



National Chicken Council

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Information for Growers on the GIPSA Proposed Rules

The U.S. Department of Agriculture's Grain Inspection, Packers & Stockyards Administration (GIPSA) has released proposed new regulations that directly affect the production contracts that exist between poultry growers and integrators. These regulations are being touted by some as "good for growers." In reality, if allowed to stand, these regulations will actually take money out of the pockets of the hardest-working, most progressive growers. Here's a look at some of the specific rules on poultry contracts and how they might affect you if they are finalized as proposed.

"Tournament" System

GIPSA wants to change the so-called "tournament" system of performance-based compensation for contract poultry growing. The proposed rules do not ban the tournament system of pay. Instead they mandate a redistribution of the money available in that tournament system. The proposed changes will **hurt** the more efficient and progressive growers – taking money right out of their pockets. Here's how:

The proposed rule says:

"No live poultry dealer shall offer a poultry growing arrangement containing provisions that decrease or reduce grower compensation below the base pay amount."

But the base pay specified in most contracts is an average. Growers with lower costs get more pay and growers with higher costs get less. Saying that no one can be *compensated* below the average is like saying that no one *performs* below average – which everyone knows isn't true.

The rule means either:

Growers with below-average results will be paid the same as average growers – which will leave nothing extra for above-average growers. Everyone will be paid at the same rate.

or

Companies will have to redefine the “base” to a figure closer to the “minimum” that is now paid, so that below-average growers will get more pay – but above-average growers will get less.

Each integrator will have to decide whether and how to adjust base pay if the rules go into effect as proposed. Results will vary from company to company, and no one can say for sure how it will turn out. But here’s a comparison using some hypothetical numbers.

SAMPLE ONLY

EXAMPLES OF COMPENSATION UNDER THE PROPOSED GIPSA RULE

All figures are hypothetical and are used for illustration only

Showing compensation per pound of product

Category	Now	All at base	Revised base
Above Average	\$0.060	\$0.050	\$0.055
Average	\$0.050	\$0.050	\$0.050
Below Average	\$0.040	\$0.050	\$0.045

Either way you cut it, the above-average growers lose out.

Incentives

If the grower loses some or all of the compensation he now gets for superior performance, what is his incentive to work hard, pay attention to his operation, put in the extra time, and invest money in new or improved facilities? If compensation is the same or nearly the same, why should you work harder and take more risk than the average or below-average grower? GIPSA doesn’t say.

Availability of financing

Anyone who has been to the bank for any kind of loan lately knows that it is getting harder to borrow money. More documentation is being demanded by loan officers. Under the existing system, banks are usually willing to lend money to poultry growers who can show that their contracts will “cash-flow.” But if the base pay is reduced, or the grower can’t expect to receive above-average compensation, then how can he expect to get a loan? The “base pay” changes included in GIPSA’s proposed rule will likely make it more difficult for growers to obtain loans.

Comparison of housing

The proposed GIPSA rule also says:

“Live poultry dealers must rank growers in settlement groups with other growers with like house types.”

GIPSA doesn't bother to define “house types” (although definitions are provided for some other terms in the proposed rule). Presumably this means that tunnel-ventilated houses and conventional houses would have to be in separate groups.

Since results for tunnel houses are usually (but not always) better than conventional, especially in the summer, separating them out will mean that the ranking for tunnel houses will be tighter. Once again, the more progressive and efficient growers will be squeezed and will make *less* money. This proposed rule change is especially unfair to those growers that have invested in premium or tunnel houses in recent years. This rule will deprive those growers of the competitive advantage they have enjoyed in the settlement process and will reward those growers who have not made the same investments.

Litigation

These rules were drafted by J. Dudley Butler, a plaintiffs' attorney who for over 20 years made his living bringing lawsuits against agribusiness companies. Therefore, it is no surprise that the rules benefit plaintiffs lawyers first and foremost. They include many vague provisions that would have to be interpreted in court. GIPSA itself has said that the proposed rules create a situation that “warrants judicial reexamination of the issues,” i.e., lawsuits.

The rules will invite lawyers to bring endless lawsuits against the companies over every act that they may want to argue is “unfair,” “unreasonable” or “distorts competition.” Mr. Butler, himself, has said that “when you have a term like ‘unfair’ or ‘unreasonable’ . . . that's . . . a plaintiff's lawyers dream.” The losers in this process will be the growers who like the system and don't go to court, since their compensation will be reduced to satisfy the demands of plaintiffs' lawyers. GIPSA's proposed rules seek to make the “dreams” of plaintiffs' lawyers come true on the backs of hardworking, progressive poultry growers.

A Threat To All Growers

The proposed regulations might seem like a “win” for growers who usually have below-average results. In reality, the “win” would be short-lived. Over the longer term, the regulations would threaten the entire system of broiler production. That’s because they would drive innovation, competition and high performance out of the system and reduce the efficiency of the domestic poultry industry. This is a threat to ALL growers, because it threatens the sustainability of their industry and their way of life. Over the long term, the only real “winners” will be plaintiffs’ lawyers and foreign competitors.

Role of Government

You might ask, why is the GIPSA doing this? The answer seems to be GIPSA is responding to the complaints of a few growers (and some livestock producers) who have complained about the existing system.

But many poultry growers feel that government should stay out of the relationship between growers and integrators beyond enforcing the laws and regulations that already exist. If the system works for the benefit of most producers, companies, and consumers, why should government get more involved? It’s called “private enterprise” for a good reason.

What You Can Do

If you don’t like the proposed GIPSA rules, you have the right and the opportunity to make your voice heard.

You can contact the members of the U.S. Senate and U.S. House of Representatives from your state and Congressional district to let them know what you think and ask them what they are going to do about this proposed rule.

GIPSA itself is required to consider comments from the public before finalizing the proposed rule. We encourage you to write to GIPSA to express your opinion.

Be sure to include the following reference:

Re: Farm Bill Comments, Federal Register, June 22, 2010, Vol. 75, No. 119, page 35338, Docket RIN 0580-AB07

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Send your comment in one of the following ways:

by U.S. Mail:

Tess Butler
GIPSA
USDA
1400 Independence Avenue, SW
Room 1643-S
Washington, DC 20250-3604

By Fax: (202) 690-2173

By E-mail: comments.gipsa@usda.gov

By Internet: Go to the Federal e-Rulemaking Portal: <http://www.regulation.gov>.

Click once on “Submit a comment.”

In the box that says “Enter keyword or ID,” enter **0580-AB07** and hit “Search”

Under “Actions,” hit “submit a comment” and fill in the form that comes up.

All comments will become a matter of public record.

For more information, contact your integrator or:

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