

**Testimony of Bob Junk  
Fay Penn Economic Development Council  
Uniontown, PA**

**Before the**

**House Committee on Small Business  
Subcommittee on Agriculture, Energy and Trade**

**Hearing on**

Regulatory Injury: How USDA's Proposed GIPSA Rule Hurts America's Small Businesses

**July 7, 2011**

Chairman Tipton, Ranking Member Critz, Members of the Subcommittee-

My name is Bob Junk. I am the Local Economy Manager for Fay Penn Economic Development Council. Thank you for this opportunity to submit this testimony in support of the GIPSA proposed rule.

Fay-Penn's mission is to maintain and increase employment opportunities (jobs) in Fayette County in an effort to improve the quality of life for all of its residents. We also work with farmers to improve their direct marketing to the consumers. Before I was at Fay Penn I was the President of Pennsylvania's Farmers Union for 10 years and had the opportunity to meet many different types of livestock and poultry farmers throughout the state.

Fay Penn is a member of the National Sustainable Agriculture Coalition and through that coalition; I have learned about the abusive situation that many contract poultry growers face throughout the country.

These producers are small business owners and have been suffering the consequences of too much consolidation and collusion at the local level. Vertical integration in the poultry industry started back in the 1960s. At that time, there were many companies competing for growers' services. Now, a grower is lucky if he has 2 companies in an area to "choose" from. I say choose in quotations because there is no real competition for growers. They are presented with take-it-or-leave-it contracts that are fairly similar from company to company. A study by Dr. Bill Heffernan of the University of Missouri documented this trend in a parish in Louisiana – showing that when there were more companies the relationships between growers and the companies they contract with were fair and balanced, and when consolidation increased, the relationships deteriorated.

I bring this up to set the stage for why the GIPSA rules were proposed. Growers now spend up to \$300,000 per house and in return, get a 6-8 week commitment from the poultry company. Once the grower invests the money in his houses and equipment, he is stuck and has to take whatever the company gives him. In a truly competitive market, the companies would be competing for the best growers and offering them better deals. In most parts of the country that competition is not happening.

What is happening is that growers are:

- Being forced to upgrade their houses after they have built the houses to the companies' specifications. A USDA survey update revealed that **49% of broiler growers** were required to make capital investments in 2004, and that this investment in the single year averaged \$49,037 per grower, which comes out to about \$490 million total throughout the US. Most of the time, these upgrades do not pay for themselves and force the grower deeper into debt. The grower has to do the upgrade or will not have a contract. Without a contract, he can't pay off his mortgage and will default on his loan and other bills, all of which have a ripple effect in our local economy. Not only will the grower lose his poultry houses, but most of the time he has his personal house and the rest of his farm put up as collateral and thus will lose everything if he can't pay his mortgage. The proposed rule will simply ensure that if the company requires the upgrade, then the company must compensate the grower in return. This will help the poultry growers, who are small business owners in our community, stay in business without costing the government anything. Growers could hold on to the \$49,037 each year and overall, our rural communities would keep \$490 million instead of spending it on upgrades.
- Growers also have their contracts terminated through no fault of their own even when they still owe hundreds of thousands of dollars on their loans. A couple of years ago, one poultry company shut down 4 plants that resulted in hundreds of growers losing their contracts. Many of the growers had done all of the upgrades that the companies had asked for, which caused them to still owe money when they were cut off. They did everything the company told them to and still they were on the verge of bankruptcy. The federal government had to step in and spend \$60 million to ensure that these farmers and their communities did not go under. Part of the proposed GIPSA rule says that the contract must be long enough for a grower to recapture 80% of their investment. If that provision would have been in place when the company closed its plants, then it probably would have had to make sure that the growers had recaptured 80% of their investment before terminating their contracts and might have decided not to close the plants at all. This provision is simply asking the companies to invest in the growers as much as the growers invest in the companies and gives the growers some security in their investment.
- Growers are retaliated against for talking to public officials or speaking about their conditions in public. In May 2010, the USDA and Department of Justice held a workshop on competition in the poultry industry and heard from grower after grower about the very real fear of retaliation for just being at the workshop. They were not speaking of it as something that has happened in the past, they spoke about being threatened if they attended the meeting. Also, if you look at the personalized comments submitted by growers in

support the GIPSA rule, about half of them are filed anonymously because of the fear of retaliation. This is a real enough problem that part of the proposed rule declares that retaliation is an unfair practice. It is sad that in America in the 21<sup>st</sup> century people have to worry about the effect of speaking out on their livelihoods. The proposed rule will give growers more protections against this.

- Growers are being paid on a system that is mainly controlled by the companies. The “ranking” pay system is based on the assumption that all growers are provided comparable inputs and any variance in performance is a result of farm management. Yet farmers have no ability to verify the equality of inputs supplied and controlled by the company. The characteristics of these inputs, such as the health of the chicks delivered, can have a great impact on the farm’s actual performance and therefore the farmer’s final pay. The actual price a farmer receives can vary considerably from check to check even though the variation in performance is relatively small.<sup>1</sup> Growers can get chicks that are from an old breeder hen flock and then no matter how hard he works; he will be at the bottom of the ranking system because chicks hatched from older hens will almost always be weaker. Being at the bottom of the ranking is a double whammy for growers – they get paid less per pound and they have fewer pounds. In the cattle industry, if the animal weighs less, I will make somewhat less because of the lack of pounds, but I will still get the same price per pound. The proposed rule corrects this by saying that the base rate has to actually be that – a base rate, a rate that a grower cannot get paid below. The company can still pay bonuses on top of that. The rule does not restrict companies from paying above the base rate. It just wants to make sure that growers are not doubly penalized for things beyond their control by being paid less per pound if they fall below average. There have been rumors spread that this part of the rule means that growers will all be paid the same and that companies will not be able to pay more for better performance. That is simply not true. Read the rule.
- Growers are forced to sign away their right to a trial by jury. The 2008 Farm Bill gave livestock and poultry farmers the choice between arbitration and going to court in their contracts. This went into effect right after the Farm Bill was passed. Unfortunately, when companies changed their contracts, they tried to get around the law by putting in other clauses that limited farmers’ abilities to have a trial by jury if they need it. In a current poultry company’s contract, it says that a grower cannot have a trial by jury and that they have to have a trial by judge only. This is the United States of America! A person should not have to give up his right to a trial by jury just because he is a contract poultry grower.

The GIPSA proposed rule will also help hog producers. Currently, only four firms control the slaughter and packing of over two-thirds of the nation’s hogs. The number of farms producing hogs has declined from 240,000 in 1992 to fewer than 70,000 in 2007. Many of the remaining hog producers raise hogs under production contracts with packers. The GIPSA proposed rule will provide independent hog producers with more transparent, open markets. It will also protect contract hog producers from abusive practices such as unexpected capital investments.

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<sup>1</sup>Dr. Mark Jenner, “Does Flock Performance Rank = Grower Performance Rank?”

As you can see by what I have just shared, this rule corrects some of the long time abuses that have occurred in the livestock and poultry industry. It will put thousands of dollars back in producers' pockets without costing the federal government any money. And as we saw with the Wall Street disaster, sometimes industry regulation is not a bad thing for the American people.

My organization, along with 143 other organizations, sent a letter to members of Congress this Spring asking them to support the GIPSA rulemaking process. I have submitted a copy of the letter with my written testimony.

Thank you for this opportunity to share with you how the GIPSA proposed rule will help America's livestock and poultry farmers.

ATTN: Agriculture & Appropriations Legislative Aides

April 21, 2011

U.S. House of Representatives  
Washington, DC 20515

Dear Representative:

As a result of rapid consolidation and vertical integration, the livestock and poultry markets of this nation have reached a point where anti-competitive practices dominate, to the detriment of producers and consumers. Numerous economic studies in recent years have demonstrated the economic harm of current market structures and practices, and have called for greater enforcement of existing federal laws in order to restore competition to livestock and poultry markets.

Until recently, Congress and the U.S. Department of Agriculture have largely ignored these trends. Fortunately, Congress included language in the 2008 Farm Bill to require the U.S. Department of Agriculture to write regulations, using its existing Packers and Stockyards Act authorities, to begin to restore fairness and competition in livestock and poultry markets.

On June 22, 2010, the Grain Inspection Packers and Stockyards Agency (GIPSA) issued proposed rules to implement the 2008 Farm Bill mandates, and to address related anti-competitive practices in the livestock and poultry industries. These reforms are long overdue and begin to respond to the criticisms by farm groups, consumer groups, the Government Accountability Office and USDA's Inspector General about USDA's past lack of enforcement of the Packers and Stockyards Act. The proposed GIPSA rules define and clarify terms in the Act in order to make enforcement more effective, and to provide clarity to all players in livestock and poultry markets.

The Packers and Stockyards Act of 1921 makes it unlawful for packers, swine contractors, and live poultry dealers to engage in any "unfair, unjustly discriminatory, or deceptive practice or device," or to "make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect." The ambiguity of these terms has resulted in uncertainty in the marketplace and hindered enforcement of the Act.

Key provisions of the proposed GIPSA rules would:

- Provide contract growers with commonsense protections when making expensive investments in facilities on their farms to meet the packer or poultry company requirements;
- Provide growers, farmers, and ranchers with access to the information necessary to make wise business decisions regarding their operations;
- Require transparency and eliminate deception in the way packers, swine contractor and poultry companies pay farmers;
- Eliminate collusion between packers in auction markets;
- Provide clarity about the types of industry practices the agency will consider to be unfair, unjustly discriminatory, or when certain practices give unreasonable preference or

advantage. These are all terms used in the existing statute, which have never been adequately defined.

- Prohibit retaliation by packers, swine contractors or poultry companies against farmers for speaking about the problems within industry or joining with other farmers to voice their concerns and seek improvements. Currently, many farmers are often retaliated against economically for exercising these legal rights.
- Allow premiums to be paid to livestock producers who produce a premium product, but requires the packer or swine contractors to keep records to detail why they provide certain pricing and contract terms to certain producers.
- Reduce litigation in the industry by eliminating the ambiguity in interpretation of the terms of the Packers and Stockyards Act. Such ambiguity leads to litigation as farmers and packers seek court action to clarify the intent of the Act.

GIPSA has received approximately 60,000 comments on the proposed rule during the five-month public comment period that ended in November 22, of 2010. USDA is in the process of analyzing those comments, and providing the in-depth cost-benefit analysis necessary before issuing the final rule.

Because of the great importance of this rule to livestock and poultry producers and consumers, and the large volume of misinformation about the rule perpetuated by livestock and poultry trade associations and packer-producer groups, the undersigned organizations are writing to reiterate our strong support for the GIPSA rule and for its swift publication in final form.

We urge your support for the GIPSA rulemaking process, and its efforts to restore fairness and competition in our nation's livestock and poultry markets.

Sincerely,

Agriculture and Land Based Training Association (CA)  
Alabama Contract Poultry Growers Association  
Alliance for a Sustainable Future (PA)  
Alternative Energy Resources Organization (AERO) -MT  
Ambler Environmental Advisory Council  
American Agriculture Movement  
American Corn Growers Association  
American Federation of Government Employees (AFL-CIO), Local 3354, USDA-St. Louis  
(representing Rural Development and Farm Loan employees in Missouri, Oklahoma, and Kansas)  
American Grassfed Association  
American Raw Milk Producers Pricing Association  
Ashtabula-Lake-Geauga County Farmers Union  
BioRegional Strategies  
Buckeye Quality Beef Association (Ohio)  
C.A.S.A. del Llano (TX)  
California Dairy Campaign  
California Farmers Union  
California Food & Justice Coalition

Campaign for Contract Agriculture Reform  
Campaign for Family Farms and the Environment  
Carolina Farm Stewardship Association  
Cattle Producers of Louisiana  
Cattle Producers of Washington  
Center for Celebration of Creation  
Center for Food Safety  
Center for Rural Affairs  
Chemung County Church Women United (NY)  
Chemung County Council of Churches (NY)  
Chemung County Council of Women (NY)  
Church Women United of Chemung County (NY)  
Church Women United of New York State  
Citizens for Sanity.Com, Inc.  
Citizens for Sludge-Free Land  
Colorado Independent CattleGrowers Association  
Community Alliance for Global Justice  
Community Farm Alliance (Kentucky)  
Community Food Security Coalition  
Contract Poultry Growers Association of the Virginias  
Court St Joseph #139, Corning/Elmira, Catholic Daughters of the Americas, Corning, NY  
Crawford Stewardship Project  
Cumberland Counties for Peace & Justice  
Dakota Resource Council  
Dakota Rural Action  
Davidson College Office of Sustainability  
Ecological Farming Association  
Endangered Habitats League  
Family Farm Defenders  
Farm Aid  
Farm and Ranch Freedom Alliance  
Farmworker Association of Florida  
Fay-Penn Economic Development Council  
Federation of Southern Cooperatives  
Food & Water Watch  
Food Chain Workers Alliance  
Food Democracy Now!  
Food for Maine's Future  
Gardenshare: Healthy Farms, Healthy Food, Everybody Eats  
Georgia Poultry Justice Alliance  
Grassroots International  
Heartland Center / Office of Peace and Justice for the Diocese of Gary, Indiana and the Integrity of Creation  
Hispanic Organizations Leadership Alliance  
Idaho Rural Council  
Illinois Stewardship Alliance

Independent Beef Association of North Dakota (I-BAND)  
Independent Cattlemen of Nebraska  
Independent Cattlemen of Wyoming  
Institute for Agriculture and Trade Policy  
Iowa Citizens for Community Improvement  
Iowa Farmers Union  
Island Grown Initiative  
Izaak Walton League  
Kansas Cattlemen's Association  
Kansas Farmers Union  
Kansas Rural Center  
Ladies of Charity of Chemung County (NY)  
Land Stewardship Project  
Main Street Opportunity Lab  
Maryknoll Office for Global Concerns  
Michael Fields Agricultural Institute  
Michigan Farmers Union  
Michigan Land Trustees  
Michigan Organic Food and Farm Alliance  
Midwest Environmental Advocates  
Midwest Organic Dairy Producers Association  
Minnesota Farmers Union  
Missionary Society of St. Columban  
Mississippi Livestock Markets Association  
Missouri Farmers Union  
Missouri Rural Crisis Center  
National Catholic Rural Life Conference  
National Family Farm Coalition  
National Farmers Organization  
National Farmers Union  
National Latino Farmers & Ranchers Trade Association  
National Sustainable Agriculture Coalition  
Nebraska Farmers Union  
Nebraska Sustainable Agriculture Society  
Nebraska Wildlife Federation  
Network for Environmental & Economic Responsibility  
New England Small Farm Institute  
Nonviolent Economics  
North Carolina Contract Poultry Growers Association  
Northeast Organic Dairy Producers Alliance  
Northeast Organic Farming Association - NY  
Northeast Organic Farming Association, Interstate Council  
Northern Plains Resource Council  
Northwest Atlantic Marine Alliance  
Ohio Ecological Food and Farm Association  
Ohio Environmental Stewardship Alliance



Ohio Farmers Union  
Oregon Livestock Producers Association  
Oregon Physicians for Social Responsibility  
Oregon Rural Action  
Organic Consumers Association  
Organic Farming Research Foundation  
Organic Seed Alliance  
Organization for Competitive Markets  
Partnership for Earth Spirituality  
Past Regents Club, Catholic Daughters of the Americas, Diocese of Rochester, NY  
PCC Natural Markets  
Pennsylvania Farmers Union  
Pennypack Farm and Education Center (PA)  
Pesticide Action Network North America  
Pomona Grange #1, Chemung County NY  
Powder River Basin Resource Council (WY)  
R-CALF United Stockgrowers of America  
Rocky Mountain Farmers Union  
Rural Advancement Foundation International - USA (RAFI-USA)  
Rural Coalition  
Sisters of St. Francis of Philadelphia  
Slow Food USA  
South Dakota Livestock Auction Markets Association  
South Dakota Stockgrowers Association  
St John the Baptist Fraternity of the Secular Franciscan Order, Elmira, NY  
Sustain LA  
Taos County Economic Development Corporation  
Texas Farmers Union  
The Cornucopia Institute  
Tilth Producers of Washington  
Trappe Landing Farm & Native Sanctuary  
Veteran Grange #1118, Chemung County, NY  
Virginia Association for Biological Farming  
Western Organization of Resource Councils (WORC)  
WhyHunger  
Women, Food and Agriculture Network