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From: Carole Morison [mailto:cmorison@verizon.net]

Sent: Thursday, December 31, 2009 11:01 AM

To: ATR-Agricultural Workshops

Subject: Comment

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December 30, 2009

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Attorney General Holder and Secretary Vilsack:

My name is Carole Morison and I raised chickens under contract for Perdue for 23 years. I am not growing for them anymore because they demanded upgrades to our poultry houses which would have cost an additional \$150,000 to our existing debt. These demands were made based on a company decision and contract termination was held over our heads unless we complied with their demand.

I am writing to share my experience in 4 areas that I think should be addressed at the competition workshop regarding poultry, scheduled for May 21, 2010, in Normal, Alabama.

USDA/ Department of Justice Enforcement of Packers and Stockyards Act

I've filed several complaints with GIPSA about inaccurate weights of live haul trucks, deliveries of feed by the company to the farm which were never delivered, contract violations, manipulation of pay and interference of farm income, and demand of farm upgrades with threats of contract termination. In every instance the reply was that it's "industry standards" or that they were not able to follow through because they said that they had to turn the investigation over to the Department of Justice. Over the years, these problems have cost me and my family hundreds-of-thousands of dollars of farm income.

Other growers in my area have had the same experiences and although they were encouraged to call GIPSA ultimately they received the same replies. Growers realize that it's not worth calling GIPSA to file a complaint because first and foremost they are exposed to the company setting them up for unfair and retaliatory practices for complaining and secondly while GIPSA investigators want to help, they really have no authority and have to turn any violations over to the US Department of Justice for prosecution. It's common knowledge among growers that GIPSA can't help them and that the Department of Justice is too busy to take on a little growers case. Over the years, this belief has been reinforced by comments made by GIPSA investigators.

I think that USDA should have the same authority over poultry that they do over livestock so that they can take action on the problems that growers have.

Regional Competition and Tacit Collusion

In 1987, there were 7 companies in the area and now there are only 4 companies. When there were 7 companies, the companies were always trying to recruit growers from other companies. One company would offer a grower better pay and better quality of chickens to try and get them

to switch companies. I also saw a difference in how the company treated the growers in terms of forcing growers to do upgrades and the relationship overall.

Currently, I know of other growers that are receiving an overall of 1 less flock for the year. When growers had an average of 5.5 flocks, the grower would get the money from the last flock of the year as his or her profit. Now, the grower has to pay all 4 of the flock settlements to the bank to service their quarterly payments. On average, a grower will lose \$30,000 to \$70,000 because of this.

Many growers are now in the position of not having the income from that fifth flock of the year to pay their bills for other farm necessities such as electric, propane, insurances, land taxes, and needed repairs or maintenance. Most growers and their spouses have taken off farm jobs to pay these bills and are using income intended to provide for their family. In essence, growers are earning off farm income to pay for raising chickens.

Reduction of the amount of flocks placed on farms per year or reduction in the amount of birds placed in housing capacity has become common practice. Original promises of the amount of birds to be received by the grower annually, has forced growers into a precarious position financially. Many farms are on the brink of bankruptcy or have already gone under because growers borrowed from the bank based on income from a promised amount of birds to raise.

Within the poultry industry, growers have resigned their selves to either except the conditions for which they are under or get out of the poultry business. Basically, growers keep their heads down and their mouths shut or prepare their self for retaliatory actions and ultimately contract termination because there is no one who can help them. There is no level playing field for contract poultry farmers.

The Ranking System of Payment

The “ranking system” by which poultry growers are paid should be illegal. Not only is it an unfair and deceptive trade practice it is anti-competitive.

Simply put, the ranking system is based on the inputs to the farm versus the output of pounds of meat moved off the farm. Every farm that moves for processing in an entire week is ranked against one another based on its use of inputs to produce the output.

Unless every farm placed in a week’s ranking has the exact same and identical inputs the ranking cannot be fair. In no way does the ranking system reflect a grower’s performance rather it reflects the performance of the company inputs.

As an example chick quality delivered to farms vary in performance. There are several breeds used which perform differently. Health and thriftiness of chicks and the health and thriftiness of the breeder flock from which they came are a primary concern for ultimate production to meat. Unless growers in a settlement week receive the exact and identical chick to raise a grower’s performance is controlled and hampered from the onset by the company’s decision as to who receives what variance of chick. This in itself cannot ever be exact. Every chick delivered to

farms is different not only in health and genetics, they come from several different hatcheries owned by a company and this renders the grower useless in their efforts toward a maximum output of pounds of meat.

Quality of feed delivered to farms is a major input and is also a major decision maker within the ranking system for pounds of feed used versus pounds of meat raised. Again, every farm in a week's ranking system would have to receive the exact and identical feed to perform. This is an input, which is entirely controlled by the company, is formulated and mixed then loaded onto company feed trucks, weighed on company scales, and then delivered to a farm. All guarantees of quality and quantity are on the company "say so". Growers have no control, no way to verify quality or quantity, and must accept this major input as is.

Several incidents of input manipulation for certain farms can be cited. Personally, our farm has experienced manipulation of inputs to hamper any attempt at performance to raise the maximum amount of pounds of meat.

Unhealthy and unthrifty chicks have been delivered to our farm. From the start, the company knew that the chicks were unhealthy because they delivered highly medicated feed to the farm before the chicks were delivered. Having to start out a flock with unhealthy chicks put us in a position where there was nothing we could do to make the flock perform. No matter how much effort was put into the flock it of course ranked lower than other flocks in the settlement week which started off with healthy chicks.

Feed delivered to our farm on one occasion was so wet that it froze in the feed bin and we had to hire someone to come in and take the bin apart and chop out the frozen feed. Not only did the wet feed affect the chickens that ate it before it froze, it affected our equipment and added an additional expense to repair it. During this time, chickens were without feed after it froze and once new dry feed was delivered and feeding started the chickens in their hunger piled on top of one another to get feed. This caused mortality in the flock which meant less pounds of meat produced. Growers do not get paid for dead chickens or the feed that they ate. Since feed is a major factor in the ranking of grower performance, essentially the weight of the feed delivered was partially water weight not feed weight. Water cannot be converted to pounds of meat.

On another occasion, a delivery of feed was charged to our farm and it was proven that the truck never arrived on our farm. It took several witnesses and many arguments before the company was convinced that the truck never arrived or delivered the truckload of feed. The company credited feed to our farm however it was not for the entire truckload it was based on a formula that the company devised and pro-rated to come to an amount of credit. This was an unfair reimbursement as a truckload and stamped weight ticket should have been the amount of reimbursement. This credit was never adjusted or reflected in the week rankings which made the entire settlement week inaccurate.

On several occasions the company delivered unhealthy chicks to several farms and in doing so affected the income to be made on the farms. The argument might be that several farms received sick and diseased chicks and that makes it fair. There is no fairness in the fact that a grower

must “trust” a company to deliver them quality inputs in order that the grower can utilize their expertise and produce maximum pounds of meat.

The company lost a trailer load of chickens from our farm on its way to the processing plant. While we were reimbursed for the lost chickens, reflections in the settlement week did not occur. Lost chickens in no way reflect grower’s performance and the rankings by the company are not accurate.

These are just a few examples of manipulation of grower’s performance and have nothing to do with the way a grower raises chickens. Growers are labeled as “good” or “bad” according to the company rankings which have been proven to be wrong.

A good example of the wrongness of the ranking system could be easily seen if the top ten growers in a settlement week were placed in their next flock against one another. Some of those “top ten” or “good” growers would settle below average and rank low however previously they were considered to be “top” or “good growers”.

In no way can the ranking system reflect a grower’s abilities or performance and the ranking system is an unfair practice. The easily manipulated and imperfect inputs are in the company’s control and are deceptive practices that severely hamper a growers potential of farm income.

In order to fairly pay for the use of poultry housing and a grower’s labor to raise the company’s chickens a square footage basis should be utilized. This method of grower payment would take away the company control or availability of determining any individual grower’s performance and ensure that the growers have access to fair trade.

Capital Investment Requirements

We invested over a quarter-of-a-million dollars to get into the business. I know of other growers that invest over \$1 million to get into the business.

Our investment was based on the word of the company that we would receive chickens and a flock to flock contract which could be terminated at any time. We were told not to worry about the contract as we were building housing and utilizing equipment mandated to company standards. Not only did the bank lend the money based on the company word we borrowed the money under the same basis. Our story is not unusual as every grower who gets into the business is given the same promise.

The promise of “don’t worry about the flock to flock contract” disappears after the grower invests and starts raising chickens. As written, the company controls the grower through the contract and has absolute control over a grower’s income or potential income.

Although some companies might have a “new house guarantee” attached to the contract for growers investing and building new poultry houses, this guarantee is only for a minimum amount of pay the grower can receive. It is not a guarantee of getting chickens. Many growers and

lenders are duped by this thinking that the “new house guarantee” means that the grower will be given chickens for a very long time.

We have had the contract termination threat used on us several times leaving us to worry constantly that our contract would be terminated if we did not do exactly as the company wanted us to do. Many times having that threat hanging over our head induced us to conform to company mandates and practices against our will.

One such threat came from a newly thought up and enacted company policy whereby growers below a certain point in the rankings would be terminated. Through company manipulations of inputs our farm went from being the top producer to the bottom producer in a period of five flocks. We were told that it was because of a disease problem that was continually affecting flock performance. When the company vet visited our farm to check on the disease problem we were told by the vet that we had no disease problem.

In anticipation of the flock doing badly, the company terminated our contract before the chickens were moved for processing. Ironically, the flock settled at the top of the rankings and our contract had to be reinstated as we did not fall under the new company policy of terminating growers. Following this incident, we were once again “good growers”.

These examples show how easily poultry companies and their non-negotiable contracts can easily affect and control a grower’s ability to service the enormous debt they have undertaken to accommodate poultry companies in raising their chickens.

Constant demands made by poultry companies for upgrades to poultry housing have forced many growers out of business. Threat of contract termination if growers do not comply coerces growers to borrow more money to comply with the demand and further add to a grower’s debt load. There are only two options for a grower when demands are made – borrow more money and comply or lose your contract.

In our situation of contract termination for non-compliance of demanded upgrades, we refused to comply because firstly it was a debt that we could not afford and secondly there was no good reason for the upgrades. Prior to our contract termination for non-compliance, we received an award from Perdue for being the outstanding grower. The upgrades would not have further enhanced our farm or performance.

Had we given in to the demand, it would have added an additional \$150,000 to our existing debt. We were told that we had a year to put in tunnel ventilation or our contract would be terminated. Although the demand was for tunnel ventilation, hidden costs appeared for compliance. Our houses had to be fully enclosed with wood covered with tin siding, a new well had to be drilled, electrical service had to be upgraded to service the electrical load, and an automatic startup generator had to be installed.

We knew that we would never see a return on the additional investment. Everything that we were making on the chickens was being spent on the chicken houses as it was. We knew that we

would have to use the off farm income from our jobs to pay for the demanded upgrade which would take away from any household support.

Additionally, the upgrade would have increased our electric bills two – three times higher. Household support money would have to pay for that increase as well and the thought of taking a second off farm job to just put food on the table would have to be done.

It was a hole that was being dug deeper just to raise the company chickens. There was no real way to see ourselves ever getting out from under the enormous debt if we had to continually add to it because of company demands. Our contract was terminated.

Other growers faced the same challenges. It was decided by all the poultry companies in the region that they would not pick up new growers unless they had converted to tunnel ventilation and trying to switch to another company was further hampered based on the location of farms in relation to company operations.

Many growers were put out of business and some lost their farms after contract termination. Those who complied with the demanded upgrades now teeter on the edge of bankruptcy mainly because of the loss of income because of company decisions region wide to reduce the number of flocks of chickens produced annually on farms.

Due to the easily manipulated inputs and the absolute control that the companies have on the grower's ability to service these enormous debts, growers should have a means to recapture capital investment.

I think that USDA should write rules that require a poultry company to reimburse growers for our houses if they cut us off without cause or if the promises made by companies of expected annual income is withheld. I also think that it should be illegal for companies to force growers to make upgrades without paying for them at the time of the upgrade.

I know many other growers that have stories to share but are too scared to talk in public about these issues. I hope that you will provide an avenue for growers to share their experiences with you in confidence if necessary and to have growers on the poultry panel at the workshop to talk directly about their experiences.

Thank you for listening to my concerns and I hope that you will address these important issues at the workshop in Normal, AL.

Sincerely,

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