



Managing Legal Risk for Livestock and Dairy Producers in Ohio

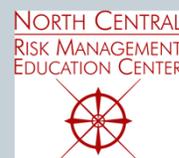
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NATIONAL AGRICULTURAL LAW CENTER

PEGGY KIRK HALL
OHIO STATE UNIVERSITY EXTENSION
AGRICULTURAL AND RESOURCE LAW PROGRAM

Project Support

- This project is provided with support from the North Central Risk Management Education Center, whose mission is *to empower the strengths and skills of individuals in the North Central region who are involved in the management of agricultural production, marketing, financial, legal, and human resource risks.*

- Visit the website at www.NCRME.org



Workshop Overview

Addressing legal risks in emerging risk areas:

- Animal identification
- Ohio Livestock Care Standards
- GIPSA
- Farm security issues

Understanding, assessing and adopting risk management strategies.

Workshop Overview

We will . . .

1. Explain the laws and legal issues.
2. Discuss strategies for managing risk.
3. Follow up.
4. Make resources available on website.

You will . . .

5. Assess your operation.
6. Identify risk management practices.
7. Adopt risk management practices.
8. Evaluate the program and participate in follow up surveys.

Workshop Overview

- **Important components:**
 - Exercises
 - Evaluations
 - Action
 - Follow up



“GIPSA” Rules

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GIPSA Update

- **June 2010.**
 - GIPSA released proposed regulations that would drastically change the way producers raise, buy and sell livestock and poultry
- **November 2010.**
 - Comment period on the proposal closed.
- **December 2011.**
 - Final rule released

GIPSA is:

The federal agency within USDA that is responsible for issuing regulations and enforcing rules that govern the contracting, buying and selling of livestock and poultry.

 **United States Department of Agriculture**
Grain Inspection, Packers & Stockyards Administration

What Does GIPSA Do?

Main Goal: Helps “ensure a productive and competitive global marketplace for U.S. agricultural products.”

- Regulates the marketing of poultry, livestock, meat, grains, and various other agricultural products
- Upholds “fair and competitive trading practices”
- Enforces the Packers and Stockyards Act

 United States Department of Agriculture
Grain Inspection, Packers & Stockyards Administration

Packers & Stockyards Act of 1921

89 year old statute meant to protect consumers and producers

- Prohibits “unfair and deceptive practices”
- Undue preferences
- Price manipulation

New Regulations are partially based on the original PSA (plus amendments) and partially on the 2008 Farm Bill amendments.

Packers and Stockyards Act



It is unlawful for any packer, swine contractor or live poultry dealer to

1. "Engage in or use any unfair, unjustly discriminatory or deceptive practice or device;" or
2. "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"

7 U.S.C. 192(a) & (b)

Any livestock or poultry contract that contains a provision requiring the use of arbitration shall contain terms that conspicuously disclose the right of the contract producer or grower, prior to entering the contract, to decline the requirement to use arbitration to resolve any controversy that may arise

7 U.S.C. 197

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Who Would These Regulations Apply To?



Packer

- Buyer of livestock for slaughter
- Person who manufactures or prepares meat for sale or shipment
- Marketer of livestock products in an unmanufactured form
 - Wholesale brokers, dealers or distributors



Swine Contractor

- A person who pays another to raise and care for hogs under a swine production contract.



Live Poultry Dealer

- Person who obtains live poultry by purchase or under a poultry growing arrangement
- Includes all stages of live poultry production, including pullets, laying hens, breeders and broilers
- Excluding egg-type pullets, hens that produce table eggs, and breeder flocks for the egg industry.

Examples of Application

PSA Directly Applies

- LLC involved in swine production contracts
- Broiler integrator contracts
- Forward contracts of beef producers

PSA Does Not Directly Apply

- Producer marketing his own livestock
- Producer buying livestock for her own stocking or feeding purposes.
- Producer who raises hens that lay table eggs

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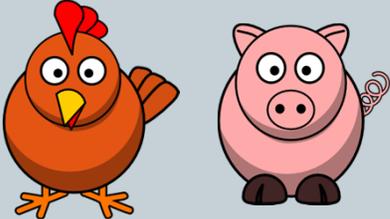
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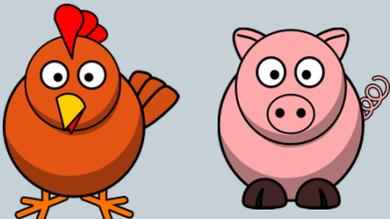
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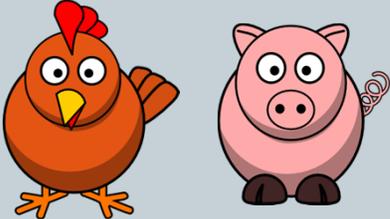
Additional Capital Investments

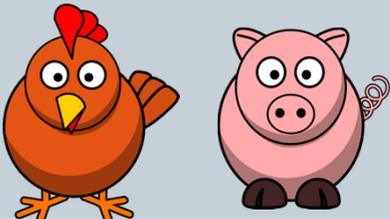
- An “additional capital investment” is “a combined amount of \$12,500 or more per structure paid by a poultry grower or swine production contract grower over the life of the poultry growing arrangement or swine production contract beyond the initial investment for facilities used to grow, raise and care for poultry or swine”
 - Includes: total cost of upgrades to the structure, upgrades or equipment located in and around each structure, goods and professional services that are directly attributable to the additional capital investment.”
 - Does not include: costs of maintenance and repair

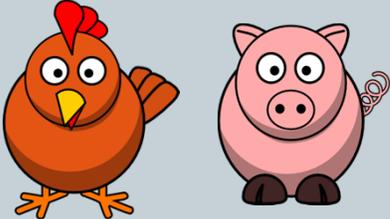
C.F.R. § 201.2(n)

<h3 style="text-align: center;">Additional Capital Investments</h3> <p style="text-align: center;"><i>“unfair, unjustly discriminatory and deceptive practices”</i></p>	
Factors:	Who:
<ul style="list-style-type: none"> • Does the producer have discretion to decide for or against the capital investment? • Is the investment the result of coercion, retaliation or threats of coercion or retaliation? 	
C.F.R. § 201.216	

<h3 style="text-align: center;">Additional Capital Investments</h3> <p style="text-align: center;"><i>“unfair, unjustly discriminatory and deceptive practices”</i></p>	
Factors:	Who:
<ul style="list-style-type: none"> • Does the integrator intend to (or actually does) close or substantially reduce operations at the processing facility within one year of requiring the investment? (barring a catastrophe, natural disaster or emergency) 	
C.F.R. § 201.216	

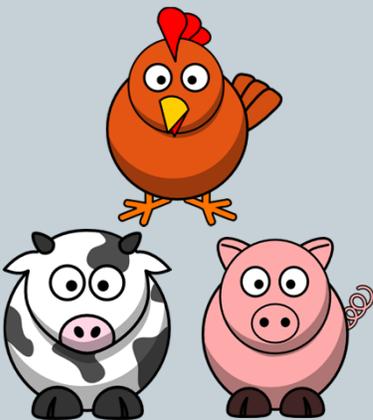
Additional Capital Investments	
<i>“unfair, unjustly discriminatory and deceptive practices”</i>	
Factors:	Who:
<ul style="list-style-type: none"> • Is the investment cost reasonably expected to be recouped by the producer? • Is the producer given a reasonable time period to implement the required investments? 	
C.F.R. § 201.216	

Additional Capital Investments	
<i>“unfair, unjustly discriminatory and deceptive practices”</i>	
Factors:	Who:
<ul style="list-style-type: none"> • How old are the producer’s facilities? <ul style="list-style-type: none"> ○ Taking into account recent upgrades to or capital investments in the facilities • Are all similarly situated producers required to make the same investments? 	
C.F.R. § 201.216	

Additional Capital Investments <i>“unfair, unjustly discriminatory and deceptive practices”</i>	
Factors:	Who:
<ul style="list-style-type: none"> • Are equipment changes required on equipment that is previously approved and is still operating as it was intended to operate, unless “adequate compensation incentives” are offered? 	
C.F.R. § 201.216	

“Reasonable notice” of bird delivery suspension <i>“unfair, unjustly discriminatory and deceptive practices”</i>	
Factors:	Who:
<ul style="list-style-type: none"> • If grower has been given written notice of intent to suspend delivery • If notice is given at least 90 days before suspension date • If notice includes <ul style="list-style-type: none"> ○ Reason for suspension ○ Length of suspension ○ Date delivery will resume • If a catastrophe, natural disaster or other emergency prevented the notice. 	
C.F.R. § 201.215	

“Reasonable Time” to Cure Breach <i>“unfair, unjustly discriminatory and deceptive practices”</i>	
Factors:	Who:
<ul style="list-style-type: none"> • If written notice was supplied upon initial discovery • If notice includes <ul style="list-style-type: none"> ○ Description of the act/omission ○ Date of breach; ○ Explanation of how producer can remedy breach (if possible); ○ Date of reasonable time to remedy 	
C.F.R. § 201.217	

“Reasonable Time” to Cure Breach <i>“unfair, unjustly discriminatory and deceptive practices”</i>	
Factors:	Who:
<ul style="list-style-type: none"> • If notice allows a response to the claimed breach and gives adequate time to do so • If time period takes into account the producer’s ongoing responsibility to the animals under their care 	
C.F.R. § 201.217	

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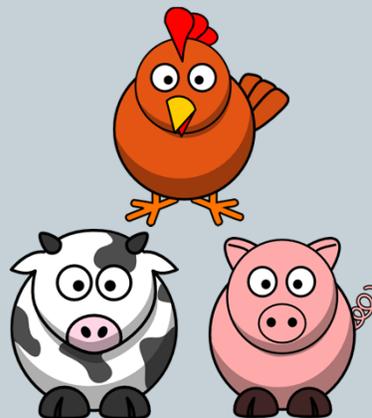
Arbitration Clauses

Arbitration as a "meaningful opportunity" for participation

Factors:

- If disclosure is made in "bold, conspicuous print" describing
 - The costs paid by the producer;
 - × Reasonableness of costs for typical arbitration
 - May include administrative and filing fees, arbitrator deposits and fees
 - The arbitration process;
 - × If it complies w/ the Federal Arbitration Act
 - Any limitations on legal rights and remedies of the producer

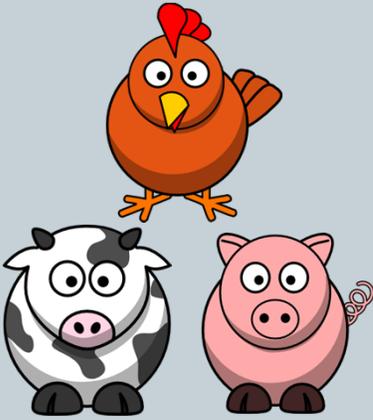
Who:



C.F.R. § 201.218

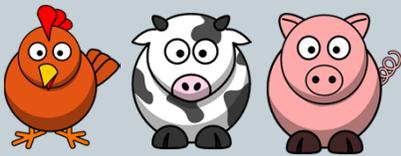
Arbitration Clauses

Arbitration as a “meaningful opportunity” for participation

Factors:	Who:
<ul style="list-style-type: none"> • If qualified neutral parties will be used as arbitrators • If a written opinion based on law and precedent will be given to the parties • If there are reasonable time limits to the arbitration process and outcome • If arbitration is used only to resolve disputes relevant to contractual obligations 	
C.F.R. § 201.218	

Arbitration Clauses

Arbitration as a “meaningful opportunity” for participation

<ul style="list-style-type: none"> • This statement must be on the contract signature page: 	<p>A poultry grower, livestock producer or swine production contract grower has the right to decline to be bound by the arbitration provision set forth in this agreement. A poultry grower, livestock producer or swine production contract grower shall indicate whether or not it desires to be bound by the arbitration provision by signing one of the following statements; failure to choose an option will be treated as if the poultry grower, livestock producer or swine production contract grower declined to be bound by the arbitration provisions set forth in this Agreement</p> <p>I decline to be bound by the arbitration provisions set forth in this Agreement: _____</p> <p>I accept the arbitration provisions as set forth in this Agreement : _____</p>
	
C.F.R § 201.218	

What If These Regulations are Violated?

- **GIPSA Penalties: Violations are resolved, according to their seriousness, as follows:**
 - Cease and desist orders
 - Suspension of business operations
 - Civil Penalties up to \$11,000 per violation (up to \$27,000 for violations of poultry trust provisions)
 - Serious violations can be referred to the Dept. of Justice for permanent injunctions, fines, and jail sentences.
- **Private party civil penalties include reparations and damages**

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