additional capital investment. The term does not include costs of maintenance or repair.
- (o) *Suspension of delivery of birds*
 - means the failure of a live poultry dealer to deliver a new poultry flock before the date payment is due to a poultry grower for the previous flock under section 410 of the Act.

§ 201.3 Applicability of regulations in this part



- (a) *Applicability to live poultry dealers*
 - The regulations in this part when applicable to live poultry dealers shall apply to all stages of a live poultry dealer's poultry production, including pullets, laying hens, breeders and broilers, excluding egg-type pullets, hens that only produce table eggs, and breeder flocks for the egg industry.
- (b) *Effective dates*
 - The regulations in this part, when governing or affecting contracts, shall apply to any poultry growing arrangement, swine production contract, or any other livestock or poultry contract entered into, amended, altered, modified, renewed or extended after **February 7, 2012**.

§ 201.215 Suspension of delivery of birds



- The Secretary may consider various criteria when determining whether or not reasonable notice has been given by a live poultry dealer to a poultry grower for suspension of delivery of birds. These criteria include, but are not limited to:
 - (a) Whether a live poultry dealer provides a poultry grower written notice at least 90 days prior to the date it intends to suspend delivery of birds under a poultry growing arrangement;
 - (b) Whether the written notice adequately states the reason for the suspension of delivery, the length of the suspension of delivery, and the anticipated date the delivery of birds will resume; and
 - (c) Whether a catastrophic or natural disaster, or other emergency, such as an unforeseen bankruptcy, has occurred that has prevented a live poultry dealer from providing reasonable notice.

Section 410 of the Act requires payment for poultry under a poultry growing arrangement be made by the close of the fifteenth day following the week in which the poultry is slaughtered.

§ 201.216 Additional capital investments criteria



- **The Secretary may consider various criteria in determining whether a requirement that a poultry grower or swine production contract grower make additional capital investments over the life of a production contract or growing arrangement constitutes a violation of the Act. These criteria include, but are not limited to:**
 - (a) Whether a packer, swine contractor or live poultry dealer failed to give a poultry grower or swine production contract grower discretion to decide against the additional capital investment requirement;
 - (b) Whether the additional capital investment is the result of coercion, retaliation or threats of coercion or retaliation by the packer, swine contractor or live poultry dealer;
 - (c) Whether the packer, swine contractor or live poultry dealer intends or does substantially reduce or end operations at the slaughter plant or processing facility or intends or does substantially reduce or end production operations within 12 months of requiring the additional capital investment, absent the occurrence of a catastrophic or natural disaster, or other emergency, such as unforeseen bankruptcy;

§ 201.216 Additional capital investments criteria



- (d) Whether the packer, swine contractor, or live poultry dealer required some poultry growers or swine production contract growers to make additional capital investments, but did not require other similarly situated poultry growers or swine production contract growers to make the same additional capital investments;
- (e) The age and number of recent upgrades to, or capital investments in, the poultry grower's or swine production contract grower's operations;
- (f) Whether the cost of the required additional capital investments can reasonably be expected to be recouped by the poultry grower or swine production contract grower;
- (g) Whether a reasonable time period to implement the required additional capital investments is provided to the poultry grower or swine production contract grower; and
- (h) Whether equipment changes are required with respect to equipment previously approved and accepted by the packer, swine contractor, or live poultry dealer, if existing equipment is functioning as it was intended to function unless the packer, swine contractor, or live poultry dealer provides adequate compensation incentives to the poultry grower or swine production contract grower.

§ 201.217 Reasonable period of time to remedy a breach of contract



- The Secretary may consider various criteria when determining whether a packer, swine contractor or live poultry dealer has provided a poultry grower or swine production contract grower a reasonable period of time to remedy a breach of contract that could lead to contract termination. These criteria do not limit a packer, swine contractor or live poultry dealer's rights under a contract or agreement where food safety or animal welfare is concerned. These criteria, include, but are not limited to:
 - (a) Whether the packer, swine contractor or live poultry dealer provided written notice of the breach of contract to the poultry grower or swine production contract grower upon initial discovery of that breach of contract if the packer, swine contractor or live poultry dealer intends to take an adverse action, including termination of a contract, against the poultry grower or swine production contract grower based on that breach of contract by the poultry grower or swine production contract grower;

§ 201.217 Reasonable period of time to remedy a breach of contract



- (b) Whether the notice in paragraph (a) includes the following:
 - ✦ (1) A description of the act or omission believed to constitute a breach of contract, including identification of the section of the contract believed to have been breached;
 - ✦ (2) The date of the breach;
 - ✦ (3) The means by which the poultry grower or swine production contract grower can satisfactorily remedy the breach, if possible, based on the nature of the breach; and
 - ✦ (4) A date that provides a reasonable time, based on the nature of the breach, by which the breach must be remedied.
- (c) Whether the packer, swine contractor or live poultry dealer took into account the poultry grower's or swine production contract grower's ongoing responsibilities related to the raising and handling of the poultry or swine under their care when establishing the date by which a breach should be remedied; and
- (d) Whether the poultry grower or swine production contract grower was afforded adequate time from the date of the notice of the alleged breach to rebut the allegation of a breach.

§ 201.218 Arbitration



- (a) In any livestock or poultry production contract that requires the use of arbitration the following language must appear on the signature page of the contract in bold conspicuous 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 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 _____”

§ 201.218 Arbitration



- (b) The Secretary may consider various criteria when determining whether the arbitration process provided in a production contract provides a meaningful opportunity for the poultry grower, livestock producer, or swine production contract grower to participate fully in the arbitration process. These criteria include, but are not limited to:
 - ✦ (1) Whether the contract discloses sufficient information in bold, conspicuous print describing all the costs of arbitration to be paid by the poultry grower, swine production contract grower, or livestock producer, and the arbitration process and any limitations on legal rights and remedies in such a manner as to allow the poultry grower, livestock producer or swine contract production grower to make an informed decision on whether to elect arbitration for dispute resolution;
 - ✦ (2) Whether provisions in the entire arbitration process governing the costs and time limits are reasonable;
 - ✦ (3) Whether the poultry grower, livestock producer, or swine production contract grower is provided access to and opportunity to engage in reasonable discovery of information held by the packer, swine contractor or live poultry dealer;
 - ✦ (4) Whether arbitration is required to be used to resolve only disputes relevant to the contractual obligations of the parties; and
 - ✦ (5) Whether a reasoned, written opinion based on applicable law, legal principles and precedent for the award is required to be provided to the parties.

GIPSA Compliance Rate



■ 2008 ■ 2009 ■ 2010 ■ 2011

