

# Breeding Change — Legislative Remedies for Contract Growers

## Part II: The Federal Packers and Stockyards Act

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*Last issue, we presented Part I of a three-part series concerning legislative remedies for contract poultry growers. That article explained the state laws that govern contract poultry and vegetable farming arrangements in Minnesota.<sup>1</sup> This article is Part II of that series. It will explain changes that poultry growers advocate in the federal Packers and Stockyards Act<sup>2</sup> and its implementing regulations.<sup>3</sup>*

The Packers and Stockyards Act (P&S Act) is designed to eliminate certain unfair<sup>4</sup> practices and monopoly practices in the livestock and poultry industries. Although most of the P&S Act has been in effect since 1921, many of the provisions that apply to poultry producers<sup>5</sup> were added in 1987 by legislation called the Poultry Producers Financial Protection Act.<sup>6</sup>

There are many, many ways in which poultry growers would like to see the P&S Act changed. Most of the desired changes have to do with giving growers better and broader protection from unfair practices and with giving the Packers and Stockyards Administration (P&S Administration) more power to enforce poultry growers' rights.

### How to Create Change

To accomplish some of the desired changes, growers need to have the United States

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<sup>1</sup> "Breeding Change—Legislative Remedies for Contract Growers, Part I: Minnesota State Law," *Farmers' Legal Action Report / Minnesota Family Farm Law Update*, Vol. 7, No. 4 (Autumn 1992).

<sup>2</sup> 7 U.S.C. § 181, *et seq.*

<sup>3</sup> 9 C.F.R. Part 201.

<sup>4</sup> The P&S Act prohibits any "unfair, unjustly discriminatory, or deceptive practice or device." 7 U.S.C. § 192(a). Throughout this article, the word "unfair" is used as a shorthand term for that phrase.

<sup>5</sup> See the first article in this series for an explanation of the reasons why this series concentrates on poultry contracting (as opposed to vegetable or hog contracting).

<sup>6</sup> Pub. L. No. 100-173 (1987).

Congress change the *statute* by passing new *legislation*. To accomplish other desired changes, growers simply need to have the P&S Administration promulgate new *regulations* to implement the *existing* statute.

### **Changing the Regulations**

Work is already well underway to change the provisions of the P&S Act regulations that apply to poultry growers. On September 15, 1992, the P&S Administration published a notice in the *Federal Register* asking for very broad comments to the P&S Act regulations. FLAG submitted very extensive comments to those regulations on behalf of the National Contract Poultry Growers' Association (NCPGA).<sup>7</sup>

The NCPGA comments asked the P&S Administration to implement regulatory changes to address problems such as:

- 1) Integrators using coercion or threats of retaliation to force growers to sign new, less favorable contracts.
- 2) Integrators sending baby chicks from good parent flocks to favored growers and sending baby chicks from bad parent flocks to disfavored growers.
- 3) Integrators failing to give growers accurate, reliable information about the weight of delivered feed.
- 4) Integrators failing to accurately record the weight of the birds at the scales.
- 5) Integrators giving misleading information to prospective growers about the amount of income they can expect to receive from the poultry operation.
- 6) Integrators using ranking systems in which company employees who supply growers with basic products (chicks, feed, medicine) and who are also contract growers are ranked in the same grouping with the other growers.
- 7) Integrators failing to keep records long enough to make the records available in discovery if growers need to sue them.
- 8) Insufficient penalties for integrators who fail to comply with detailed P&S Act regulations regarding information that must be printed on scale tickets.

Complete, detailed copies of the NCPGA comments are available from FLAG.<sup>8</sup> The comments include proposed new regulatory language.

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<sup>7</sup> The NCPGA is an agricultural cooperative association organized, managed, and operated by contract poultry growers for the specific purpose of enhancing the well-being of growers and their families. The association provides representation for thousands of turkey and chicken growers across the nation.

<sup>8</sup> Write to FLAG at 46 East Fourth Street, Suite 1301, St. Paul, Minnesota, 55101. Ask for the "NCPGA P&S Comments." Include a check for \$3.00 to cover the costs of postage and photocopying.

## Changing the Statute

There are two categories of changes that poultry growers need which can only be accomplished by Congress passing new legislation to change the statute itself. The first category involves *broadening the coverage of the act*, and the second category involves *creating more powerful enforcement provisions*.

### Broadening Coverage

Certain important categories of growers and transactions are excluded from coverage under the current P&S Act. First, coverage under the P&S Act is restricted to persons “engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another . . .”<sup>9</sup> This means that growers who raise poultry for purposes other than slaughter—for example, growers who raise breeder hens or pullets, or growers who have egg operations—are not protected in any way by the P&S Act. Poultry growers advocate changing that restrictive language to read, “engaged in the business of raising and caring for live poultry *for slaughter or for production of poultry or eggs for another*, whether the poultry is owned by such person or by another . . .”

Second, coverage under the current P&S Act does not extend to employees of the integrators. The language quoted above—“any person engaged in the business of raising and caring for live poultry . . .”—is modified by “but not an employee of the owner of such poultry.”<sup>10</sup> This is a problem because many poultry growers work part-time for the integrators as field supervisors, delivery persons, truck drivers, scale operators, or in other capacities. None of these people are protected in any way by the P&S Act. Poultry growers advocate removing this restrictive language from the P&S Act.

Third, coverage under the P&S Act is restricted to transactions that are “with respect to live poultry.”<sup>11</sup> Growers and integrators engage in many types of important transactions that integrators may not consider to be “with respect to live poultry.” For example, many growers buy their farms from the integrators or build poultry houses according to integrator specifications. Are these transactions “with respect to live poultry” because they are necessary to the poultry growing operation, or are they instead “with respect to real estate”? This question is very important, because transactions involving financing and sales of real estate and construction of buildings give rise to many serious allegations of unfair practices. Poultry growers advocate changing that restrictive statutory language to read, “with respect to any aspect of the poultry growing operation.”

### More Powerful Enforcement

The P&S Act contains very powerful enforcement mechanisms for dealing with almost any type of unfair practice in the *livestock* industry,<sup>12</sup> but it contains no mechanisms for dealing with most types of unfair practices in the *poultry* industry.

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<sup>9</sup> 7 U.S.C. § 182(8).

<sup>10</sup> 7 U.S.C. § 182(8).

<sup>11</sup> 7 U.S.C. § 192.

<sup>12</sup> See 7 U.S.C. §§ 193-195.

Although the P&S Act prohibits unfair practices in the poultry industry,<sup>13</sup> the P&S Act provides *enforcement authority* only for unfair practices relating to non-payment.<sup>14</sup> This means that it is *illegal* for integrators to engage in unfair practices against growers, but unless that unfair practice relates to non-payment, the P&S Administration can do nothing about it.<sup>15</sup> Growers can always sue on their own to enforce the unfair practice prohibition in the P&S Act,<sup>16</sup> but many growers report that it is difficult, if not impossible, to find lawyers who will represent them at affordable rates. Growers would like to see the statute changed to give the P&S Administration greater authority to enforce the prohibition against unfair practices in the poultry industry.

## **Conclusion**

The changes described above would be a good start toward giving all poultry growers the right to work hard at their business without being subjected to unfair and discriminatory practices.

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<sup>13</sup> 7 U.S.C. § 192.

<sup>14</sup> 7 U.S.C. § 228b-2. For an explanation of those enforcement powers, see "Making Complaints Under the Packers and Stockyards Act," *Farmers' Legal Action Report / Minnesota Family Farm Law Update*, Vol. 6, No. 1 (Winter 1991).

<sup>15</sup> The P&S Administration may investigate such unfair practices; but even if it finds that an unfair practice is occurring, the most it can do is refer the problem to the Department of Justice. The Department of Justice is often too busy to take any action in these matters.

<sup>16</sup> 7 U.S.C. § 209.