



# Consumer Federation of America

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March 24, 2017

## VIA ELECTRONIC SUBMISSION

Randall D. Jones  
Acting Administrator  
Grain Inspection Packers and Stockyards Administration  
U.S. Department of Agriculture  
1400 Independence Ave., SW  
Washington, DC 20250

**Re: Interim Final Rule on Scope of Sections 202(a) and (b) of the Packers and Stockyards Act (GIPSA-2016-PSP-0009-RULEMAKING-0001); Proposed Rule on Poultry Grower Ranking Systems (GIPSA-2016-PSP-0010-RULEMAKING-0001); and Proposed Rule on Unfair Practices and Undue Preferences in Violation of the Packers and Stockyards Act (GIPSA-2016-FGIS-0008-RULEMAKING-0001)**

Dear Mr. Jones:

The Consumer Federation of America (CFA) appreciates the opportunity to submit these comments on the above-referenced protections for farmers and fair and competitive markets, which are long overdue. CFA has submitted extensive joint comments with other partners of the Coalition for Contract Agriculture Reform (CCAR). We write separately to emphasize consumers' interest in fair, transparent, and competitive markets, which these rules would promote.

The meatpacking industry is more concentrated than ever before. According to USDA estimates, the four largest U.S. poultry processors control 51 percent of the broiler market and 57 percent of the turkey market. Over half of poultry growers must depend on just one or two processors in their state or region.<sup>1</sup> This type of concentration leaves family farmers vulnerable to unfair, uncompetitive, and retaliatory practices. It also operates to deny options to consumers who wish to support independent livestock farmers, or production practices that address environmental, public health, food safety, social welfare, animal welfare, and other concerns related to large-scale industrial animal agriculture. The proposed rules on poultry grower ranking systems and on unfair practices under the Packers and Stockyards Act (P&S Act), and the Interim Final Rule reinstating the Grain, Inspection, Packers and Stockyard Administration's (GIPSA) longstanding interpretation of key P&S Act protections for farmers and ranchers, all represent important steps toward a less concentrated animal protein market that better supports rural economies and better satisfies consumer demand.

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<sup>1</sup> USDA. Press Release: USDA Announces Farmer Fair Practices Rules - Clarifications for Industry & Protections for Farmers, Release No. 0263.16 (Dec. 14, 2016), <https://www.usda.gov/media/press-releases/2016/12/14/usda-announces-farmer-fair-practices-rules-clarifications-industry>.

These rules are long overdue. As indicated in our comments with CCAR, GIPSA proposed rules in 2010 that would have better promoted farmers' and consumers' interests. In response to opposition from large meatpackers and their allies, GIPSA issued a significantly weaker version of the rules in 2011, then Congress passed a series of appropriations riders to block the rules. In 2015, the comedian and television host John Oliver presented a segment on abusive practices in the poultry industry.<sup>2</sup> The segment featured a number of aggrieved contract chicken growers, and referenced studies citing the high proportion of contract chicken growers living in poverty.<sup>3</sup> In part due to the public outcry after the show aired, this rulemaking process was revived.

The unprecedented concentration in the meatpacking industry has spawned a situation that is ripe for exploitation of contract farmers. The inequities in the current system may contribute to lower prices for certain meat and poultry products in stores, but they also create hidden costs that far exceed the benefits of those supermarket savings, particularly for rural communities.<sup>4</sup> Opponents of the rules claim that they will create frivolous lawsuits, and could even harm animal welfare by “eliminating competition and the incentive to provide the best care possible on the farm.”<sup>5</sup> Even a cursory examination of the rules, however, not to mention common sense, indicates otherwise.

The Interim Final Rule on Scope of Sections 202(a) and (b) of the P&S Act supersedes a controversial line of case law, beginning with the 2005 11th Circuit Court of Appeals decision in the *London vs. Fieldale Farms*, which requires that a farmer alleging an “unfair, unjustly discriminatory, or deceptive practice” under the Packers and Stockyards Act (P&S Act) must show that the practice “adversely affects competition” or is likely to do so. This requirement is absent in the statute and contrary to the longstanding interpretation of both Democratic and Republican administrations. We agree with the agency that the interim final rule “promotes fairness and equity for livestock producers, swine production contract growers, and poultry growers,” and that the “benefit of additional enforcement of the P&S Act will accrue to all segments of the value chain in the production of livestock and poultry, and ultimately to consumers.”

Similarly, we agree that the Proposed Rule on Unfair Practices and Undue Preferences will advance this objective, subject to the objections we raised in our joint comments, in particular with respect to the “legitimate business justification” provision. By defining key terms like “retaliation” and by prohibiting contracts that force contract growers to forfeit legal rights like recourse to a jury trial, this Proposed Rule establishes common sense protections for growers. Likewise, the Proposed Rule on Poultry Grower Ranking Systems recognizes how “ranking systems,” by which poultry processors commonly pay growers, are “unfair” or “unjustly discriminatory” in violation of the law.

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<sup>2</sup> See “Chickens: Last Week Tonight with John Oliver” (May 17, 2015) *available at*: <https://www.youtube.com/watch?v=X9wHzt6gBgl>.

<sup>3</sup> See The Pew Charitable Trusts. “The Business of Broilers: Hidden Costs of Putting a Chicken on Every Grill.” (Dec. 13, 2013), <http://www.pewtrusts.org/en/research-and-analysis/reports/2013/12/20/the-business-of-broilers-hidden-costs-of-putting-a-chicken-on-every-grill> (noting “that 71 percent of growers whose sole source of income was chicken farming were living below the poverty line.”).

<sup>4</sup> See *id.* (detailing the costs of improper waste management from poultry operations, and the failure of poultry processing companies to take responsibility for waste management.).

<sup>5</sup> Statement of Chicken Council President Mike Brown (Dec. 14, 2016), <http://www.nationalchickencouncil.org/obama-administration-strangles-poultry-livestock-producers-new-controversial-regulations/>

For example, the rule clarifies that a poultry processor cannot penalize a grower in a ranking pool by sending her weaker chicks. The proposed rule similarly contains a “legitimate business justification” loophole, which will allow many abuses to continue, but it is a good start.

Thank you for the opportunity to submit these comments.

Sincerely,

Thomas Gremillion  
Director  
Food Policy Institute  
Consumer Federation of America