

Assessing the Impact of Integrator Practices on Contract Poultry Growers

September 2001



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Chapter 1

Introduction

Farmers' Legal Action Group, Inc.

I. The Backdrop: Tension in the Industry

The poultry industry in the United States is almost fully vertically integrated. Live bird care is provided almost exclusively by independent growers who furnish facilities, equipment, and labor under contractual arrangements with poultry companies, also called "integrators." These contracts, written by the companies, give the companies substantial control of the relationship and many aspects of the poultry growing operations.

In the mid- to late 1990s, tensions in the relationship between poultry companies and contract growers received increasing attention from the media, state and federal regulators, economic and legal analysts, the courts, grower associations, and the companies themselves. In addition to concerns about hardships on growers, the attention focused on an instability that could threaten the competitive position of the U.S. poultry industry. The first installment of a three-part series entitled "Dark Passage" which ran in *Meat & Poultry* magazine in 1994 explains:

While the farm structure supporting the meat and poultry industry is not our usual bailiwick, the possibility of a cave-in at the deepest point of poultry's vertical integration demands coverage because reverberations from such a disaster would shoot straight up through the entire shaft of the industry . . . Discontent among poultry growers in the U.S . . . is the most controversial and volatile issue in the poultry business today. By comparison, regulatory issues such as bacterial contamination are tempests in test tubes. The grower issue grows like an artery blockage in the very heart of the poultry industry's phenomenal success of the past 20 years: competitive pricing against the other flesh proteins.¹

II. USDA Considers a Response, Looks for Information

Beginning in the mid-1990s, USDA expressed a strong interest in responding to this tension in the domestic poultry industry. In June 1996, after hearing extensive public testimony and considering a large volume of government studies, academic studies, and basic data, the USDA Advisory Committee on Agricultural Concentration issued a report entitled

¹ Steve Bjerklie, "Dark Passage," Part I, *Meat & Poultry* (Aug. 1994). Subsequent parts of the series were published in October and December 1994.

“Concentration in Agriculture.”² The report made several very specific recommendations for change in the poultry industry and indicated that much more information was needed.

In January 1997, USDA issued a notice soliciting research and education under the Fund for Rural America “to improve the competitive position of small, independent livestock producers in an increasingly concentrated market.”³ USDA specifically sought information about the impact of company practices and procedures on contract poultry growers, seeking to use such information as a guide to policy development.

Shortly after this solicitation for research and education was issued, USDA’s Grain Inspection and Packers and Stockyards Administration issued an Advance Notice of Proposed Rulemaking discussing poultry growers’ concerns and seeking comments about possible rulemaking to address those concerns.⁴ Issues identified in the notice included:

- (A) Frustration and concern about the ranking or “tournament” system of payment, through which growers’ compensation is based in part on their per pound production costs relative to others in their growout group.
- (B) Concerns about feed weighing and delivery.
- (C) Concerns about delays in weighing birds.
- (D) Concerns about growers’ unequal bargaining position vis-à-vis the companies.

III. The Project—Assessing the Impact of Company Practices on Broiler Growers

This project was designed to develop information that was identified by USDA as necessary to allow the agency and industry participants to resolve the potentially crippling tensions in the poultry industry. The project contributors have researched, analyzed, and organized information about the impact of company practices on contract growers and the current state of the law regulating those practices. The study focused on broiler growers. Broiler growing contracts represent the largest number of producers in the industry and the highest value of contract payments to contract poultry growers.

The project began with the development of a survey instrument to discover broiler grower perceptions of the growout contracts, their relations with the companies, and their experiences as contract growers. This aspect of the project sought to assess the economic and sociological impacts of company practices on growers. The survey protocol and results are discussed in Chapter Two of this report. Chapter Two also sets out extensive analyses of relationships between grower perceptions about contract production and grower characteristics such as economic performance, human and social capital, and financial

² The report is currently available on the Internet at www.ams.usda.gov/concentration/home.htm.

³ 62 Fed. Reg. 4381, 4387 (1997).

⁴ 62 Fed. Reg. 5935 (1997).

dependence on broiler growing. The survey responses suggested 10 general areas of grower concern about company practices in growout arrangements.⁵

The next stage of the project was consideration of 18 current broiler growout contracts. Analysis of these contracts identified typical terms of growout arrangements as well as atypical terms that may be considered “grower-friendlier” or may raise additional concerns. The analysis then considered the extent to which the 10 general areas of concern identified through the grower survey are addressed through provisions of the sample contracts. The growout contract analysis is discussed in Chapter Three of this report.

Next, federal and state statutes, rules, and case law that might address the impact of company practices on contract growers were reviewed and analyzed. This analysis sought to identify existing law that explicitly speaks to grower-company relations as well as law whose applicability is unclear and law that clearly does not currently apply to growout arrangements but that could serve as a model for reform. The report on the state of the law affecting grower-company relations is found in Chapter Four. The analyses of current law affecting growout relationships focused particular attention on the areas of concern identified in the grower survey. As a conclusion, Chapter Four makes recommendations for changes in the industry that could address these concerns in light of typical contractual provisions and existing law.

Another component of this project was to prepare and disseminate educational materials for growers to help them make informed decisions about risk management and participation in the industry. Some of these materials, published in the *Poultry Grower News*, were summaries drawn from the survey, contract, and legal analyses set out in this report. Other materials, discussing particular issues identified as being of concern to growers, were written separately and are included as an appendix to Chapter Four.

IV. Contributors

Project contributors are individuals and organizations with skills and experience related to contract broiler production and its legal, economic, and social contexts.

⁵ These areas of concern are: (1) use of the ranking system to determine grower pay; (2) that grower pay is most affected by matters outside their control, namely the quality of inputs provided by the company; (3) confusion among a substantial number of growers regarding their settlement sheets; (4) higher than expected condemnation rates and inadequate explanations of condemnations; (5) the dispute resolution procedures available to growers under growout contracts; (6) the disconnect between many growers’ negative perceptions of the value of improvements suggested by the companies and their belief that their contracts will not be renewed if the improvements are not made; (7) grower concerns and uncertainty about the accuracy of feed weighing and prompt weighing of birds; (8) the large majority of growers who receive no assistance from their company with the disposal of litter or dead birds; (9) the high percentage of growers earning less than expected and high percentages perceiving the causes to be related to chick quality, required improvements, and rising operating costs; and (10) growers being left without flocks long enough to suffer financially.

Lee Schrader is Professor Emeritus of Agricultural Economics at Purdue University in West Lafayette, Indiana. In his 32 years at Purdue, Dr. Schrader's work included an emphasis on poultry industry economics.

John Wilson is Professor of Sociology at Duke University in Durham, North Carolina. Dr. Wilson is the author of several articles on the impact of part-time farming on the farm family, including "The Contrasting Effects of Social, Organizational and Economic Variables on Farm Production." He also wrote "The Political Economy of Contract Farming," *Review of Radical Political Economies* 1986.

The National Contract Poultry Growers Association (NCPGA) is a national cooperative association of contract poultry growers dedicated to improving the social and economic well being of growers. NCPGA has several thousand members in 27 states and reaches more than 25,000 growers through its publication, the *Poultry Grower News*.

Rural Advancement Foundation International-USA (RAFI-USA) is a non-profit organization based in Pittsboro, North Carolina, which works to promote sustainable agricultural systems. For the past 15 years, RAFI has been working with poultry growers on issues related to contract production.

Neil D. Hamilton is the Ellis and Nelle Levitt Distinguished Professor of Law and Director of the Agricultural Law Center at Drake University Law School in Des Moines, Iowa. Mr. Hamilton is one of the nation's leading experts on the role of law in shaping agriculture. His writings include the 1995 Farm Journal/Top Producer publication, *A Farmer's Guide to Production Contracts*.

Farmers' Legal Action Group, Inc. (FLAG) is a nonprofit law firm based in Saint Paul, Minnesota, which provides legal assistance to farmers, farm advocates, attorneys, and organizations working to help individual farmers stay on the land and to defend the family farm system of agriculture.

All project contributors provided feedback on the various components of this report. The survey instrument was developed in a collaborative effort involving Dr. Schrader, Dr. Wilson, NCPGA, RAFI, and FLAG. Dr. Schrader and Dr. Wilson analyzed the Broiler Grower Survey responses and wrote Chapter Two of this report, presenting their analysis of those responses. Mr. Hamilton reviewed the sample broiler production contracts and wrote Chapter Three of this report, setting out an analysis of contract terms as they relate to grower concerns. FLAG conducted the review of state and federal laws affecting broiler growout arrangements and wrote the analysis of those laws, the recommendations, and the grower education materials found in Chapter Four of this report.

Chapter 2

Broiler Grower Survey Report

Professor Lee Schrader, Purdue University
Professor John Wilson, Duke University

I. Introduction

This report sets out the results of a survey of contract broiler growers that was conducted in mid- to late 1999. The purpose of the survey was to obtain information from growers about their experience in contract broiler growing. The results are based upon survey responses received from 1424 growers in 10 states.

This survey was conducted as part of a larger project seeking to assess the impact of company practices on growers in contract poultry production. As a result of discussions with growers, farm organization representatives, Extension agents, and poultry specialists, a number of areas of possible concern were identified as question categories for the survey. The first area has to do with the how much *freedom or autonomy* contract growing grants to the farmer who elects to grow broilers under this system. For example, is the company fieldman seen as a resource on which the grower can draw or as a person who is in charge of the details of the broiler operation? The second area of concern identified is one of *accounting*. Does the grower understand the terms of the contract and is he or she able to interpret the settlement sheet? The third area of concern is the grower's assessment of the *balance of risk and reward* entailed in contract growing. For example, do growers believe that the reward for their work is determined by factors within their control? A fourth area of concern has to do with the *quality of the interpersonal relationships* between grower and company. On a routine, day-to-day basis, are growers treated with consideration and respect and is their expertise and experience recognized and used? Elsewhere in the survey growers were asked if their contract stipulated that any *disputes* they might have with their company be settled in a certain way, such as through arbitration, mediation, or peer review. The growers were asked if they had ever used such a method and, if so, whether they were satisfied with it. If they had not used the provided method they were asked to state their reasons why.

Two final areas of concern have to do with the *quality of inputs* provided by the company and its *methods of dealing with the grower's output*—the finished broiler chicken. Contract growing means that the company provides most of the inputs for the operation. In the case of broiler growing, this means feed and chicks. Are these inputs provided on a timely basis and are they of consistently high quality? The output of the broiler operation is the finished bird. Are birds picked up on a timely basis and treated in such a way as to protect the grower's investment in them?

Besides asking growers about these areas of concern, the survey also gathered information about a wide range of characteristics of the grower and his or her operation. Many of the questions had to do with the grower's work experience. What kinds of work were they doing before they became contract growers? Do they or their spouse currently have a job off the farm and, if so, what is that job and is it full-time or part-time? How many hours of work a day is spent looking after the chickens? Do they grow crops or livestock on their farm other than broilers? Another batch of questions asked about the farm. How many houses are used? What is the age and size of each house and how many improvements have been made to them? What is the average number of flocks handled each year? Has this number remained steady over the past three years? How many birds in each flock and what was the average growout weight?

Growers were also asked about their finances. What was their net cash flow from the broiler operation last year? How many times over the past ten flocks did they finish above average in their growout group and receive a bonus? Is their income from broiler growing their only source of farm income? How dependent is their family on broiler earnings for its household income? What is their level of total farm debt? How much of that is attributable to the broiler operation? Have they received any contractually stipulated increases in their rate of pay over the past three years? Questions were also asked about the "human capital" of each grower. What is their level of education? How experienced a broiler grower are they? What is their age? Are they male or female? Are they members of farm organizations?

An important set of questions had to do with growers' expectations about contract growing. What was their reason for becoming contract growers originally? Where did they get their information about what their income from broiler growing would be? Has that income been higher or lower than they were led to expect? If it has been less than expected, what were the reasons? Has the time they spend looking after chickens been more or less than they expected?

Finally, in recognition of the rapid changes occurring in the broiler industry, growers were asked about how their experience of contract growing had changed. They were asked to compare the number of companies offering contracts in their area when they started out in the business with the number now offering contracts. They were asked whether they had ever changed companies and, if so, why and, if they had not changed, why they had stayed with their original company.

II. Sample and Survey Procedure

The survey sample was drawn by National Agricultural Statistics Service, U. S. Department of Agriculture (NASS) from a list frame of growers marketing between 100,000 and 1,500,000 broilers per year in the 10 major broiler producing states. A minimum size was selected to limit the sample to commercial producers and the maximum to exclude operations owned by broiler companies. Four replicates of about 2000 each were drawn to provide additional names if needed. Only the first replicate set of 2004 names was used. States sampled in proportion to production are Alabama, Arkansas, Delaware, Georgia,

Maryland, Mississippi, North Carolina, South Carolina, Texas, and Virginia. Lists were reviewed by State Statisticians in each state who identified 33 names in the set used that should not be contacted because of prior survey burden, known to be company farms, or known to object strongly to being contacted.

At least some information was provided by 1424 of the 1971 contacts. Additional analysis by Purdue Department of Agricultural Statistics based on Census of Agriculture data indicated no significant difference in size of operation or grower demographics between respondents and non-respondents in the original sample. All data preparation and analysis was completed using the SAS system with the assistance of Linda Lawson of Purdue University's Department of Agricultural Statistics. Details of the response rates are provided in Appendix 2-A.

III. Responses to the Survey

This section of the report describes the responses to the survey. The description follows the sequence of items as laid out in the questionnaire. A copy of the questionnaire used is provided in Appendix 2-B. More details on the number of growers who responded to each item together with the percentages for each item's response category are reported in Appendix 2-C.

A. The Growers and Their Farms

The growers who responded to the survey have extensive experience. Sixty-two percent have been growing broilers for more than 10 years. The average is 16 years. Most growers in the survey entered the business to enhance their income or financial security. However, a large majority of growers responding also indicated that being their own boss (72 percent) was at least somewhat important in their decision to enter broiler production. Only 37 percent of growers responding were operating a farm prior to starting their broiler operation. Table 1 provides additional analysis of grower responses related to prior employment.

Table 1

Employment when started growing broilers		
	Frequency	Percent
Farm, no off-farm job	217	22
Off-farm job, no farm	535	53
Both farm and off-farm job	151	15
Neither farm nor off-farm job	98	10

Thirty-seven percent of growers responding currently have an off-farm job. Of those, 66 percent are employed full time. Sixty-five percent of growers responding grow other crops

or livestock. Ninety percent are married and almost half their spouses work off the farm, most of them full time.

The average farm represented in the survey has 3.6 houses, which average 15.5 years in age. Seventy-four percent of farms have between two and four houses, with three being most common at 30 percent. Sixty-seven percent of broiler houses represented in the survey had undergone at least one “substantial” improvement (costing at least \$3,000) over the past five years.

Responses from some growers indicating that they worked more than 24 hours a day and spent fewer hours per day working in the broiler operation in the initial two weeks after receiving flock delivery suggests caution in interpreting the data on labor time devoted to broiler growing. Excluding these questionable responses, the data indicate that the average operation uses 7.4 hours of labor per day in the first 2 weeks and 5.5 hours per day in subsequent weeks. Routine cleanout requires 33.3 hours and a major cleanout, 43.3 hours. Responses indicating hours needed for both types of cleanouts indicate the use of substantial hired help. Despite the problems with these questions on labor time, a regression analysis found that hours of labor per day for both the first two weeks and the rest of the growout period are positively related to number of houses as might be expected, suggesting that the edited responses are valid.

B. The Growers and Their Contracts

The average number of companies offering contracts within the grower’s area (self-defined) at the time of the survey was 2.48, lower by .33 than when respondents began growing broilers. Of those growers providing information about companies operating when they started growing and companies operating now, 28 percent reported a decrease, 54 percent reported no change, and 18 percent reported an increase. Nearly a third of growers have changed companies. Forty-seven percent of those indicating a reason for the change said that they did so because the old company closed or changed hands, while 12 percent of those indicating a reason for changing companies said it was because they were cut off by their old company. This latter statistic probably understates the occurrence of cut-offs because it includes only those that remain in the business. Of those who have not changed, two-thirds did not see an alternative to their current company.

Thirty-six percent of growers responding indicated that their contracts stipulate a specific procedure for settlement of disputes between the grower and the company. Thirty-eight percent of growers indicated that they did not know whether their contract requires disputes to be settled through a specified procedure. For those growers who did know of a required procedure, arbitration (52%) and peer review (30%) are the most common procedures used. However, few growers (4%) had used the dispute resolution procedure provided in their contract. (Of the 13 growers who indicated that they *had* used the dispute resolution procedure, four were not at all satisfied with the process, one was not very satisfied, four were somewhat satisfied, three were very satisfied, and one failed to indicate a degree of satisfaction.) Of those not using the contractual dispute settlement procedure, 13 percent believed that it would prove too costly, 33 percent feared that it would provoke

retaliation by the company, and 29 percent believed that it simply would not work to their benefit.

During the three years prior to the survey (1996-98), growers responding averaged 5.5 flocks per year with flocks averaging 71,725 birds per flock raised to an average of 5.14 pounds per bird. The number of flocks per year stayed about the same for roughly two-thirds of the growers, while 12% of growers reported decreasing flock numbers and 7% reported increasing flock numbers.

C. Grower Perceptions of Company Relations

Two questions in the survey focused on the growers' perceptions of their relationship with their contracting companies. The questions were designed to evaluate the quality of that grower-company relationship. Question 7 in Section 2 of the survey presented statements with which respondents were asked to completely agree, agree, disagree, or completely disagree. Question 8 in Section 2 presented statements for which respondents were asked to indicate the frequency that the statement applied to their situation.

The survey results indicate that growers generally find that companies provide helpful information on flock management (80% agree) and that growers view their service person as a good judge of their work (77% agree). Two-thirds of the survey respondents agreed that they feel free to complain to the company if they have a problem. However, forty-two percent of the growers responding to the survey indicated that they do not feel free not to follow the recommendations of the company service person. Seventy-eight percent of the growers indicated that the service person rarely or never lets the grower know ahead of time about a farm visit. Settlement sheets are difficult to decipher for 31 percent of the growers. Almost half the growers (48%) do not regard the ranking method of determining payment as a good incentive to work hard. Seventy-eight percent of growers agree that pay depends more on quality of chicks and feed supplied than on the quality of their own work. One third of respondents feel that time required to care for the broilers is more than they were led to expect. Barely half (51%) agree that improvements to houses suggested by the company made them better off, while half believe that their contract will not be renewed unless company recommendations regarding house replacement are followed. Seventy-five percent agree that getting into broiler growing was a good decision for them. However, only 35 percent would encourage others to enter the business, with 23 percent indicating strong disagreement with that statement.

While only 45 percent of growers find that company management always or usually responds helpfully to complaints (and 21 percent indicating that this is rarely or never true), the survey suggests that growers generally have a good relationship with their service person, as indicated by majorities of survey respondents indicating that the service person always or usually takes the time to help the grower understand and follow recommendations (64%) and keeps promises made to the grower (66%). Many growers perceive chick quality as a problem. Less than half (44%) indicate that good quality chicks are always or usually delivered to the farm. On the other hand, sixty-five percent of growers indicated that they always or usually receive good quality feed. Most growers responding to the survey indicated that they receive chicks, feed, and pickup as scheduled.

However, 38 percent of growers indicated that they are at least sometimes left without birds long enough to be hurt financially. Sixty-three percent believe the catching crew always or usually does a good job. When asking about condemnation rates, only 44 percent of growers always or usually receive a satisfactory explanation.

Most growers responding (65%) believe that their company always or usually provides them with good quality feed, and a slightly higher proportion (71%) report punctual feed delivery to their farms. Survey questions on charges for feed evoked a slightly different response pattern. While about half of growers responding believe they are rarely or never charged for more feed than delivered, 32% indicated that they did not know whether this was the case or not. A smaller but still significant proportion of growers (19%) indicated that they did not know whether feed had been emptied from their bins without their being credited for it. Most growers, however, were satisfied that this rarely or never occurred.

Seventy-eight percent of growers responding reported no company assistance with proper disposal of litter or dead birds. Growers who are company employees are frequently included in growout groups (implying inclusion in calculation of payment, although the question could have been interpreted otherwise). Seventy percent of growers responding believe that company employees should not be included in the same growout groups as non-employees.

D. Income and Expenses

Net cash flow (income less cash expenses) from the broiler operation was less than \$30,000 for three-quarters of growers responding. Nine percent reported losing money. While sixty-five percent of the growers responding have diversified farm operations, only 14 percent of all growers reported other farm activity accounting for more than 50 percent of gross farm income. Broilers therefore seem to be the chief source of farm income for most growers participating in the survey. Only a slim majority, 51 percent, however, indicated that more than half their family's total income (including any off-farm income) is derived from the broiler operation. (A preliminary analysis of the determinants of net cash flow is reported in Appendix 2-D.)

The growers were asked how many times, in the past ten flocks, they had been ranked above average in their growout group. The mean number of times was 5.94. Either the respondents were better than average growers or there is a positive bias in the response.

Broiler companies and other growers were the most important sources of income information at the time respondents began to think about broiler growing. Lending organizations were the next most important information source. Forty-seven percent of growers indicated that their incomes have been about as expected based on information provided by the company when starting. Ten percent indicated that their incomes have been more than expected. However, the income of 43 percent has been below expectations. Most of those whose expectations have been disappointed attribute this to chick quality (76%), higher than anticipated operating costs (86%), higher than expected chick death rates (65%), and the need to make expensive improvements (65%). Sixty percent of

respondents reported contract changes that increased their pay in the preceding three years.

Two-thirds of growers (66%) reported total farm debt of less than \$200,000, and almost half (46%) reported less than \$100,000 in total farm debt. More than half (52%) reported that 75 percent or more of their total farm debt was owed on the broiler operation.

Growers indicated Farm Bureau most often (43%) and Contract Poultry Growers Association next (20%) as organizations they belong to in the belief that the organization will help them manage the broiler operation. The average grower age is 51 years. Most growers are male (82%) and have completed no more than high school education (58%).

IV. Summary of Results of Analysis of Broiler Data

The purpose of the survey was not only to gather descriptive data on broiler growers but to find out why growers have such different experiences with contract growing. The growers' demographic and financial information reported in the survey was grouped to assess whether any categories of factors were associated with specific grower perceptions. The first set of factors had to do with the growers' level of performance in the ranking system and the size of their operation (measured in net cash flow, number of flocks per year, and number of houses). The second had to do with the grower's human and social capital (measured in education, age, gender, years of growing experience, and organizational membership). The third deals with the grower's work experience. The fourth concerns the grower's dependence on the company for a livelihood. And the fifth deals with changes in the circumstances under which the grower has operated.

The analysis performed looks at the impact of each of these clusters of variables on nine areas of concern. These are:

- Grower ratings of autonomy
- Grower ratings of difficulty understanding contracts and settlement sheets
- Grower assessments of risk and reward in contract growing
- Grower ratings of quality and timeliness of chick delivery
- Grower ratings of quality and timeliness of feed delivery
- Grower ratings of the quality of interactions with company personnel
- Grower expectations about the work time entailed in broiler growing
- Grower reports of delayed flock delivery and high condemnation rates
- Grower opinions about broiler growing and recommendation to others

The complete tables from which the following summary is drawn, with accompanying text, can be found in Appendix 2-E.

A. Grower Ratings of Autonomy

Contract growing is one way to enter or stay in farming, it can be an attractive means of farm diversification, and it offers individual growers resources and support from company representatives. On the other hand, there are many restrictions and conditions imposed by

the contract that undermine some of the freedoms enjoyed by independent growers. A number of items of the survey were intended to measure the grower's sense of autonomy with respect to the company. There was considerable disagreement among growers on many of these items. For example, 67% felt free to complain to their company if they had a problem but 28% did not; 51% believed that the improvements mandated by their company had made them better off but 33% either disagreed or strongly disagreed that this was the case and a further 16% indicated they did not know either way. By and large, growers who were doing better financially seemed to feel the most autonomous. This could mean that the more "independent" growers performed better or it could mean that better performance enabled growers to enjoy more autonomy, or at least think they had more autonomy. It could also mean that a third, prior, factor not only helped some growers to be more successful but also more "their own boss."

A typical pattern of association is to be found in the case of the item: "My service person may make recommendations but I feel free to go my own way." Just over half (52%) of the growers agreed but 42% disagreed with this statement, ten percent of them strongly. A further 6% refused to say. Who was most likely to feel they could go their own way despite the recommendation of their service person? Two performance measures stand out: growers with higher net incomes and growers who had ranked above average often were more likely to express a sense of autonomy. Growers whose income was higher than they had expected were also more likely to agree as were growers who had been well treated by the company—as shown by an increase in the number of flocks they received per year. Several other factors, however, pointed to disagreement with this statement with almost half of the growers not feeling that they could go their own way: these growers were more likely to be male than female, they tended to be older and, significantly, they tended to have accumulated more years of experience as a contract grower.

B. Grower Ratings of Difficulty in Understanding Contracts and Settlement Sheets

These questions were intended to measure the degree of difficulty faced by growers in understanding the various documents pertaining to the contract growing relationship. As it turned out, 82% of the growers said they could understand the terms of their contract. The settlement sheet was another matter: only 63% claimed to be able to understand those documents, leaving 31% who could not understand the calculations reported. Which growers seemed to experience the most difficulty? Once again, a number of performance measures were relevant. The growers most likely to report difficulties understanding their settlement sheets were those who were not doing too well: that is, they had lower net cash incomes, had not ranked above average very often recently, had received fewer flocks per year, and realized income from the broiler operation that was less than they expected. Furthermore, they had enjoyed no increases in financial well being in recent years: they had not been given an increase in flocks per year and their contract had not been changed to increase their pay. In addition to these performance measures, there were several other grower and farm characteristics associated with understanding of settlement sheets. The managers of larger operations (as measured by number of houses) found the settlement sheets easier to understand, as did the more highly educated growers and those with an off-farm job in the managerial or professional world. Somewhat surprisingly, the more

experienced growers reported more difficulty: a function, perhaps, of their age and education. Finally, growers operating farms in areas in which several companies were offering contracts were more likely to find their settlement sheets comprehensible.

C. Grower Assessments of Risk and Reward in Contract Growing

These questions were intended to measure the growers' perceptions of how risk and reward are related in contract farming. Perhaps the most important item in this cluster pertains to the ranking method. Does it provide a good incentive to the grower to work hard and take care of his or her operation? Just under half the growers (48%) clearly believe that the ranking system does not provide much incentive to work hard, while 45% are in favor of it and a further 7% did not provide an answer.

Who are the growers most likely to speak favorably of the ranking method? As might be expected, performance measures are strongly associated with opinions on this matter, with the better performing growers (measured by times ranked above average and net cash flow) more supportive of it. Positive attitudes toward the ranking method are also more likely to be found among growers whose recent experience with growing under contract has been good: their flock numbers have been rising and their contract has been changed to increase their pay. Enjoying an income greater than expected also contributed to positive attitudes about ranking. Those reporting an average of seven or more flocks in the previous three years were also supportive, compared to those who had been given five flocks. There is also a tendency for growers with little debt and with little of their debt owed on the chicken operation to think more highly of the ranking method. Grower characteristics also played some role: growers with some post-high school education (in trade or technical school) were the least favorably disposed as were the younger growers. On the other hand, growers with an off-farm job in the managerial category were, of all off-farm workers, the most approving of the system.

D. Grower Ratings of Quality and Timeliness in Chick Delivery

A majority of the growers in the survey (78%) believe that their pay depends more on the quality of chicks delivered to their farm than on their quality of their work. Growers' assessments of the quality and punctuality of chick delivery is thus very important. Growers were asked a number of questions about timeliness of chick delivery and the quality of the chicks delivered. Quite a number of growers (38%) agreed that they are at least "sometimes" left without birds long enough to hurt them financially. However, 85% reported that birds are "always" or "usually" delivered to their farm when promised. Perhaps the key item in this batch, considering the opinions expressed on the importance of chick quality, is that which states: "Good quality chicks are delivered to my farm." Growers were split on this item, with 43% indicating "always" or "usually," 44% indicating "sometimes," and 12% saying "rarely" or "never."

Who were the growers most likely to report always, or at least usually, receiving good quality chicks? They tend to be those with higher net cash incomes, they rank above average more frequently, they receive more flocks per year, the number of flocks they have been receiving has risen in recent years, as has their base pay as stipulated in the contract,

and they are earning more than they expected. They are older and hold a job off the farm in a managerial position. Only a small fraction of their farm debt is attributable to broiler growing.

E. Grower Ratings of Quality and Timeliness of Feed Delivery

Feed is the other major input supplied by the company, and many growers are concerned that their lack of control over the delivery and quality of the feed they must use affects their incomes. Few growers (3%) responding believe that they are “always” or “usually” overcharged for their feed although 16% believe they “sometimes” are. Almost one-third (32%) of growers responding to the survey marked the “other” column regarding overcharging for feed, indicating that some growers do not know what to believe about overcharging while others may have not wanted to indicate their belief about overcharging. Most (71%) report on-time delivery of feed. However, there is more variation with respect to the perceived quality of the feed with which they are supplied. The majority (65%) believe that good quality feed is “always” or “usually” delivered to their farm, but the rest are more skeptical.

Who, according to these reports, gets the best quality feed? They tend to be growers with higher net cash incomes who often rank above average, are given more flocks a year, have experienced an increase in the number of flocks delivered and an increase in base pay and are earning more than they expected. They operate more houses but have less total farm debt and attribute a smaller fraction of their debt to broiler growing. They are older and have more years of experience as a contract grower. Their job prior to becoming a contract grower is less likely to have been that of a farmer. Good quality feed delivery is also more likely to be reported by those without a job off the farm. However, if they do have a job off the farm it is those who occupy managerial or professional positions who report receiving good quality feed most consistently. Once again, more favorable reports come from growers with low farm debt and those who report that little of the debt they have is attributable to broiler growing. More consistent quality feed delivery is reported by growers whose family income is the *least* dependent on money they make from raising chickens.

F. Grower Ratings of the Quality of Interactions with Company Personnel

These questions allowed growers to rate the degree to which their company seems to acknowledge and use their expertise. High quality relationships are defined as those in which the skills and concerns of the grower are respected and acknowledged; low quality relationships are those in which the grower is “de-skilled” and simply told exactly what to do for each phase of the growout operation. One key indicator of relationship quality is how readily companies respond to the concerns of their growers. Do they respond helpfully when the grower approaches them? Just under half (45%) of the growers said that their company “always” or “usually” responds to their complaints helpfully, but 21% responded that their company “rarely” or “never” does so and 28% said that their company responded helpfully only “sometimes.”

Which growers were most likely to see their company as responding helpfully when they complain? They had higher net cash incomes, rank above average more often, receive more flocks per year, had seen the number of flocks they receive rise in recent years and were earning more than they had expected. They had also received an increase in pay through a re-written contract. They are more highly educated, female, older, and, if they have an off-farm job, working in a managerial rather than a technical or sales position. They are also likely to owe little on their farm.

Growers were also asked to describe their relationship with their service person. Although few growers (8%) reported that their service person let them know ahead of time about visiting their farm, 64% reported that he or she “always” or “usually” took time to help them understand and follow recommendations. This still leaves 33% who would describe their service person as not spending enough time on their concerns. Who are these growers? They tend to be growers who: had lost money on their operation last year or reported low net cash incomes, ranked below average more frequently, had fewer flocks last year, had not been granted an increase in flock numbers or in their base pay through contract revision, and were earning less than they expected. They tended to be *more* well educated, male, younger, and have an off-farm job. The less dependent the grower was on broilers for family income, the worse they rated the service person on this criterion, but the association with debt was the opposite: the smaller the proportion of total debt attributable to broiler growing, the more favorable the rating for the service person.

G. Grower Expectations About the Work Time Entailed in Broiler Growing

Contract broiler growing is frequently marketed by companies as a part-time job, but many growers feel that their time commitments exceed those expectations. Growers were asked if they believe that the amount of time they and their families spend on the broiler operation is more than the company led them to expect. A third of the growers agreed that they did spend more time than they had anticipated, while just over half (54%) disagreed, with the remainder offering no answer. Who were the growers most likely to think they were having to spend more time than they had planned? They reported lower net cash income, but more flocks per year and more houses. They were older and their job prior to contract broiler growing was farming. They reported that broiler income represented less than a quarter of their family income and they had not enjoyed an increase in base pay through contract revision. They were also more likely to report that their income was less than they had expected.

H. Grower Reports of Delayed Flock Delivery and High Condemnation Rates

Two factors that seem to play a role in growers’ overall assessment of contract growing are how frequently they are left without birds long enough to hurt them financially and how often their birds are condemned at the plant at rates higher than they had expected. Being left without birds makes it more likely that the grower will report lower income, rank below average, and, not surprisingly, receive less than seven flocks a year and not have been given increased flock numbers. The more highly educated growers also report being without birds more often, as do growers who have diversified operations. Higher than expected condemnation rates are found among growers who are male, earn less income,

earn less than expected, rank above average infrequently, have more experience with contract growing, and have not been granted an increase in pay through contract revision.

I. Grower Opinions About Broiler Growing and Recommendation to Others

The survey asked two questions intended to provide the grower with the chance to make an overall assessment of their role as a contract grower: had it been a good decision for them and would they recommend it to others? Three quarters of the growers agreed that getting into broiler growing had been a good decision for them, but only 35% would encourage others to do the same.

Who were the growers most likely to believe that their career choice had been a good one? As might be expected, they tended to be the growers who were doing better financially, better than they had expected. They had higher net cash incomes, were ranked above average with greater frequency, their contract had been changed to increase their pay, they received more flocks per year and the number of flocks delivered had been going up. They tended to be full-time farmers (no off-farm job) and attributed little of their farm debt to the broiler operation. They were also more likely to be women. Finally, growers were more likely to see their decision as a good one if they were farming in an area where the number of companies offering contracts was rising.

Who were the growers most likely to want to encourage others to join their ranks? Once again, they tended to be growers who were doing well financially, better than they had expected. They had higher net cash incomes, were ranked above average frequently, had been granted an increase in base pay, and were either young or old (the middle aged were the least likely to recommend it). If they had an off-farm job they were more positive about contract growing if they were managers or professionals (in contrast to those with technical or sales jobs who were the most negative). They were more likely to recommend the job to others if the number of companies offering contracts in the area had been increasing.

V. Grower Comments

Growers participating in the survey were also invited to submit written comments. Forty-two percent of the completed surveys included at least one comment. The ten most frequently addressed issues matched many topics already covered by survey questions. These comments were reviewed and grouped by topic. Those frequently addressed topics were:

- Level of contract payments (income) (126 comments).
- Cost of improvements and repairs specified by the company (93 comments).
- Grower involvement in decisions affecting his or her operation (78 comments).
- Cost increases (69 comments).
- Chick quality and/or count (63 comments).
- Pay based on performance relative to other growers (58 comments).

- Satisfaction now compared to past (50 comments).
- Expressing high level of satisfaction (49 comments).
- Concern about an imbalance of power between companies and growers (43 comments).
- Feed quality and/or weight (40 comments).

VI. Conclusion

The purpose of this survey was not only to gather descriptive data on broiler growers but also to assess the impact of contract poultry growing arrangements on the growers. Survey responses indicate that most growers participating feel that their company provides helpful information about flock management (80%), that they feel free to complain to the company about problems (67%), that the service person is a good judge of the grower's work quality (77%), and that getting into broiler growing was a good decision for them (75%).

Despite these positive indications, grower responses to other survey questions identify certain aspects of their broiler growing arrangements that are perceived by growers to be of continuing concern. Survey responses indicate that growers perceive the following as areas of continuing concern:

- Use of the ranking system to determine grower pay.
- That grower pay is most affected by matters outside their control, namely the quality of inputs provided by the company.
- Confusion among a substantial number of growers regarding their settlement sheets.
- Higher than expected condemnation rates and inadequate explanations of condemnations.
- The dispute resolution procedures available to growers under growout contracts.
- The disconnect between many growers' negative perceptions of the value of improvements suggested by the companies and their belief that their contracts will not be renewed if the improvements are not made.
- Grower concerns and uncertainty about the accuracy of feed weighing and prompt weighing of birds.
- The large majority of growers who receive no assistance from their company with the disposal of litter or dead birds.
- The high percentage of growers earning less than expected and high percentages perceiving the causes to be related to chick quality, required improvements, and rising operating costs.
- Growers being left without flocks long enough to suffer financially.

How these perceived grower concerns are addressed by broiler grower contract provisions and state and federal laws will be discussed in subsequent chapters of this report. Chapter Four, which discusses the extent to which federal and state laws address these grower concerns, also includes recommendations for policy changes that may improve grower and company relations in these areas.

Appendix 2-A Survey Protocol

The survey was conducted by the Department of Agricultural Statistics, Purdue University. The first mailing was made July 30, 1999. A second mailing to non-respondents was made August 30. Telephone contacts of non-respondents were made from September 20 through October. Those contacted by phone who did not agree to complete the survey were asked a subset of four questions to aid in assessment of bias.

A third mailing was made to those who did not respond to the first two mailings and were not reached by phone.

Responses:

1010	Fully completed questionnaires
103	Answered 4-6 questions by phone
311	Not growing broilers (out of scope of survey)
33	Not contacted at request of state office
25	Unable to contact—post office return and no valid phone number
77	Valid address, mailed three times, but unable to reach by phone
5	Returned form, stating they didn't want to participate
49	Refused to complete the survey when called
58	Mailed twice, when called said they would return form—never received
19	Mailed twice, when called requested we mail it again—never received
79	Mailed twice, when called requested call back, but then not home
<u>235</u>	Valid phone and address, mailed three times, attempted by phone more than three times
2004	Sample

Appendix 2-B
Blank Survey Form

Appendix 2-C Survey Results

Appendix 2-D Calculating Net Cash Flow

The survey indicates that many growers derive relatively low incomes from their broiler operation. An examination of the data in the survey shows that level of income corresponds quite closely with size of operation. In the ensuing analysis, the following variables are used:

Net cash flow = 0 if “Lost Money” to 5 if “\$60,000+” from Section 3, Question 1

Square feet = total house space calculated from Section 1, Question 7

Number of flocks per year = Section 2, Question 6

Operator has off-farm job = 1 if yes, 0 if no

Operator has full-time job = 1 if yes, 0 if no

Farm includes crops and/or other livestock = 1 if yes, 0 if no

Three regression models were estimated. The results of testing the first model are reported in the table below. A positive relationship between cash flow and house capacity, the number of flocks per year, and the farm including other enterprise(s) is indicated. The grower’s job status has no impact net of these factors.

Dependent : Net Cash Flow		
	Parameter Estimate	Probability
Intercept	1.483770	.0001
Square feet	0.000010699	.0001
Number of flocks per year	0.105853	.0366
Operator has off-farm job	-0.175447	.1647
Operator has full-time job	-0.186525	.1797
Farm has other crops/livestock	0.188428	.0179

In a second model, net cash flow was regressed on age of operator, average age of houses, and number of houses. Positive statistically significant coefficients were found for operator age and number of houses and a marginally significant negative relationship for age of houses.

A third model regressed net cash flow on operator age, age of houses, and number of flocks in last 10 ranked above average. Operator age was not significant in this model, but house age had a negative significant coefficient, and number of flocks above average showed a positive significant influence.

Appendix 2-E

Statistical Analyses of Survey Results

In the following 35 tables are presented detailed analyses of relationships between the growers' responses to Questions 7 and 8 in Section 2 of the questionnaire and various characteristics of the grower and his or her operation. It is important to recognize that the analyses presented identify association, not causation. Even though the statistical analyses are structured as if one variable is dependent on another, the existence of a statistically significant relationship does not indicate which is cause and which is effect. The tables present the results of analysis of variance employing the Duncan multiple range test on the responses to Questions 7 and 8. For Question 7 the scores are: completely agree=1, agree=2, disagree=3, and completely disagree=4. "Other" is treated as a missing value. For Question 8 the scores are: always=1, usually=2, sometimes=3, rarely=4, and never=5. "Other" is treated as a missing value. Thus an average of 2.5 for statements in Question 7 implies an equal level of agreement and disagreement, and an average of 3.0 for statements in Question 8 implies "sometimes." Letters to the left of the average scores indicate differences between groups. A statistically significant difference ($p=.05$) exists between groups only if they do not have any of the same letters displayed. Code numbers at the top of the table refer to the questionnaire item.

Tables 1-5 focus on the relationship of statements related to the grower's assessment of his or her autonomy with respect to the company to variables measuring grower performance, human and social capital, work experience, dependency, and change. Tables 6-10 highlight the degree of difficulty involved in understanding contract and settlement documents. Tables 11-15 concern items on the questionnaire asking the grower to assess the ratio of risk and reward in the contract relationship. Tables 16-20 have to do with the quality of the interaction between grower and company. Tables 21-25 concern the quality of chicks and associated services. Tables 26-30 deal with growers' evaluation of feed and feed services. Tables 31-35 contain items in which growers provide an overall assessment of the contract relationship.

With regard to the human and social capital variable of organizational membership (Tables 2, 7, 12, 17, 22, 27, and 32) note that, because the survey asked if growers joined the organizations for the specific purpose of helping them "manage their broiler operations better," a negative response does not necessarily mean that the grower is *not* a member of the organization. He or she may have answered "no" because that was not the reason for joining the organization.

Grower Ratings of the Degree of Autonomy They Have With Respect to Their Company

Table 1 shows a mainly positive relationship between growers' net cash flow and their assessment of their autonomy with respect to the company. Greatest differences occur for the grower's feeling free to complain to the company about problems and the perception that contracts will not be renewed unless company recommendations to build new houses or make major improvements are followed. Growers with higher cash flow from the broiler operation are also more likely to see themselves as having a higher degree of independence—they feel freer to go their own way—than do those with low net cash flow. There is some tendency for growers producing more flocks per year to see themselves as more independent. Size of the

growing operation has limited impact. Frequency of ranking above average is also positively related to a feeling of independence.

Table 1. Grower assessment of autonomy with respect to the company and measures of grower performance

- 251 - Feel free to complain
- 252 - Feel free to go own way
- 253 - Service person is a good judge
- 260 - Improvements worth it
- 261 - Particular vendors
- 262 - No contract unless new houses/improvements

Performance Variables	N	Code 251	Code 252	Code 253	Code 260	Code 261	Code 262
Net Cash							
Lost Money	81	D 2.55	C 2.68	B 2.40	C 2.82	AB 2.84	A 1.88
\$ 0 - \$14,999	329	C 2.26	BC 2.46	A 2.02	B 2.40	A 2.81	AB 2.12
\$15,000 - \$29,999	274	BC 2.11	B 2.41	A 1.96	B 2.39	AB 2.94	BC 2.24
\$30,000 - \$44,999	152	B 1.95	B 2.37	A 1.99	B 2.25	AB 2.94	CD 2.40
\$45,000 - \$59,999	42	BC 2.01	B 2.38	A 1.98	B 2.28	B 3.13	CD 2.48
\$60,000 & Up	36	A 1.65	A 2.06	A 1.81	A 1.96	B 3.13	D 2.62
Flocks/Year							
Less Than 5	102	B 2.11	A 2.32	AB 2.01	AB 2.38	A 2.93	A 2.18
5.0 - 5.9	498	B 2.22	A 2.45	B 2.08	B 2.44	A 2.89	A 2.17
6.0 - 6.9	337	B 2.09	A 2.42	AB 1.93	AB 2.34	A 2.89	A 2.23
7.0 or More	63	A 1.85	A 2.35	A 1.89	A 2.21	A 3.02	A 2.36
Houses/Farm							
1 - 2 Houses	335	B 2.21	A 2.41	A 2.00	A 2.35	A 2.92	A 2.18
3 - 4 Houses	426	A 2.03	A 2.39	A 1.99	A 2.36	A 2.90	A 2.26
5 or More	222	B 2.22	A 2.47	A 2.05	A 2.47	A 2.87	A 2.15
Ranked Above							
0 - 5 Times	368	A 2.18	B 2.47	B 2.07	B 2.46	A 2.86	A 2.15
6 - 10 Times	451	A 2.09	A 2.36	A 1.94	A 2.30	A 2.96	B 2.26

Table 2 shows relationships between perceptions of autonomy and measures of human and social capital of growers. Surprisingly, there are no significant effects of education. Women respondents are more likely to perceive themselves as having more autonomy. Older and more experienced growers are somewhat less likely to feel independent, although the older growers have more respect for the judgment of the service person. The more experienced growers split on the issue of respect for their service person's judgment, with the most experienced group (25 or more years) most likely to respect that person's judgment and the next most experienced group (13 to 24 years) least likely to respect that person's judgment, when compared to growers with 12 or fewer years in the business. Growers who belong to the Farm Bureau but not the Contract Poultry Growers Association or neither of these are more likely perceive themselves as

independent than are those belonging to the Growers Association or both Farm Bureau and the Growers Association.

Table 2. Grower assessment of autonomy with respect to the company and measures of grower human and social capital

- 251 - Feel free to complain
- 252 - Feel free to go own way
- 253 - Service person is a good judge
- 260 - Improvements worth it
- 261 - Particular vendors
- 262 - No contract unless new houses/improvements

Human & Social Capital Variables	N	Code 251	Code 252	Code 253	Code 260	Code 261	Code 262
Education							
Grade School	83	A 2.07	A 2.53	A 1.96	A 2.30	A 2.97	A 2.25
High School	495	A 2.12	A 2.37	A 1.98	A 2.36	A 2.89	A 2.23
Trade/Technical	135	A 2.19	A 2.43	A 2.02	A 2.41	A 2.85	A 2.20
Some 4-year	163	A 2.21	A 2.50	A 2.10	A 2.45	A 2.94	A 2.09
Bachelor & Up	116	A 2.16	A 2.46	A 2.12	A 2.48	A 2.97	A 2.23
Gender							
Male	822	B 2.17	B 2.45	B 2.05	A 2.40	A 2.87	A 2.20
Female	180	A 2.00	A 2.27	A 1.82	A 2.33	B 3.06	A 2.23
Years Growing							
7 or Less	213	A 2.12	A 2.27	AB 2.04	A 2.27	A 2.90	AB 2.26
8 - 12	251	A 2.15	AB 2.40	AB 1.97	AB 2.37	A 2.87	B 2.28
13 - 24	328	A 2.17	BC 2.45	B 2.09	B 2.45	A 2.92	AB 2.16
25 or More	206	A 2.10	C 2.56	A 1.92	AB 2.41	A 2.91	A 2.12
Age							
40 & Under	177	B 2.20	A 2.27	B 2.11	AB 2.33	A 2.95	A 2.22
41 - 50	307	B 2.20	B 2.45	B 2.06	B 2.46	A 2.86	A 2.15
51 - 60	307	B 2.16	B 2.46	AB 1.99	AB 2.41	A 2.89	A 2.22
Over 60	209	A 1.97	B 2.45	A 1.89	A 2.28	A 2.95	A 2.23
Organizations							
Poultry Grower	93	B 2.50	AB 2.51	B 2.24	B 2.64	A 2.66	A 1.91
Farm Bureau	311	A 2.03	A 2.37	A 1.97	A 2.32	B 2.97	B 2.30
Both	92	B 2.49	B 2.67	B 2.20	B 2.66	A 2.68	A 2.00
Neither	447	A 2.07	A 2.40	A 1.98	A 2.34	B 2.96	B 2.23

Note: Organization grouping is as follows:

Poultry Grower represents those who belong to the Contract Poultry Growers Association to help them manage their broiler operations better, and do not belong to Farm Bureau for that purpose.

Farm Bureau represents those who belong to Farm Bureau in order to help them manage their broiler operations better, and do not belong to the Contract Poultry Growers Association for that reason.

Both represents those who belong to both the Contract Poultry Growers Association and Farm Bureau in order to help them manage their broiler operations better.

Neither represents those who belong to neither the Contract Poultry Growers Association nor to Farm Bureau in order to help them manage their broiler operations better.

Table 3 outlines the relation between growers' work experience and their perceptions of autonomy. Those with prior farming activity differ from those without only in being more likely to agree that the company suggests use of particular vendors for equipment. Off-farm jobholders are no different from other growers, with the exception that they disagree that the service person is a good judge of the quality of their work. Whether the spouse has an off-farm job has no effect on the perception of independence.

Table 3. Grower assessment of autonomy with respect to the company and measures of grower work experience

- 251 - Feel free to complain
- 252 - Feel free to go own way
- 253 - Service person is a good judge
- 260 - Improvements worth it
- 261 - Particular vendors
- 262 - No contract unless new houses/improvements

Work Experience Variables	N	Code 251	Code 252	Code 253	Code 260	Code 261	Code 262
Farming Prior Job							
Yes	368	A 2.13	A 2.41	A 2.02	A 2.40	A 2.74	A 2.19
No	642	A 2.15	A 2.43	A 2.01	A 2.37	B 3.00	A 2.21
Has Off-farm Job							
Yes	360	A 2.18	A 2.44	B 2.08	A 2.43	A 2.94	A 2.19
No	624	A 2.10	A 2.40	A 1.97	A 2.35	A 2.89	A 2.22
Spouse Off-farm Job							
Yes	400	A 2.23	A 2.43	B 2.09	B 2.45	A 2.88	A 2.16
No	458	A 2.09	A 2.44	AB 1.99	B 2.38	A 2.94	A 2.26
No Spouse	94	A 2.07	A 2.33	A 1.89	A 2.21	A 2.84	A 2.20
Current Occupation							
Manager/Professional	45	A 1.94	A 2.39	A 1.93	A 2.37	B 3.17	A 2.31
Tech/Sales/Support	66	AB 2.14	A 2.41	A 2.12	A 2.43	AB 3.07	A 2.19
Farm/Forest/Broilers	47	AB 2.07	A 2.52	A 1.92	A 2.36	AB 2.98	A 2.20
Precision/Repair	80	AB 2.31	A 2.46	A 2.09	A 2.45	AB 2.92	A 2.18
Operators/Labor	85	AB 2.24	A 2.45	A 2.20	A 2.47	A 2.73	A 2.18
Other/None Listed	36	B 2.35	A 2.48	A 2.14	A 2.44	AB 2.96	A 2.09

Table 4 describes the association between the growers' financial dependence on broiler growing and their rating of their autonomy with respect to their company. Growers who depend very little on broiler growing for their family income reported feeling less autonomous. Growers who derive 75% or more of their family income from broilers show a somewhat greater perception of independence, although they join the growers deriving less than 25% of family income from broilers in feeling less able to complain than the middle groups do. Indebtedness does not seem to account for variation in grower attitudes: neither total farm debt nor percentage of debt attributable to broiler growing is associated with the items in this table, with the rather surprising exception that growers with a higher percentage of farm debt owed on the broiler operation feel most free to complain. Feeling bound to a particular company is not associated with autonomy ratings. The number of companies in the area makes no difference, however an increase in number is associated with a perception of greater autonomy.

Table 4. Grower assessment of autonomy with respect to the company and measures of grower dependency

251 - Feel free to complain
252 - Feel free to go own way
253 - Service person is a good judge
260 - Improvements worth it
261 - Particular vendors
262 - No contract unless new houses/improvements

Dependency Variables	N	Code 251	Code 252	Code 253	Code 260	Code 261	Code 262
% of Family Income							
Less Than 25%	185	B 2.30	A 2.46	B 2.13	A 2.47	A 2.73	A 2.09
25% - 49%	272	A 2.08	A 2.43	AB 2.00	A 2.37	B 2.95	AB 2.17
50% - 74%	243	A 2.05	A 2.41	AB 2.03	A 2.33	B 2.93	B 2.31
75% or More	228	AB 2.23	A 2.39	A 1.97	A 2.41	B 2.97	B 2.26
Total Farm Debt							
Under \$50,000	276	A 2.05	AB 2.40	A 1.95	AB 2.33	A 2.99	A 2.29
\$ 50,000 - \$ 99,999	143	AB 2.24	AB 2.43	A 1.97	B 2.44	A 2.92	A 2.20
\$100,000 - \$199,999	178	B 2.31	B 2.57	B 2.19	B 2.48	A 2.88	A 2.12
\$200,000 - \$299,999	132	A 2.04	A 2.34	AB 2.02	A 2.25	A 2.84	A 2.30
\$300,000 or More	180	AB 2.19	AB 2.43	AB 2.06	B 2.44	A 2.81	A 2.17
% of Debt is Broiler							
Less Than 25%	217	A 2.00	A 2.36	A 1.95	A 2.30	A 2.94	A 2.34
25% - 49%	84	AB 2.16	A 2.48	A 2.12	A 2.37	A 2.92	A 2.18
50% - 74%	105	AB 2.12	A 2.43	A 2.07	A 2.40	A 2.88	A 2.24
75% or More	472	B 2.25	A 2.46	A 2.05	A 2.42	A 2.87	A 2.16
50% Other Crops							
Yes	136	A 2.20	A 2.41	A 2.07	A 2.43	A 2.82	A 2.13
No	820	A 2.13	A 2.42	A 2.01	A 2.38	A 2.91	A 2.22
Current Companies							
1	274	A 2.24	A 2.48	A 2.02	A 2.44	A 2.90	A 2.21
2	202	A 2.18	A 2.49	A 2.02	A 2.43	A 3.00	A 2.10
3	160	A 2.10	A 2.39	A 1.99	A 2.33	A 2.81	A 2.27
4	109	A 2.06	A 2.40	A 2.01	A 2.40	A 2.96	A 2.22
5 or More	82	A 2.06	A 2.35	A 1.94	A 2.38	A 2.81	A 2.20
Don't Know	162	A 2.05	A 2.30	A 2.05	A 2.28	A 2.90	A 2.27
Number of Companies Offering Contracts							
Decreased	212	B 2.27	A 2.49	B 2.12	B 2.51	A 2.93	A 2.16
Stayed the Same	422	AB 2.16	A 2.45	AB 1.98	B 2.42	A 2.90	A 2.19
Increased	144	A 1.99	A 2.41	A 1.95	A 2.23	A 2.89	A 2.23

Growers' attitudes and perceptions can be affected by uncertainty and fluctuations in their circumstances. A number of measures of change are identified in Table 5, where their association with the autonomy ratings is also described. If the number of flocks per year has increased, income exceeds expectations, or the contract has changed to increase income, growers are more likely to perceive a higher level of independence relative to the company. Likewise, if the number of companies offering contracts has increased, growers' ratings of degree of autonomy are somewhat higher, particularly concerning the growers' feelings of freedom to complain, feelings that the service person is a good judge of their work, and feelings that improvements are worthwhile. A change of companies by growers is not associated with perceptions of autonomy.

Table 5. Grower assessment of autonomy with respect to the company and measures of change

- 251 - Feel free to complain
- 252 - Feel free to go own way
- 253 - Service person is a good judge
- 260 - Improvements worth it
- 261 - Particular vendors
- 262 - No contract unless new houses/improvements

Change Variables	N	Code 251	Code 252	Code 253	Code 260	Code 261	Code 262
Number of Flocks per Year							
Gone Up	68	A 1.92	A 2.31	A 1.85	A 2.08	C 3.17	B 2.35
Gone Down	121	B 2.52	B 2.69	C 2.24	C 2.74	A 2.67	A 1.94
Gone Up & Down	115	B 2.33	AB 2.52	BC 2.12	C 2.61	A 2.69	A 1.99
Stayed the Same	691	A 2.06	A 2.36	AB 1.97	B 2.32	B 2.95	B 2.27
Income Expectations							
More Than Expected	100	A 1.67	A 2.21	A 1.73	A 1.83	B 3.19	C 2.57
About What Expected	454	B 1.89	A 2.25	B 1.88	B 2.16	B 3.07	B 2.36
Less Than Expected	413	C 2.53	B 2.65	C 2.24	C 2.76	A 2.66	A 1.95
Contract Changed to Increase Pay							
Yes	563	A 1.98	A 2.37	A 1.92	A 2.27	B 3.00	B 2.30
No	319	B 2.44	A 2.50	B 2.19	B 2.61	A 2.75	A 2.03
Don't Know	55	A 2.07	A 2.41	A 1.9	A 2.29	A 2.76	B 2.27
Number of Companies Offering Contracts							
Decreased	212	B 2.27	A 2.49	B 2.12	B 2.51	A 2.93	A 2.16
Stayed the Same	422	AB 2.16	A 2.45	AB 1.98	B 2.42	A 2.90	A 2.19
Increased	144	A 1.99	A 2.41	A 1.95	A 2.23	A 2.89	A 2.23
Changed Companies							
Yes	303	A 2.06	A 2.42	A 1.98	A 2.41	A 2.89	A 2.20
No	689	A 2.17	A 2.42	A 2.02	A 2.37	A 2.91	A 2.21

Difficulty Understanding the Terms of the Contract Relationship

Four statements from Question 7 in Section 2 of the questionnaire represent the degree of difficulty or “hassle” involved in understanding the terms of the contract relationship. A lower score (more agreement) for the four statements represents less difficulty or hassle. Table 6 shows that growers with the highest cash flow experience fewer problems understanding the terms of their contract than those who lost money or earned less than \$15,000. Since these will also typically be larger growers, it is not surprising that the number of flocks per year is also associated with more positive scores on some of these items. It also follows that growers ranked above average more often are significantly more likely to perceive company information helpful and to understand their settlement sheet. However, sheer size of operation is not a consistent indicator: small operators are significantly more likely than large growers to agree that their company provides helpful information but are less likely than large growers to understand their settlement sheet.

Table 6. The degree of difficulty involved in the contract relationships and measures of grower performance

250 - Helpful information
254 - Effort to understand contract
255 - Understand the terms of contract
256 - Understand settlement sheet

Performance Variables	N	Code 250	Code 254	Code 255	Code 256
Net cash					
Lost Money	81	C 2.23	A 1.67	B 2.00	D 2.51
\$ 0 - \$14,999	329	BC 2.07	A 1.83	B 1.98	CD 2.35
\$15,000 - \$29,999	274	B 1.90	A 1.71	AB 1.84	ABC 2.20
\$30,000 - \$44,999	152	B 1.89	A 1.70	AB 1.79	AB 2.04
\$45,000 - \$59,999	42	B 1.90	A 1.80	AB 1.95	BCD 2.29
\$60,000 & Up	36	A 1.61	A 1.84	A 1.74	A 1.94
Flocks/Year					
Less Than 5	102	B 1.91	A 1.81	A 1.97	B 2.39
5.0 - 5.9	498	B 2.00	A 1.77	A 1.94	B 2.34
6.0 - 6.9	337	B 1.96	A 1.76	A 1.85	A 2.11
7.0 or More	63	A 1.74	A 1.70	A 1.81	A 1.96
Houses/Farm					
1 - 2 Houses	335	AB 1.99	A 1.77	A 1.89	B 2.32
3 - 4 Houses	426	A 1.90	A 1.75	A 1.89	AB 2.20
5 or More	222	B 2.04	A 1.79	A 1.95	A 2.17
Ranked Above					
0 - 5 Times	368	B 2.00	A 1.79	A 1.94	B 2.34
6 - 10 Times	451	A 1.92	A 1.74	A 1.86	A 2.12

Table 7 describes the association between human and social capital measures and the degree of difficulty understanding the terms of the contract. The more highly educated growers are more likely to understand their contract and their settlement sheets. Women and growers over 60 are more likely to find company information helpful. However, no consistent pattern emerged with respect to grower experience. Members of the Contract Poultry Growers Association perceive greater difficulty in understanding settlement sheets than do growers belonging to Farm Bureau and not the Growers Association or not belonging to either of these organizations. Growers belonging to both the Growers Association and Farm Bureau perceived the greatest difficulty in understanding their contract terms.

Table 7. The degree of difficulty involved in the contract relationships and measures of grower human and social capital

- 250 - Helpful information
- 254 - Effort to understand contract
- 255 - Understand the terms of contract
- 256 - Understand settlement sheet

Human & Social Capital Variables	N	Code 250	Code 254	Code 255	Code 256
Education					
Grade School	83	A 1.95	A 1.84	B 2.01	C 2.41
High School	495	A 1.94	A 1.76	AB 1.90	BC 2.29
Trade/Technical	135	A 1.99	A 1.74	B 1.98	C 2.41
Some 4-year	163	A 2.07	A 1.83	AB 1.92	AB 2.15
Bachelor & Up	116	A 1.93	A 1.71	A 1.79	A 1.94
Gender					
Male	822	B 1.98	A 1.78	A 1.92	A 2.24
Female	180	A 1.87	A 1.71	A 1.85	A 2.29
Years Growing					
7 or Less	213	A 2.01	A 1.74	A 1.82	A 2.12
8 - 12	251	A 1.95	A 1.80	B 1.97	B 2.34
13 - 24	328	A 1.99	A 1.74	AB 1.87	AB 2.23
25 or More	206	A 1.90	A 1.79	B 1.96	AB 2.27
Age					
40 & Under	177	B 2.02	A 1.82	A 1.90	A 2.16
41 - 50	307	B 1.97	A 1.76	A 1.91	A 2.25
51 - 60	307	B 2.00	A 1.75	A 1.91	A 2.31
Over 60	209	A 1.84	A 1.78	A 1.90	A 2.22
Organizations*					
Poultry Growers	93	B 2.10	A 1.76	A 1.88	B 2.47
Farm Bureau	311	A 1.90	A 1.79	A 1.91	A 2.24
Both	92	B 2.15	A 1.69	B 2.10	B 2.52
Neither	447	A 1.94	A 1.78	A 1.87	A 2.15

* See Note accompanying Table 2

Table 8 describes the relation between the items related to growers' understanding of their contracts and various measures of work experience. Prior work experience has little impact on grower comprehension. Whether the operator or spouse has an off-farm job also shows no significant effect.

Table 8. The degree of difficulty involved in the contract relationships and measures of grower work experience

250 - Helpful information
254 - Effort to understand contract
255 - Understand the terms of contract
256 - Understand settlement sheet

Work Experience Variables	N	Code 250	Code 254	Code 255	Code 256
Farming Prior Job					
Yes	368	A 1.97	A 1.77	A 1.93	A 2.28
No	642	A 1.96	A 1.76	A 1.89	A 2.22
Has Off-farm Job					
Yes	360	A 2.01	A 1.79	A 1.92	A 2.27
No	624	A 1.93	A 1.75	A 1.89	A 2.22
Spouse Off-farm Job					
Yes	400	B 2.01	A 1.79	A 1.91	A 2.27
No	458	AB 1.96	A 1.75	A 1.90	A 2.21
No Spouse	94	A 1.87	A 1.79	A 1.95	A 2.32
Current Occupation					
Manager/Professional	45	A 1.87	A 1.83	A 1.88	A 1.94
Tech/Sales/Support	66	A 2.06	A 1.72	A 1.81	AB 2.09
Farm/Forest/Broilers	47	A 1.89	A 1.78	A 1.83	AB 2.15
Precision/Repair	80	A 2.01	A 1.78	AB 1.95	BC 2.38
Operators/Labor	85	A 2.07	A 1.67	AB 1.93	BC 2.36
Other/None Listed	36	A 2.14	B 2.21	B 2.19	C 2.70

Table 9 describes the association between being dependent on the company and the level of perceived difficulty in understanding the contract and settlement sheet. One of the key items in this table—the growers’ perceptions of understanding their contracts—is unaffected by any of the dependency measures, except the change in number of companies where a decrease is associated with reports of less understanding. Growers’ assessment of their level of comprehension of their settlement sheets is not associated in a systematic way with farm debt. Growers whose family income is very dependent on broilers do make more of an effort to understand the terms of their contract. The more companies operating in the growers’ area, the more likely it is that growers describe their company as giving helpful information. Growers who report having five or more companies in their area are the most likely to report that they understand their settlement sheet, but the group reporting the lowest level of comprehension is not those with one company but those with three.

Table 9. The degree of difficulty involved in the contract relationships and measures of dependency

250 - Helpful information

254 - Effort to understand contract

255 - Understand the terms of contract

256 - Understand settlement sheet

Dependency Variables	N	Code 250	Code 254	Code 255	Code 256
% of Family Income					
Less Than 25%	185	A 2.03	B 1.83	A 1.96	A 2.28
25% - 49%	272	A 1.96	AB 1.80	A 1.90	A 2.26
50% - 74%	243	A 1.92	AB 1.75	A 1.90	A 2.29
75% or More	228	A 1.98	A 1.68	A 1.85	A 2.16
Total Farm Debt					
Under \$50,000	276	A 1.87	A 1.76	A 1.86	A 2.15
\$ 50,000 - \$ 99,999	143	AB 1.94	A 1.77	A 1.98	B 2.37
\$100,000 - \$199,999	178	C 2.10	A 1.76	A 1.93	B 2.36
\$200,000 - \$299,999	132	AB 1.93	A 1.77	A 1.92	AB 2.27
\$300,000 or More	180	BC 2.05	A 1.77	A 1.91	AB 2.19
% of Debt is Broiler					
Less Than 25%	217	A 1.86	A 1.81	A 1.88	A 2.13
25% - 49%	84	A 1.97	A 1.75	A 1.81	A 2.32
50% - 74%	105	A 1.98	A 1.71	A 1.88	A 2.30
75% or More	472	A 2.01	A 1.76	A 1.93	A 2.29
50% Other Crops					
Yes	136	A 2.06	A 1.83	A 1.85	A 2.30
No	820	A 1.95	A 1.74	A 1.90	A 2.23
Current Companies					
1	274	B 2.05	AB 1.76	A 1.93	AB 2.24
2	202	AB 1.96	AB 1.78	A 1.84	AB 2.25
3	160	AB 1.97	AB 1.79	A 1.96	B 2.33
4	109	AB 1.92	A 1.64	A 1.83	AB 2.10
5 or More	82	A 1.85	AB 1.72	A 1.90	A 2.09
Don't Know	162	AB 1.90	B 1.81	A 1.93	AB 2.30
Number of Companies Offering Contracts					
Decreased	212	A 2.04	A 1.77	B 2.00	A 2.28
Stayed the Same	422	A 1.98	A 1.74	A 1.87	A 2.19
Increased	144	A 1.93	A 1.78	A 1.85	A 2.28

Table 10 looks at the association between the various measures of change and the growers' degree of difficulty understanding their contracts and settlement sheets. A pattern is clearly evident here, since changes that benefit the grower are associated with more reported comprehension of contracts and settlement sheets. Thus, growers who report that their flock numbers have gone up are more likely to agree that the company gives helpful information and more likely to report that they understand settlement sheets. Growers whose incomes are more than they expected are more likely to rate company information as helpful and, together with growers whose income is about what they expected, more likely (than those whose income fell short), to report that they understand contracts and settlement sheets. Growers whose contracts had been altered to improve their pay were, again, more likely to rate company information as helpful, and more likely to report that they understand their contracts and settlement sheets. Whether a grower has changed companies is not related to these items.

Table 10. The degree of difficulty involved in the contract relationships and measures of change

250 - Helpful information

254 - Effort to understand contract

255 - Understand the terms of contract

256 - Understand settlement sheet

Change Variables	N	Code 250	Code 254	Code 255	Code 256
Number of Flocks per Year					
Gone Up	68	A 1.89	A 1.74	A 1.85	A 2.11
Gone Down	121	BC 2.07	A 1.71	A 1.97	B 2.40
Gone Up & Down	115	C 2.21	A 1.69	A 1.85	AB 2.31
Stayed the Same	691	B 1.91	A 1.80	A 1.91	AB 2.22
Income Expectations					
More Than Expected	100	A 1.64	A 1.70	A 1.75	A 1.89
About What Expected	454	B 1.82	A 1.77	A 1.80	A 2.02
Less Than Expected	413	C 2.20	A 1.76	B 2.04	B 2.57
Contract Changed to Increase Pay					
Yes	563	A 1.87	A 1.75	A 1.83	A 2.12
No	319	B 2.13	A 1.76	B 2.00	B 2.42
Don't Know	55	AB 2.00	A 1.77	A 1.84	B 2.38
Changed Companies					
Yes	303	A 1.92	A 1.80	A 1.94	A 2.26
No	689	A 1.98	A 1.75	A 1.89	A 2.23

Growers Assess Risks and Rewards

The following five tables detail the relationships between growers' characteristics and four measures of how growers see the relation between risks and rewards in contract growing. Perception that the ranking method of payment is a good incentive implies that the quality of inputs supplied by the company is consistent across growers. The statement "My pay depends more on the quality of chicks and feed supplied by the company than on the quality of my work" implies the opposite.

Table 11 shows relationships of the four measures to grower performance variables. Net cash flow from the broiler operation is clearly related to favorable perceptions of the risk-reward relationship. Respondents with the highest cash flow (5% of growers surveyed) are more likely to see the ranking method as a good incentive and more likely to think their own work is more important than the quality of chicks they receive. Growers having more flocks per year are somewhat more likely to believe that the ranking system is a good incentive and are least likely to believe that company employees are in their growout groups. On the other hand, larger operators are more likely to perceive their pay as dependent on quality of inputs than on their work, contrary to that indicated by the cash flow relationship. As expected, the growers more often ranked above average are more likely to see ranking as a good incentive and see pay as less dependent on inputs.

Table 11. Grower assessment of risk and measures of grower performance

257 - Ranking method is good incentive
258 - Pay depends more on chicks & feed than work
263 - Employees should not be group
291 - Employees are in my group

Performance Variables	N	Code 257	Code 258	Code 263	Code 291
Net cash					
Lost Money	81	D 3.08	A 1.47	A 1.67	A 2.56
\$ 0 - \$14,999	329	C 2.74	B 1.73	A 1.82	AB 2.68
\$15,000 - \$29,999	274	BC 2.58	AB 1.71	A 1.80	AB 2.84
\$30,000 - \$44,999	152	BC 2.44	AB 1.66	A 1.92	AB 2.85
\$45,000 - \$59,999	42	B 2.28	AB 1.72	A 1.80	B 3.07
\$60,000 & Up	36	A 1.98	C 2.27	B 2.20	AB 2.67
Flocks/Year					
Less Than 5	102	AB 2.53	A 1.79	A 1.98	A 2.66
5.0 - 5.9	498	B 2.69	A 1.69	A 1.78	AB 2.79
6.0 - 6.9	337	AB 2.56	A 1.70	A 1.86	A 2.69
7.0 or More	63	A 2.36	A 1.64	A 1.87	B 3.03
Houses/Farm					
1 - 2 Houses	335	A 2.59	B 1.76	A 1.87	A 2.57
3 - 4 Houses	426	A 2.59	AB 1.68	A 1.85	B 2.83
5 or More	222	A 2.69	A 1.64	A 1.75	B 2.86
Ranked Above					
0 - 5 Times	368	B 2.83	B 1.83	B 1.96	B 2.87
6 - 10 Times	451	A 2.41	A 1.58	A 1.69	A 2.67

Table 12 describes the association between social and human capital characteristics and growers' assessment of the risk-reward relationship in contract growing. No clear patterns emerge from these data. With respect to education, for example, the growers most supportive of the ranking method are those whose education is limited to grade school, while the growers who are least supportive of the ranking system are those whose highest level of education was technical or trade school. As far as age is concerned, the ranking method gets its strongest approval from growers over 60, but years growing makes no difference, nor does gender or experience. Farm Bureau members are more likely to view the ranking method most favorably. The idea that pay depends more on quality of chicks than quality of work finds its strongest agreement among middle-aged growers, growers with some four-year college education, and growers who are members of both the Farm Bureau and the Contract Poultry Growers Association. Growers who belong to both of these organizations are also more likely to disapprove of company employees being in their growout group.

Table 12. Grower assessment of risk and measures of grower human and social capital

257 - Ranking method is good incentive
258 - Pay depends more on chicks & feed than work
263 - Employees should not be group
291 - Employees are in my group

Human & Social Capital Variables	N	Code 257	Code 258	Code 263	Code 291
Education					
Grade School	83	A 2.45	A 1.71	A 1.98	A 2.44
High School	495	AB 2.59	A 1.72	A 1.83	AB 2.76
Trade/Technical	135	B 2.76	A 1.67	A 1.84	A 2.64
Some 4-year	163	AB 2.69	A 1.62	A 1.76	B 3.00
Bachelor & Up	116	AB 2.56	A 1.73	A 1.84	AB 2.72
Gender					
Male	822	A 2.63	A 1.69	A 1.82	A 2.78
Female	180	A 2.53	A 1.73	A 1.88	A 2.66
Years Growing					
7 or Less	213	A 2.52	A 1.77	A 1.90	B 2.89
8 - 12	251	A 2.68	A 1.63	A 1.75	B 2.84
13 - 24	328	A 2.66	A 1.72	A 1.84	A 2.57
25 or More	206	A 2.53	A 1.69	A 1.85	AB 2.80
Age					
40 & Under	177	B 2.66	AB 1.73	A 1.80	B 3.05
41 - 50	307	B 2.69	A 1.64	A 1.83	A 2.63
51 - 60	307	AB 2.59	A 1.66	A 1.82	A 2.76
Over 60	209	A 2.46	B 1.89	A 1.88	A 2.69
Organizations*					
Poultry Growers	93	B 2.91	B 1.65	A 1.62	A 2.75
Farm Bureau	311	A 2.51	B 1.74	B 1.82	A 2.71
Both	92	B 3.02	A 1.48	A 1.59	A 2.72
Neither	447	A 2.51	B 1.71	B 1.93	A 2.78

*See Note accompanying Table 2

Table 13 reports the association between work experience and the risk-reward assessment variables. The ranking method receives strongest support from growers who work full time on the farm, though the average value of the responses even for these growers indicates greater disapproval than approval. Of those who work off the farm, those who have managerial or professional jobs or who have jobs in the agricultural sector are the most likely to believe that their own efforts, rather than the quality of their inputs, makes the most difference to their pay, though the average value for these responses lies between “agree” and “strongly” agree that company inputs are more important. Those who have technical or manual jobs off the farm are the most likely to think that the quality of chicks is more important. Spouse’s off-farm job is unrelated to the assessment of risk.

Table 13. Grower assessment of risk and measures of grower work experience

257 - Ranking method is good incentive
258 - Pay depends more on chicks & feed than work
263 - Employees should not be group
291 - Employees are in my group

Work Experience Variables	N	Code 257	Code 258	Code 263	Code 291
Farming Prior Job					
Yes	368	A 2.66	A 1.68	A 1.84	A 2.70
No	642	A 2.58	A 1.71	A 1.82	A 2.79
Has Off-farm Job					
Yes	360	B 2.69	A 1.65	A 1.83	A 2.79
No	624	A 2.56	A 1.73	A 1.84	A 2.72
Spouse Off-farm Job					
Yes	400	B 2.73	A 1.65	A 1.81	A 2.70
No	458	AB 2.58	A 1.73	A 1.83	A 2.80
No Spouse	94	A 2.46	A 1.74	A 1.97	A 2.73
Current Occupation					
Manager/Professional	45	A 2.33	CD 1.87	A 1.99	A 2.69
Tech/Sales/Support	66	B 2.76	ABC 1.63	A 1.74	A 2.89
Farm/Forest/Broilers	47	AB 2.56	D 1.95	A 1.98	A 2.86
Precision/Repair	80	B 2.95	AB 1.54	A 1.72	A 2.80
Operators/Labor	85	AB 2.72	A 1.46	A 1.85	A 2.74
Other/None Listed	36	AB 2.56	BCD 1.76	A 1.75	A 2.76

Table 14 reports the association between assessment of risk and various items describing the financial dependency of the grower. Percent of family income derived from the broiler operation has no significant impact on assessment of risk. Growers with the least farm debt are most likely to agree that ranking is a good incentive. Those with farm debt levels of \$100,000 or more are somewhat more reluctant to have company employees in their growout group. Lower broiler debt as percent of farm debt is associated with greater agreement that ranking is a good incentive. Competition among companies appears to leave growers more favorably disposed to ranking as an incentive.

Table 14. Grower assessment of risk and measures of grower dependency

257 - Ranking method is good incentive
258 - Pay depends more on chicks & feed than work
263 - Employees should not be group
291 - Employees are in my group

Dependency Variables	N	Code 257	Code 258	Code 263	Code 291
% of Family Income					
Less Than 25%	185	A 2.74	A 1.70	A 1.76	A 2.70
25% - 49%	272	A 2.61	A 1.70	A 1.89	A 2.73
50% - 74%	243	A 2.59	A 1.68	A 1.82	A 2.71
75% or More	228	A 2.58	A 1.75	A 1.80	A 2.93
Total Farm Debt					
Under \$50,000	276	A 2.45	A 1.76	B 1.93	AB 2.73
\$ 50,000 - \$ 99,999	143	B 2.71	A 1.74	B 1.93	AB 2.79
\$100,000 - \$199,999	178	B 2.70	A 1.68	A 1.69	A 2.55
\$200,000 - \$299,999	132	AB 2.61	A 1.68	AB 1.88	AB 2.72
\$300,000 or More	180	B 2.74	A 1.66	AB 1.73	B 3.00
% of Debt Is Broiler					
Less Than 25%	217	A 2.42	A 1.74	A 1.91	A 2.75
25% - 49%	84	AB 2.51	A 1.77	A 1.77	A 2.59
50% - 74%	105	B 2.70	A 1.64	A 1.80	A 2.64
75% or More	472	B 2.74	A 1.68	A 1.79	A 2.81
50% Other Crops					
Yes	136	A 2.74	A 1.68	A 1.92	A 2.58
No	820	A 2.59	A 1.71	A 1.82	A 2.79
Current Companies					
1	274	B 2.72	ABC 1.72	A 1.80	B 2.86
2	202	AB 2.63	AB 1.61	A 1.81	AB 2.71
3	160	AB 2.60	A 1.59	A 1.85	AB 2.69
4	109	AB 2.51	C 1.83	A 1.82	B 2.86
5 or More	82	A 2.39	ABC 1.74	A 1.90	A 2.40
Don't Know	162	AB 2.58	BC 1.79	A 1.86	B 2.80
Number of Companies Offering Contracts					
Decreased	212	A 2.62	A 1.69	A 1.81	A 2.66
Stayed the Same	422	A 2.64	A 1.71	A 1.83	A 2.80
Increased	144	A 2.58	A 1.58	A 1.84	A 2.71

Table 15 describes how the growers' assessment of risk is related to changes in their situations. Those experiencing a constant or increasing number of flocks per year view ranking more positively and are more likely to agree that their pay reflects their own effort rather than the quality of chicks and feed with which they are provided. Similarly, higher income relative to expectations is associated with a greater likelihood of agreement that ranking is a good incentive and with a greater likelihood of agreement that pay is more the result of the grower's effort than input quality. Growers receiving less than expected are more likely to believe that company employees should not be in the same growout group as others and, together with growers earning about what they expected, are more likely to believe that company employees are in their group. A contract change resulting in a pay increase is also associated with a greater likelihood of a positive view of the ranking method.

Table 15. Grower assessment of risk and measures of change

257 - Ranking method is good incentive
258 - Pay depends more on chicks & feed than work
263 - Employees should not be group
291 - Employees are in my group

Change Variables	N	Code 257	Code 258	Code 263	Code 291
Number of Flocks per Year					
Gone Up	68	A 2.52	B 1.78	A 1.81	A 2.87
Gone Down	121	B 3.09	A 1.55	A 1.72	A 2.75
Gone Up & Down	115	B 2.86	A 1.57	A 1.67	A 2.83
Stayed the Same	691	A 2.50	AB 1.74	A 1.87	A 2.74
Income Expectations					
More Than Expected	100	A 1.90	C 2.03	B 2.13	B 3.19
About What Expected	454	B 2.32	B 1.81	B 1.97	A 2.77
Less Than Expected	413	C 3.09	A 1.50	A 1.61	A 2.62
Contract Changed to Increase Pay					
Yes	563	A 2.48	A 1.73	A 1.89	A 2.86
No	319	B 2.88	A 1.67	A 1.75	A 2.63
Don't Know	55	A 2.48	A 1.79	A 1.88	A 2.66
Changed Companies					
Yes	303	A 2.55	A 1.70	A 1.87	A 2.66
No	689	A 2.64	A 1.70	A 1.82	A 2.79

Grower Reports on the Quality of Their Interactions with Their Company

Tables 16-20 describe the relationships between six measures of the quality of the interaction between grower and company and grower/operation characteristics. Response scores indicate the frequency (always to never) with which the statement holds true for the respondent, where a low score is “always” and a high score is “never.”

Table 16 describes the relation between grower performance measures and grower reports on interactions between them and their company. Overall, net cash flow is positively associated with reports of more favorable and supportive relations. Higher income growers are more likely to report a responsive company management and good quality service from the fieldman. Growers averaging seven or more flocks were also more likely to rate their company management and fieldmen highly. The number of houses on the operation shows little association but an anomalous significant difference with respect to receiving a satisfactory explanation for condemnation rate. One might expect the larger grower to receive more attention from the company, but the frequency of satisfactory explanations reported by larger growers was lower. Those who more often rank above average were more likely to view the relationship with their company more positively than those more often ranking below average.

Table 16. Quality of the interaction between grower and company and measures of grower performance

270 - Management responds to complaints
271 - Service person lets me know about visits
272 - Service person takes time to help me
275 - Service person keeps promises
276 - Service person is hard to contact
286 - Satisfactory explanation about condemnation rate

Performance Variables	N	Code 270	Code 271	Code 272	Code 275	Code 276	Code 286
Net Cash							
Lost Money	81	C 3.13	B 4.47	C 2.64	D 2.49	A 3.57	C 2.95
\$ 0 - \$14,999	329	B 2.75	B 4.26	BC 2.34	CD 2.23	A 3.63	B 2.61
\$15,000 - \$29,999	274	B 2.66	B 4.26	B 2.19	BC 2.14	A 3.68	B 2.49
\$30,000 - \$44,999	152	B 2.58	B 4.31	B 2.11	ABC 2.11	A 3.74	B 2.52
\$45,000 - \$59,999	42	AB 2.44	B 4.20	B 2.02	AB 1.88	A 3.93	B 2.46
\$60,000 & Up	36	A 2.19	A 3.81	A 1.80	A 1.82	A 3.82	A 2.03
Flocks/Year							
Less Than 5	102	B 2.61	A 3.92	AB 2.12	B 2.10	A 3.83	B 2.45
5.0 - 5.9	498	B 2.75	B 4.29	B 2.30	B 2.19	A 3.64	B 2.69
6.0 - 6.9	337	B 2.67	B 4.32	AB 2.18	B 2.16	A 3.70	B 2.45
7.0 or More	63	A 2.24	AB 4.14	A 1.98	A 1.86	A 3.78	A 2.06
Houses/Farm							
1 - 2 Houses	335	A 2.70	A 4.30	A 2.29	A 2.22	A 3.59	A 2.48
3 - 4 Houses	426	A 2.62	A 4.21	A 2.15	A 2.10	B 3.78	AB 2.53
5 or More	222	A 2.76	A 4.27	A 2.24	A 2.14	AB 3.64	B 2.68
Ranked Above							
0 - 5 Times	368	B 2.83	A 4.26	B 2.35	B 2.24	A 3.61	B 2.66
6 -10 Times	451	A 2.58	A 4.28	A 2.15	A 2.11	A 3.75	A 2.46

Table 17 describes the relation between human and social capital variables and the quality of the grower's interaction with the company. These variables are less consistently related than the performance items. Women are more likely to report positive relations than are men. Grower years of experience shows no significant effect. Older respondents are more likely to report higher quality interactions. Growers who are members of Farm Bureau and not the Contract Poultry Growers Association, or who are members of neither organization, are most likely to report better quality interactions with the company.

Table 17. Quality of the interaction between grower and company and measures of grower human and social capital

270 - Management responds to complaints
271 - Service person lets me know about visits
272 - Service person takes time to help me
275 - Service person keeps promises
276 - Service person is hard to contact
286 - Satisfactory explanation about condemnation rate

Human & Social Capital Variables	N	Code 270	Code 271	Code 272	Code 275	Code 276	Code 286
Education							
Grade School	83	AB 2.64	A 4.21	A 2.07	A 2.05	A 3.69	A 2.48
High School	495	A 2.56	A 4.23	AB 2.17	A 2.13	A 3.69	A 2.51
Trade/Technical	135	A 2.84	A 4.14	AB 2.27	A 2.16	A 3.73	A 2.56
Some 4-year	163	AB 2.81	A 4.35	B 2.36	A 2.14	A 3.62	A 2.73
Bachelor & Up	116	B 2.84	A 4.32	AB 2.30	A 2.29	A 3.67	A 2.51
Gender							
Male	822	B 2.74	A 4.27	B 2.26	A 2.16	A 3.66	B 2.58
Female	180	A 2.39	A 4.15	A 2.03	A 2.10	A 3.78	A 2.41
Years Growing							
7 or Less	213	A 2.65	A 4.16	A 2.28	A 2.08	A 3.66	A 2.52
8 - 12	251	A 2.63	A 4.25	A 2.17	A 2.07	A 3.72	A 2.56
13 - 24	328	A 2.73	A 4.32	A 2.23	A 2.24	A 3.68	A 2.55
25 or More	206	A 2.66	A 4.22	A 2.17	A 2.14	A 3.66	A 2.52
Age							
40 & Under	177	B 2.70	AB 4.25	B 2.36	AB 2.11	A 3.62	A 2.64
41 - 50	307	B 2.74	AB 4.22	B 2.27	B 2.19	A 3.79	A 2.60
51 - 60	307	B 2.71	B 4.35	B 2.21	B 2.22	A 3.68	A 2.48
Over 60	209	A 2.50	A 4.15	A 2.06	A 2.01	A 3.58	A 2.48
Organizations*							
Poultry Growers	93	B 3.05	A 4.37	B 2.54	B 2.43	A 3.33	B 2.74
Farm Bureau	311	A 2.51	A 4.23	A 2.17	A 2.13	B 3.71	A 2.50
Both	92	B 3.05	A 4.27	B 2.43	B 2.43	A 3.47	B 2.76
Neither	447	A 2.63	A 4.25	A 2.18	A 2.06	B 3.76	A 2.50

* See note accompanying Table 2

Table 18 describes the relation between work experience and the quality of interaction with the company. Growers who farmed prior to broiler growing are more likely to say that the service person lets them know ahead of time about his visits, as are growers who currently work full time on the farm and do not have an off-farm job. Full-time farmers are also more likely to say that their service person takes time to help them. Those whose off-farm job is a managerial or professional one are more likely to report that the company responds helpfully to their complaints. Those with no prior farm experience are more likely to be satisfied with the company's explanation about condemnation rates.

Table 18. Quality of the interaction between grower and company and measures of grower work experience

- 270 - Management responds to complaints
- 271 - Service person lets me know about visits
- 272 - Service person takes time to help me
- 275 - Service person keeps promises
- 276 - Service person is hard to contact
- 286 - Satisfactory explanation about condemnation rate

Work Experience Variables	N	Code 270	Code 271	Code 272	Code 275	Code 276	Code 286
Farming Prior Job							
Yes	368	A 2.72	A 4.13	A 2.26	A 2.20	A 3.65	A 2.64
No	642	A 2.65	B 4.32	A 2.19	A 2.11	A 3.70	B 2.50
Has Off-farm Job							
Yes	360	A 2.74	B 4.36	B 2.33	A 2.21	A 3.64	A 2.59
No	624	A 2.63	A 4.18	A 2.15	A 2.11	A 3.72	A 2.52
Spouse Off-farm Job							
Yes	400	A 2.74	B 4.29	B 2.35	A 2.21	A 3.64	A 2.61
No	458	A 2.66	B 4.27	AB 2.17	A 2.13	A 3.71	A 2.54
No Spouse	94	A 2.60	A 4.06	A 2.07	A 2.07	A 3.72	A 2.48
Current Occupation							
Manager/Professional	45	A 2.37	A 4.27	A 2.32	A 1.97	A 3.44	A 2.44
Tech/Sales/Support	66	B 2.79	A 4.38	A 2.33	A 2.31	A 3.78	A 2.44
Farm/Forest/Broilers	47	AB 2.60	A 4.35	A 2.13	A 2.18	A 3.61	A 2.39
Precision/Repair	80	B 2.97	A 4.33	A 2.27	A 2.16	A 3.73	A 2.66
Operators/Labor	85	AB 2.75	A 4.51	A 2.56	A 2.31	A 3.53	A 2.78
Other/None Listed	36	B 2.81	A 4.12	A 2.20	A 2.24	A 3.66	A 2.67

Table 19 describes the relation between quality of interaction with the company and the measures of grower dependency on the company. The most dependent under the income measure are those who derive 75% or more of their family income from broiler growing. These growers are more likely than those whose corresponding proportion is less than 25% to report that the service person is hard to contact, but they are distinctive in no other way in this table. Growers who reported that the number of companies in their area increased, indicating greater independence, were somewhat more likely to report that the company service person keeps promises with greater frequency. Growers whose broiler-related debt amounted to less than 25% of total farm debt, again suggesting greater independence, were most likely to be satisfied with explanations of condemnation rates. Other than this, there is no clear pattern in the results relating dependency to quality of interactions.

Table 19. Quality of the interaction between grower and company and measures of grower dependency

270 - Management responds to complaints
271 - Service person lets me know about visits
272 - Service person takes time to help me
275 - Service person keeps promises
276 - Service person is hard to contact
286 - Satisfactory explanation about condemnation rate

Dependency Variables	N	Code 270	Code 271	Code 272	Code 275	Code 276	Code 286
% of Family Income							
Less Than 25%	185	A 2.78	A 4.31	B 2.40	B 2.33	A 3.56	A 2.61
25% - 49%	272	A 2.77	A 4.31	B 2.23	A 2.13	AB 3.63	A 2.54
50% - 74%	243	A 2.58	A 4.21	A 2.16	A 2.12	AB 3.70	A 2.56
75% or More	228	A 2.66	A 4.20	AB 2.21	A 2.14	B 3.82	A 2.51
Total Farm Debt							
Under \$50,000	276	AB 2.61	AB 4.29	A 2.16	A 2.08	AB 3.68	A 2.44
\$ 50,000 - \$ 99,999	143	ABC 2.70	AB 4.15	A 2.14	A 2.11	AB 3.78	AB 2.48
\$100,000 - \$199,999	178	C 2.87	B 4.36	B 2.50	B 2.39	A 3.56	C 2.74
\$200,000 - \$299,999	132	A 2.51	A 4.13	A 2.14	A 2.03	B 3.80	A 2.44
\$300,000 or More	180	BC 2.81	AB 4.34	AB 2.34	AB 2.23	AB 3.61	BC 2.67
% of Debt Is Broiler							
Less Than 25%	217	A 2.57	A 4.27	2.10	A 2.03	A 3.71	A 2.35
25% - 49%	84	A 2.69	A 4.23	B 2.39	B 2.29	A 3.58	B 2.62
50% - 74%	105	A 2.72	A 4.27	AB 2.33	AB 2.23	A 3.80	B 2.64
75% or More	472	A 2.75	A 4.29	AB 2.28	AB 2.18	A 3.66	B 2.62
50% Other Crops							
Yes	136	A 2.83	A 4.31	A 2.38	A 2.25	A 3.56	A 2.61
No	820	A 2.66	A 4.25	A 2.21	A 2.15	A 3.70	A 2.54
Current Companies							
1	274	A 2.73	B 4.40	A 2.26	A 2.17	A 3.69	A 2.56
2	202	A 2.67	AB 4.22	A 2.28	A 2.18	A 3.59	A 2.50
3	160	A 2.59	AB 4.16	A 2.19	A 2.19	A 3.68	A 2.55
4	109	A 2.66	A 4.12	A 2.20	A 2.12	A 3.78	A 2.52
5 or More	82	A 2.65	AB 4.18	A 2.23	A 2.18	A 3.60	A 2.61
Don't Know	162	A 2.73	AB 4.23	A 2.12	A 2.05	A 3.78	A 2.57
Number of Companies Offering Contracts							
Decreased	212	A 2.73	A 4.24	A 2.32	B 2.29	A 3.61	A 2.63
Stayed the Same	422	A 2.66	A 4.27	A 2.24	AB 2.15	A 3.68	A 2.48
Increased	144	A 2.65	A 4.23	A 2.21	A 2.07	A 3.72	A 2.60

Table 20 describes the relation between quality of interaction with the company and the variables measuring changes in the grower's situation. Growers whose flock numbers had remained stable or who had received an increase in the number of flocks per year viewed their interactions with their company more positively. Likewise, the higher the growers' incomes relative to expectations, the more favorably the reports on the interactions. Experiencing a recent change in contract that increased pay also is associated with a positive contract relationship. Growers who had not changed companies were more likely than growers who had changed to indicate that their service person frequently keeps promises.

Table 20. Quality of the interaction between grower and company and measures of change

- 270 - Management responds to complaints
- 271 - Service person lets me know about visits
- 272 - Service person takes time to help me
- 275 - Service person keeps promises
- 276 - Service person is hard to contact
- 286 - Satisfactory explanation about condemnation rate

Change Variables	N	Code 270	Code 271	Code 272	Code 275	Code 276	Code 286
Number of Flocks per Year							
Gone Up	68	A 2.39	A 4.23	A 2.05	A 2.02	B 3.74	A 2.28
Gone Down	121	B 3.06	A 4.37	B 2.48	B 2.32	AB 3.54	C 2.87
Gone Up & Down	115	B 3.03	A 4.33	B 2.49	B 2.43	A 3.37	BC 2.69
Stayed the Same	691	A 2.58	A 4.22	A 2.15	A 2.08	B 3.75	AB 2.50
Income Expectations							
More Than Expected	100	A 2.09	A 4.07	A 1.75	A 1.73	B 3.95	A 2.03
About What Expected	454	B 2.34	A 4.14	B 2.01	B 1.95	B 3.83	B 2.28
Less Than Expected	413	C 3.18	B 4.42	C 2.59	C 2.47	A 3.45	C 2.96
Contract Changed to Increase Pay							
Yes	563	A 2.52	A 4.20	A 2.13	A 2.04	A 3.77	A 2.36
No	319	B 2.98	A 4.34	B 2.43	B 2.35	A 3.51	B 2.88
Don't Know	55	A 2.61	A 4.20	A 2.12	AB 2.13	A 3.73	A 2.52
Changed Companies							
Yes	303	A 2.66	A 4.22	A 2.22	B 2.25	A 3.69	A 2.60
No	689	A 2.69	A 4.26	A 2.22	A 2.10	A 3.68	A 2.52

Grower Assessment of Chicks as Input and Output

Tables 21-25 relate to the quality of chicks, their delivery, and determination of pay weight. The associations between the six variables in this set and the grower performance variables are shown in Table 21. Chick quality and the related variables are key determinants of grower income. Increasing levels of net cash flow are associated with increasing perceptions of frequently receiving good quality, accurately counted chicks and frequently having birds picked up on schedule. Growers receiving seven or more flocks per year are more likely than those receiving 5.0 to 5.9 flocks a year to report prompt delivery of birds, and the same comparison yields similar differences in reports on chick quality. Differences in quality ratings associated with size of operation are not consistent with those associated with cash flow. One would expect income to be related to the number of houses, but growers with larger operations were more likely to report a lower frequency of desirable attributes and more of the undesirable. Growers ranked above average consistently report higher frequencies of desired attributes and lower frequencies of the undesirable.

Table 21. Grower assessment of the quality of the chicks and measures of grower performance

- 278 - Chicks are delivered when promised
- 279 - Good quality chicks are delivered
- 280 - The chick count is accurate
- 281 - Birds are picked up as scheduled
- 282 - Birds are weighed promptly at plant
- 283 - My weight tickets are machine stamped

Performance Variables	N	Code 278	Code 279	Code 280	Code 281	Code 282	Code 283
Net Cash							
Lost Money	81	D 2.03	C 2.96	C 2.56	B 2.03	B 2.04	B 1.83
\$ 0 - \$14,999	329	CD 1.84	BC 2.74	B 2.22	AB 1.91	A 1.81	B 1.62
\$15,000 - \$29,999	274	CD 1.84	B 2.64	B 2.24	AB 1.93	A 1.77	AB 1.53
\$30,000 - \$44,999	152	BC 1.72	AB 2.53	AB 2.10	AB 1.89	A 1.82	AB 1.54
\$45,000 - \$59,999	42	A 1.45	AB 2.52	A 1.94	A 1.71	A 1.61	B 1.60
\$60,000 & Up	36	AB 1.52	A 2.31	A 1.95	A 1.69	A 1.72	A 1.26
Flocks/Year							
Less Than 5	102	AB 1.76	AB 2.57	AB 2.17	A 1.84	B 1.77	A 1.56
5.0 - 5.9	498	B 1.89	B 2.73	B 2.28	B 2.02	B 1.86	A 1.60
6.0 - 6.9	337	AB 1.71	AB 2.60	AB 2.09	A 1.77	B 1.77	A 1.56
7.0 or More	63	A 1.59	A 2.42	A 2.03	A 1.70	A 1.61	A 1.40
Houses/Farm							
1 - 2 Houses	335	A 1.75	A 2.63	A 2.15	A 1.80	A 1.79	AB 1.60
3 - 4 Houses	426	AB 1.79	A 2.68	A 2.20	A 1.88	A 1.79	A 1.50
5 or More	222	B 1.90	A 2.64	A 2.23	B 2.10	A 1.87	B 1.68
Ranked Above							
0 - 5 Times	368	A 1.83	B 2.79	B 2.30	B 1.97	A 1.84	B 1.68
6 - 10 Times	451	A 1.79	A 2.54	A 2.12	A 1.86	A 1.78	A 1.51

Table 22 describes the association between the growers' assessments of chick input and output and the human and social capital variables. Growers with less formal education were somewhat more likely to report more frequent occurrence of on-time delivery and on-time pick up than those with higher education. Women reported more favorably than men did on chicks being delivered when promised. There are no significant differences associated with grower experience. Older growers show some tendency to report better quality chicks and pick-up. Significant differences in ratings of chick input quality are associated with organizational membership. Growers who belong to both the Contract Poultry Growers Association and Farm Bureau report lower perceptions of chick quality, reliable pick-up and delivery, and accurate chick counts than growers who are not members of these organizations or are members of Farm Bureau only.

Table 22. Grower assessment of the quality of the chicks and measures of grower human and social capital

- 278 - Chicks are delivered when promised
279 - Good quality chicks are delivered
280 - The chick count is accurate
281 - Birds are picked up as scheduled
282 - Birds are weighed promptly at plant
283 - My weight tickets are machine stamped

Human & Social Capital Variables	N	Code 78	Code 79	Code 80	Code 81	Code 82	Code 83
Education							
Grade School	83	A 1.62	A 2.59	A 2.00	A 1.72	A 1.74	A 1.46
High School	495	AB 1.79	A 2.66	B 2.18	BC 1.90	A 1.78	A 1.55
Trade/Technical	135	B 1.83	A 2.74	B 2.27	AB 1.82	A 1.85	A 1.68
Some 4-year	163	B 1.90	A 2.68	B 2.26	C 2.04	A 1.89	A 1.63
Bachelor & Up	116	B 1.84	A 2.56	B 2.15	BC 1.96	A 1.80	A 1.57
Gender							
Male	822	B 1.83	A 2.67	A 2.19	A 1.92	A 1.80	A 1.58
Female	180	A 1.68	A 2.58	A 2.16	A 1.83	A 1.84	A 1.55
Years Growing							
7 or Less	213	A 1.82	A 2.60	A 2.12	A 1.94	A 1.75	A 1.53
8 - 12	251	A 1.78	A 2.64	A 2.15	A 1.89	A 1.81	A 1.61
13 - 24	328	A 1.86	A 2.70	A 2.26	A 1.90	A 1.86	A 1.61
25 or More	206	A 1.71	A 2.65	A 2.17	A 1.87	A 1.76	A 1.50
Age							
40 & Under	177	B 1.88	B 2.73	A 2.16	B 2.04	A 1.83	A 1.56
41 - 50	307	B 1.89	AB 2.69	A 2.26	A 1.90	A 1.84	A 1.58
51 - 60	307	A 1.71	AB 2.64	A 2.17	A 1.86	A 1.78	A 1.55
Over 60	209	A 1.74	A 2.56	A 2.12	A 1.84	A 1.76	A 1.61
Organizations*							
Poultry Growers	93	B 2.17	AB 2.79	B 2.32	B 2.14	B 1.93	A 1.68
Farm Bureau	311	A 1.76	A 2.62	AB 2.17	A 1.86	AB 1.84	A 1.56
Both	92	B 1.99	B 2.81	C 2.51	B 2.11	B 1.96	A 1.68
Neither	447	A 1.73	A 2.62	A 2.11	A 1.84	A 1.73	A 1.54

* See Note accompanying Table 2

Table 23 describes the association between chick input and output quality and work experience. Chick quality was not significantly associated with prior farming experience, having an off-farm job, or the spouse having an off-farm job. There are few significant differences associated with current off-farm occupation type, and, where differences occur, they display no discernable pattern. However, those with managerial or professional jobs off the farm report more frequent quality chick delivery than those working as operators or laborers off the farm. The same difference is found with respect to how often the chick count is accurate. Growers with off-farm occupations in agriculture and forestry were more likely to report that their birds were picked up on schedule than were those working off-farm as operators or laborers.

Table 23. Grower assessment of the quality of the chicks and measures of grower work experience

- 278 - Chicks are delivered when promised
- 279 - Good quality chicks are delivered
- 280 - The chick count is accurate
- 281 - Birds are picked up as scheduled
- 282 - Birds are weighed promptly at plant
- 283 - My weight tickets are machine stamped

Work Experience Variables	N	Code 278	Code 279	Code 280	Code 281	Code 282	Code 283
Farming Prior Job							
Yes	368	A 1.83	A 2.71	A 2.25	A 1.94	A 1.85	A 1.62
No	642	A 1.78	A 2.62	A 2.15	A 1.88	A 1.78	A 1.54
Has Off-Farm Job							
Yes	360	A 1.86	A 2.69	A 2.19	A 1.95	A 1.84	A 1.62
No	624	A 1.76	A 2.63	A 2.19	A 1.87	A 1.78	A 1.54
Spouse Off-Farm Job							
Yes	400	B 1.90	A 2.69	A 2.27	A 1.96	A 1.85	A 1.59
No	458	AB 1.76	A 2.65	A 2.14	A 1.87	A 1.78	A 1.57
No Spouse	94	A 1.69	A 2.57	A 2.16	A 1.85	A 1.79	A 1.51
Current Occupation							
Manager/Professional	45	A 1.76	A 2.34	A 1.97	AB 1.84	A 1.85	A 1.67
Tech/Sales/Support	66	A 2.02	BC 2.79	AB 2.16	AB 2.02	A 1.76	A 1.58
Farm/Forest/Broilers	47	A 1.66	ABC 2.61	AB 2.17	A 1.72	A 1.70	A 1.71
Precision/Repair	80	A 1.81	BC 2.76	AB 2.18	AB 1.92	A 1.85	A 1.55
Operators/Labor	85	A 1.96	C 2.84	B 2.33	B 2.10	A 1.95	A 1.65
Other/None Listed	36	A 1.88	AB 2.52	AB 2.24	AB 1.97	A 1.85	A 1.60

Table 24 describes the association between chick input and output quality and growers' level of dependency. Those with a larger percentage of family income coming from the broiler operation tend to give higher quality ratings, as do growers with lower total farm debt and a

lower percentage of broiler debt. Neither the number of companies in the area nor the change in their number is an important factor determining perceptions of chick quality measures.

Table 24. Grower assessment of the quality of the chicks and measures of grower dependency

- 278 - Chicks are delivered when promised
- 279 - Good quality chicks are delivered
- 280 - The chick count is accurate
- 281 - Birds are picked up as scheduled
- 282 - Birds are weighed promptly at plant
- 283 - My weight tickets are machine stamped

Dependency Variables	N	Code 278	Code 279	Code 280	Code 281	Code 282	Code 283
% of Family Income							
Less Than 25%	185	B 1.96	A 2.71	B 2.30	A 1.96	A 1.90	A 1.65
25% - 49%	272	A 1.76	A 2.62	AB 2.20	A 1.91	A 1.81	A 1.59
50% - 74%	243	A 1.77	A 2.69	A 2.13	A 1.85	A 1.79	A 1.59
75% or More	228	A 1.80	A 2.64	AB 2.19	A 1.93	A 1.78	A 1.55
Total Farm Debt							
Under \$50,000	276	A 1.74	A 2.58	A 2.15	A 1.83	A 1.78	A 1.54
\$ 50,000 - \$ 99,999	143	AB 1.78	A 2.68	A 2.16	A 1.88	A 1.81	A 1.54
\$100,000 - \$199,999	178	AB 1.85	A 2.74	A 2.26	A 1.93	A 1.85	A 1.57
\$200,000 - \$299,999	132	AB 1.77	A 2.63	A 2.20	A 1.82	A 1.77	A 1.55
\$300,000 or More	180	B 1.93	A 2.75	A 2.26	B 2.10	A 1.86	A 1.72
% of Debt Is Broiler							
Less Than 25%	217	A 1.67	A 2.50	A 2.05	A 1.81	A 1.74	A 1.49
25% - 49%	84	B 1.88	AB 2.65	AB 2.15	A 1.85	AB 1.88	A 1.63
50% - 74%	105	B 1.88	B 2.75	B 2.34	A 1.93	B 1.99	A 1.59
75% or More	472	B 1.86	B 2.73	B 2.27	A 1.96	A 1.79	A 1.60
50% Other Crops							
Yes	136	A 1.80	A 2.74	A 2.21	A 1.94	A 1.87	A 1.68
No	820	A 1.81	A 2.64	A 2.20	A 1.91	A 1.80	A 1.56
Current Companies							
1	274	A 1.85	A 2.69	A 2.18	A 1.94	A 1.81	B 1.61
2	202	A 1.87	A 2.70	A 2.20	A 1.86	A 1.82	B 1.57
3	160	A 1.70	A 2.65	A 2.18	A 1.90	A 1.80	A 1.36
4	109	A 1.79	A 2.61	A 2.21	A 1.84	A 1.79	B 1.63
5 or More	82	A 1.84	A 2.67	A 2.30	A 2.01	A 1.76	B 1.69
Don't Know	162	A 1.71	A 2.55	A 2.14	A 1.86	A 1.81	B 1.62
Number of Companies Offering Contracts							
Decreased	212	A 1.82	A 2.67	A 2.23	A 1.94	A 1.78	A 1.57
Stayed the Same	422	A 1.81	A 2.65	A 2.17	A 1.89	A 1.80	A 1.55
Increased	144	A 1.84	A 2.71	A 2.23	A 1.89	A 1.88	A 1.60

Table 25 describes the association between chick input and output and changes in the grower's situation. Growers experiencing an increase in the number of flocks per year consistently report more favorable chick quality than do those for whom the number of flocks has decreased or fluctuated. Likewise, growers whose income has been higher than expected and those whose contract has changed to increase the pay rate are more likely to give higher ratings to chick input and output quality. Whether or not growers have changed companies shows no significant impact.

Table 25. Grower assessment of the quality of the chicks and measures of change

- 278 - Chicks are delivered when promised
- 279 - Good quality chicks are delivered
- 280 - The chick count is accurate
- 281 - Birds are picked up as scheduled
- 282 - Birds are weighed promptly at plant
- 283 - My weight tickets are machine stamped

Change Variables	N	Code 278	Code 279	Code 280	Code 281	Code 282	Code 283
Number of Flocks per Year							
Gone Up	68	A 1.57	A 2.45	A 2.02	A 1.79	A 1.72	A 1.50
Gone Down	121	BC 1.90	B 2.83	B 2.35	BC 2.05	B 1.96	B 1.81
Gone Up & Down	115	C 2.01	B 2.91	B 2.47	C 2.06	AB 1.87	A 1.52
Stayed the Same	691	B 1.78	A 2.61	A 2.13	AB 1.86	A 1.78	A 1.55
Income Expectations							
More Than Expected	100	A 1.46	A 2.15	A 1.77	A 1.62	A 1.55	A 1.31
About What Expected	454	B 1.64	B 2.43	B 2.00	A 1.75	B 1.67	B 1.49
Less Than Expected	413	C 2.05	C 2.99	C 2.49	B 2.13	C 1.99	C 1.73
Contract Changed to Increase Pay							
Yes	563	AB 1.75	A 2.59	A 2.13	A 1.79	AB 1.76	A 1.49
No	319	B 1.93	B 2.81	B 2.33	B 2.14	B 1.91	B 1.75
Don't Know	55	A 1.61	A 2.58	A 2.09	A 1.78	A 1.73	A 1.44
Changed Companies							
Yes	303	A 1.81	A 2.67	A 2.22	A 1.97	A 1.84	A 1.61
No	689	A 1.79	A 2.64	A 2.18	A 1.87	A 1.79	A 1.56

Grower Assessment of Feed Quality

Tables 26-30 focus on the growers' assessments of the quality of feed, timeliness of delivery, and accuracy of feed quantity.

Table 26 looks at the relation between these feed items and grower performance variables. Feed being emptied from bins without proper credit was reported as rarely being a problem and bears no significant relationship to any of the four performance characteristics included in Table 26. Generally, more positive assessments of the feed situation have some association with higher net cash flow. Positive evaluations of feed are also associated with receiving more flocks per year, although the relation is not linear. Size of operation does matter, however, with the larger operations most likely to provide a positive assessment of feed. Growers more often ranked above average were more likely to report receipt of good quality feed and were less likely to report being overcharged for feed.

Table 26. Grower assessment of the quality of feed and measures of grower performance

287 - My company provides me with good quality feed

288 - Feed is delivered as scheduled

289 - I am charged for more feed than delivered

290 - Feed is emptied from my bins and not credited

Performance Variables	N	Code 287	Code 288	Code 289	Code 290
Net Cash					
Lost Money	81	C 2.47	C 2.41	A 3.83	A 4.29
\$ 0 - \$14,999	329	BC 2.29	BC 2.25	AB 3.98	A 4.34
\$15,000 - \$29,999	274	AB 2.16	AB 2.12	B 4.12	A 4.37
\$30,000 - \$44,999	152	AB 2.09	BC 2.22	AB 4.07	A 4.44
\$45,000 - \$59,999	42	AB 2.09	BC 2.21	B 4.11	A 4.26
\$60,000 & Up	36	A 1.96	A 1.90	B 4.23	A 4.35
Flocks/Year					
Less Than 5	102	AB 2.09	B 2.20	B 4.21	A 4.50
5.0 - 5.9	498	B 2.25	B 2.24	A 3.96	A 4.30
6.0 - 6.9	337	B 2.18	AB 2.15	AB 4.12	A 4.38
7.0 or More	63	A 1.99	A 1.98	AB 4.14	A 4.44
Houses/Farm					
1 - 2 Houses	335	A 2.11	A 2.12	B 4.06	A 4.29
3 - 4 Houses	426	AB 2.22	AB 2.19	B 4.08	A 4.39
5 or More	222	B 2.28	B 2.30	A 3.92	A 4.34
Ranked Above					
0 - 5 Times	368	B 2.32	A 2.26	A 3.91	A 4.32
6 - 10 Times	451	A 2.13	A 2.19	B 4.11	A 4.37

Table 27 describes the relation between feed evaluation and human and social capital variables. Growers' education is not related to their assessments of the feed inputs. Women are more likely to report on-time delivery of feed than are men, the only significant difference associated with gender. The more experienced growers are more likely to report receipt of good quality feed. Similarly, older growers are more likely to assess the quality of feed and timeliness of delivery higher than are the younger. Growers who are members of Farm Bureau and not the Contract Poultry Growers Association and growers who are members of neither organization are more likely to report a favorable assessment of the feed relationship than are members of the Contract Poultry Growers Association.

Table 27. Grower assessment of the quality of feed and measures of grower human and social capital

287 - My company provides me with good quality feed
288 - Feed is delivered as scheduled
289 - I am charged for more feed than delivered
290 - Feed is emptied from my bins and not credited

Human & Social Capital Variables	N	Code 287	Code 288	Code 289	Code 290
Education					
Grade School	83	A 2.18	A 2.13	A 4.09	A 4.25
High School	495	A 2.15	A 2.15	A 4.05	A 4.32
Trade/Technical	135	A 2.25	A 2.20	A 3.98	A 4.35
Some 4-year	163	A 2.32	A 2.30	A 4.06	A 4.43
Bachelor & Up	116	A 2.18	A 2.25	A 4.07	A 4.40
Gender					
Male	822	A 2.20	B 2.22	A 4.04	A 4.34
Female	180	A 2.16	A 2.07	A 4.05	A 4.37
Years Growing					
7 or Less	213	B 2.23	A 2.21	A 4.10	A 4.39
8 - 12	251	B 2.23	A 2.23	A 4.04	A 4.33
13 - 24	328	AB 2.21	A 2.22	A 3.98	A 4.33
25 or More	206	A 2.08	A 2.08	A 4.10	A 4.32
Age					
40 & Under	177	B 2.29	C 2.36	A 4.05	A 4.44
41 - 50	307	B 2.30	C 2.28	A 4.02	A 4.32
51 - 60	307	B 2.17	B 2.14	A 4.07	A 4.39
Over 60	209	A 2.01	A 1.99	A 4.04	A 4.25
Organizations*					
Poultry Growers	93	B 2.45	B 2.44	A 3.89	A 4.15
Farm Bureau	311	A 2.15	A 2.18	B 4.08	B 4.40
Both	92	AB 2.32	AB 2.27	A 3.80	AB 4.33
Neither	447	A 2.16	A 2.14	B 4.09	AB 4.36

*See Note accompanying Table 2

Table 28 describes the relation between work experience and feed evaluation. Growers with prior farm experience and those who have an off-farm job are more likely to be skeptical of the quality of feed they receive. Prior experience as a farmer is also associated with reporting that feed is frequently emptied from bins and not credited, while having an off-farm job is also associated with reporting problems with off-schedule deliveries. A spouse's off-farm work does not significantly affect this assessment. Growers currently employed off-farm in manager/professional positions and technical/sales/support positions are more likely to report frequently receiving good quality feed than growers in other off-farm occupations.

Table 28. Grower assessment of the quality of feed and measures of grower work experience

287 - My company provides me with good quality feed

288 - Feed is delivered as scheduled

289 - I am charged for more feed than delivered

290 - Feed is emptied from my bins and not credited

Work Experience Variables	N	Code 287	Code 288	Code 289	Code 290
Farming Prior Job					
Yes	368	B 2.27	A 2.21	A 3.98	A 4.26
No	642	A 2.15	A 2.18	A 4.08	B 4.40
Has Off-Farm Job					
Yes	360	B 2.28	B 2.27	A 4.02	A 4.32
No	624	A 2.15	A 2.14	A 4.06	A 4.37
Spouse Off-Farm Job					
Yes	400	B 2.24	A 2.23	A 4.00	A 4.31
No	458	B 2.20	A 2.19	A 4.08	A 4.35
No Spouse	94	A 2.04	A 2.10	A 3.99	A 4.39
Current Occupation					
Manager/Professional	45	A 2.03	A 2.09	A 4.15	A 4.44
Tech/Sales/Support	66	AB 2.20	A 2.19	A 4.06	A 4.22
Farm/Forest/Broilers	47	B 2.37	A 2.31	A 4.06	A 4.40
Precision/Repair	80	B 2.37	A 2.35	A 4.00	A 4.41
Operators/Labor	85	B 2.44	A 2.40	A 3.94	A 4.20
Other/None Listed	36	A 2.02	A 2.10	A 3.90	A 4.28

Table 29 describes the relation between feed assessment and dependency. Those who rely on broilers for the bulk of their income are more likely to report frequently receiving good quality feed and they are the least likely to report that feed is frequently emptied from their bins without being credited. Growers having the lowest total farm debt are more likely to provide a positive assessment of the feed quality set than are those with the largest debt. A lower percentage of broiler debt is associated with a more positive view of feed quality. Neither a

change in the number of companies, pursuing other farm enterprises, or the number of companies in the area affects the grower's view of feed quality.

Table 29. Grower assessment of the quality of feed and measures of grower dependency

287 - My company provides me with good quality feed

288 - Feed is delivered as scheduled

289 - I am charged for more feed than delivered

290 - Feed is emptied from my bins and not credited

Dependency Variables	N	Code 287	Code 288	Code 289	Code 290
% of Family Income					
Less Than 25%	185	B 2.31	A 2.25	A 4.00	A 4.31
25% - 49%	272	AB 2.20	A 2.18	A 4.07	A 4.29
50% - 74%	243	AB 2.22	A 2.26	A 4.00	A 4.33
75% or More	228	A 2.13	A 2.15	A 4.03	B 4.54
Total Farm Debt					
Under \$50,000	276	A 2.09	A 2.04	AB 4.08	A 4.29
\$ 50,000 - \$ 99,999	143	AB 2.25	B 2.22	AB 4.03	A 4.41
\$100,000 - \$199,999	178	B 2.28	B 2.27	A 3.92	A 4.29
\$200,000 - \$299,999	132	AB 2.21	B 2.22	B 4.16	A 4.50
\$300,000 or More	180	B 2.35	B 2.39	A 3.95	A 4.34
% of Debt Is Broiler					
Less Than 25%	217	A 2.03	A 2.02	A 4.15	A 4.32
25% - 49%	84	B 2.33	B 2.22	A 4.01	A 4.27
50% - 74%	105	B 2.30	B 2.33	A 3.98	A 4.31
75% or More	472	B 2.29	B 2.29	A 3.98	A 4.41
50% Other Crops					
Yes	136	A 2.24	A 2.29	A 4.05	A 4.25
No	820	A 2.19	A 2.18	A 4.04	A 4.37
Current Companies					
1	274	A 2.21	A 2.20	A 4.00	A 4.33
2	202	A 2.20	A 2.17	A 4.04	A 4.34
3	160	A 2.22	A 2.19	A 4.11	A 4.39
4	109	A 2.14	A 2.21	A 4.12	A 4.48
5 or More	82	A 2.26	A 2.21	A 4.00	A 4.30
Don't Know	162	A 2.15	A 2.18	A 4.03	A 4.24
Number of Companies Offering Contracts					
Decreased	212	A 2.19	A 2.21	A 4.01	A 4.30
Stayed the Same	422	A 2.19	A 2.15	A 4.05	A 4.38
Increased	144	A 2.23	A 2.25	A 4.05	A 4.38

Table 30 describes the association between feed assessment and variables measuring changes in the grower's situation. Growers who experienced an increase in the number of flocks per year or had the same number of flocks were more likely to have positive perceptions of feed quality. A higher income than expected and contract changes that increase pay are also associated with a positive assessment of feed quality. Having changed companies shows no impact.

Table 30. Grower assessment of the quality of feed and measures of change

287 - My company provides me with good quality feed

288 - Feed is delivered as scheduled

289 - I am charged for more feed than delivered

290 - Feed is emptied from my bins and not credited

Change Variables	N	Code 287	Code 288	Code 289	Code 290
Number of Flocks per Year					
Gone Up	68	A 2.06	AB 2.19	B 4.13	B 4.61
Gone Down	121	C 2.42	C 2.43	A 3.80	A 4.26
Gone Up & Down	115	BC 2.30	BC 2.34	A 3.90	A 4.21
Stayed the Same	691	AB 2.16	A 2.13	B 4.10	AB 4.37
Income Expectations					
More Than Expected	100	A 1.82	A 1.92	C 4.38	B 4.42
About What Expected	454	B 1.98	A 2.00	B 4.24	B 4.46
Less Than Expected	413	C 2.51	B 2.47	A 3.76	A 4.20
Contract Changed to Increase Pay					
Yes	563	A 2.11	A 2.12	B 4.16	A 4.41
No	319	B 2.38	B 2.36	A 3.85	A 4.23
Don't Know	55	A 2.19	A 2.12	AB 4.00	A 4.38
Changed Companies					
Yes	303	A 2.17	A 2.18	A 4.03	A 4.35
No	689	A 2.21	A 2.19	A 4.05	A 4.34

Overall Assessment of the Contract Relationship

Tables 31-35 include variables assessing the growers' assessments of their overall contract relationships. Whether getting into broiler production has been a good decision for the respondent and whether he or she recommends broiler growing to others cuts to the heart of the contract relationship. The labor time required when birds are on the farm and the amount of down time between flocks are both important aspects of that relationship.

Table 31 shows the relationship between the overall assessment and grower performance measures. Agreement with statements 264 and 265, disagreement with statement 259 and low frequency of statements 277 and 285 indicate a positive view of the contract relationship. There is a clear positive association between net cash flow and a positive perception of the contract relationship. However, at all cash flow levels, growers are more positive regarding their own involvement in broiler growing than about recommending it to others. The number of flocks per year is also generally positively related to a favorable perception of the relationship. Growers having seven or more flocks per year were significantly more likely to view the relationship favorably. Ranking above average more than half the time is also associated with a more positive view.

Those who lost money in the previous year are more likely to agree that broiler growing takes more labor time than they planned. A higher numbers of houses is also associated with increased grower perceptions of spending more time than expected. However, spending more time is inversely related to the number of flocks per year: those receiving five or fewer are more likely to agree that they have spent more time than growers receiving more flocks per year. Being left without birds is a serious problem for the grower. Not surprisingly, higher income growers are less likely to agree that they are often left without birds, as are those growers receiving seven or more flocks per year. On the other hand, growers operating five or more houses are more likely than those operating one to four houses to report being without birds frequently. Being left without birds for too long was also associated with ranking below average.

Unexpectedly high condemnation rates are also a source of concern for growers since they have a major impact on their income. Growers who lost money are more likely to report condemnation rates higher than they expected, as are those growers operating five or more houses. Those receiving seven or more flocks per year, on the other hand, were less likely to report unexpectedly high condemnation rates. Having condemnation rates higher than expected was also associated with ranking below average.

Table 31. Overall assessment of contract production and measures of grower performance

264 - Broiler growing has been a good decision for me
265 - I would encourage others to become broiler growers
259 - Spent more time than expected
277 - Left without birds too long
285 - The condemnation rate is higher than I expected

Performance Variables	N	Code 264	Code 265	Code 259	Code 277	Code 285
Net Cash						
Lost Money	81	D 2.77	E 3.40	A 2.14	A 3.38	A 2.72
\$ 0 - \$14,999	329	C 2.16	D 2.85	B 2.50	AB 3.66	B 3.03
\$15,000 - \$29,999	274	BC 1.93	CD 2.71	B 2.54	BC 3.76	BC 3.11
\$30,000 - \$44,999	152	B 1.80	BC 2.51	BC 2.67	CD 4.01	BC 3.17
\$45,000 - \$59,999	42	B 1.78	AB 2.29	C 2.82	D 4.21	C 3.34
\$60,000 & Up	36	A 1.52	A 2.19	BC 2.68	D 4.15	C 3.37
Flocks/Year						
Less Than 5	102	B 2.08	A 2.77	A 2.38	A 3.74	A 3.13
5.0 - 5.9	498	B 2.05	A 2.79	AB 2.52	A 3.75	A 3.02
6.0 - 6.9	337	B 2.04	A 2.70	B 2.60	A 3.82	A 3.15
7.0 or More	63	A 1.83	A 2.58	B 2.67	B 4.09	B 3.40
Houses/Farm						
1 - 2 Houses	335	A 2.05	A 2.79	B 2.60	B 3.81	B 3.18
3 - 4 Houses	426	A 2.02	A 2.70	AB 2.53	B 3.87	B 3.11
5 or More	222	A 2.07	A 2.76	A 2.44	A 3.63	A 2.95
Ranked Above						
0 - 5 Times	368	B 2.18	B 2.87	A 2.50	A 3.71	A 2.92
6 - 10 Times	451	A 1.91	A 2.65	A 2.59	B 3.86	B 3.25

Table 32 illustrates the association of the overall assessment to growers' human and social capital. Education has no impact, except that the more highly educated are more likely to feel that they are frequently without birds too long. Men report condemnation rates higher than expected more often than women do. The more experienced growers are less likely than less experienced growers to find condemnation rates higher than expected. However, more experienced growers are also less likely to recommend broiler growing to others. Younger growers are somewhat more likely to have a positive perspective. Contract Poultry Growers Association members consistently hold a less favorable view of the contract situation than do non-members.

Table 32. Overall assessment of contract production and measures of grower human and social capital

264 - Broiler growing has been a good decision for me
265 - I would encourage others to become broiler growers
259 - Spent more time than expected
277 - Left without birds too long
285 - The condemnation rate is higher than I expected

Human & Social Capital Variables	N	Code 264	Code 265	Code 259	Code 277	Code 285
Education						
Grade School	83	A 2.04	A 2.64	A 2.51	B 3.93	A 3.18
High School	495	A 1.99	A 2.71	A 2.51	B 3.82	A 3.10
Trade/Technical	135	A 2.08	A 2.83	A 2.56	B 3.83	A 3.05
Some 4-year	163	A 2.09	A 2.77	A 2.50	AB 3.73	A 3.07
Bachelor & Up	116	A 2.13	A 2.83	A 2.65	A 3.54	A 3.11
Gender						
Male	822	A 2.06	A 2.76	A 2.54	A 3.77	A 3.07
Female	180	A 1.94	A 2.68	A 2.51	A 3.88	B 3.22
Years Growing						
7 or Less	213	A 2.02	A 2.55	A 2.63	A 3.79	A 3.01
8 - 12	251	A 1.99	A 2.66	A 2.52	A 3.72	AB 3.09
13 - 24	328	A 2.13	B 2.87	A 2.50	A 3.78	AB 3.08
25 or More	206	A 1.99	B 2.85	A 2.51	A 3.87	B 3.23
Age						
40 & Under	177	A 1.92	A 2.63	B 2.69	A 3.72	A 3.05
41 - 50	307	B 2.10	AB 2.74	A 2.54	A 3.69	A 3.04
51 - 60	307	B 2.11	B 2.86	A 2.49	AB 3.85	A 3.14
Over 60	209	AB 1.95	A 2.67	A 2.48	B 3.91	A 3.13
Organizations*						
Poultry Growers	93	B 2.23	BC 2.90	A 2.23	A 3.50	AB 2.91
Farm Bureau	311	A 1.99	AB 2.71	B 2.59	B 3.82	BC 3.11
Both	92	B 2.35	C 3.03	A 2.28	AB 3.63	A 2.84
Neither	447	A 1.98	A 2.69	B 2.63	B 3.82	C 3.18

* See Note accompanying Table 2

Table 33 shows the relationship between growers' overall assessment of contract production and their work experience. Contrary to expectations, growers with prior farming experience are more likely than those without to find the time required for broiler production longer than expected. Those without an off-farm job are more likely to find broiler production good for them and they are less likely to report being frequently left without birds. Off-farm work by a spouse shows no significant impact. If employed off-farm, the type of job has no impact on the assessment except that the managerial /professional workers are more likely than the technical/sales/support workers to recommend broiler growing to others.

Table 33. Overall assessment of contract production and measures of grower work experience

264 - Broiler growing has been a good decision for me
265 - I would encourage others to become broiler growers
259 - Spent more time than expected
277 - Left without birds too long
285 - The condemnation rate is higher than I expected

Work Experience Variables	N	Code 264	Code 265	Code 259	Code 277	Code 285
Farming Prior Job						
Yes	368	A 2.03	A 2.76	A 2.46	A 3.74	A 3.02
No	642	A 2.05	A 2.74	B 2.58	A 3.81	A 3.13
Has Off-Farm Job						
Yes	360	B 2.11	A 2.79	A 2.56	A 3.69	A 3.07
No	624	A 2.00	A 2.72	A 2.52	B 3.86	A 3.13
Spouse Off-Farm Job						
Yes	400	A 2.11	A 2.79	A 2.59	A 3.69	A 3.05
No	458	A 1.99	A 2.73	A 2.52	AB 3.83	A 3.13
No Spouse	94	A 2.10	A 2.74	A 2.48	B 3.96	A 3.09
Current Occupation						
Manager/Professional	45	A 1.98	A 2.55	A 2.74	A 3.58	A 3.27
Tech/Sales/Support	66	A 2.12	B 2.95	A 2.62	A 3.68	A 3.11
Farm/Forest/Broilers	47	A 2.00	AB 2.68	A 2.64	A 3.88	A 3.24
Precision/Repair	80	A 2.21	AB 2.80	A 2.47	A 3.80	A 2.93
Operators/Labor	85	A 2.10	AB 2.87	A 2.46	A 3.54	A 2.96
Other/None Listed	36	A 2.22	AB 2.74	A 2.59	A 3.77	A 3.09

Table 34 provides the association between the overall assessment and measures of grower dependence on the company. A higher percentage of family income from broilers is generally associated with a positive view of the relationship. Lower farm debt is also associated with a positive view, however, less consistently than is a high share of income. The lower the share of debt that is for broilers, the more positive the assessment. Respondents without other farm operations (i.e., those whose farm is undiversified) are more likely to recommend broiler production and are less frequently left without birds. The number of companies in the area has no impact on the overall assessment, but there is a somewhat more positive view where the number of companies is increasing rather than decreasing.

Table 34. Overall assessment of contract production and measures of grower dependency

264 - Broiler growing has been a good decision for me
265 - I would encourage others to become broiler growers
259 - Spent more time than expected
277 - Left without birds too long
285 - The condemnation rate is higher than I expected

Dependency Variables	N	Code 264	Code 265	Code 259	Code 277	Code 285
% of Family Income						
Less Than 25%	185	B 2.29	C 2.92	A 2.39	A 3.52	A 2.95
25% - 49%	272	A 2.03	BC 2.81	AB 2.54	B 3.79	AB 3.11
50% - 74%	243	A 1.93	A 2.62	B 2.63	B 3.86	AB 3.11
75% or More	228	A 1.96	AB 2.67	AB 2.53	B 3.90	B 3.14
Total Farm Debt						
Under \$50,000	276	A 1.91	A 2.69	A 2.58	B 3.94	B 3.18
\$ 50,000 - \$ 99,999	143	AB 2.04	A 2.87	A 2.59	AB 3.76	B 3.17
\$100,000 - \$199,999	178	B 2.19	A 2.85	A 2.47	A 3.60	AB 3.02
\$200,000 - \$299,999	132	AB 2.06	A 2.74	A 2.53	AB 3.79	AB 3.07
\$300,000 or More	180	B 2.10	A 2.69	A 2.44	A 3.68	A 2.88
% of Debt Is Broiler						
Less Than 25%	217	A 1.84	A 2.57	A 2.64	B 3.99	B 3.20
25% - 49%	84	B 2.14	B 2.78	A 2.59	A 3.63	AB 3.09
50% - 74%	105	B 2.07	B 2.85	A 2.47	A 3.66	A 2.96
75% or More	472	B 2.12	B 2.80	A 2.48	A 3.72	AB 3.03
50% Other Crops						
Yes	136	A 2.09	B 2.93	A 2.43	A 3.60	A 3.02
No	820	A 2.03	A 2.72	A 2.55	B 3.81	A 3.10
Current Companies						
1	274	A 2.03	A 2.67	A 2.50	A 3.80	A 3.12
2	202	A 2.04	A 2.78	A 2.54	A 3.69	A 3.09
3	160	A 2.05	A 2.81	A 2.53	A 3.84	A 3.11
4	109	A 2.09	A 2.83	A 2.58	A 3.89	A 3.17
5 or More	82	A 1.99	A 2.82	A 2.52	A 3.72	A 2.99
Don't Know	162	A 2.06	A 2.68	A 2.59	A 3.83	A 3.08
Number of Companies Offering Contracts						
Decreased	212	B 2.17	B 2.95	A 2.52	A 3.64	A 3.08
Stayed the Same	422	AB 2.04	A 2.70	A 2.54	B 3.84	A 3.14
Increased	144	A 1.89	A 2.63	A 2.52	B 3.83	A 3.02

Table 35 shows association between the overall assessment of contract production and changes in the grower's situation. An increase in the number of flocks per year is clearly more associated with a positive view of the contract relationship than is a decrease or variation. Likewise, income above expectations is associated with a favorable assessment of contract production, as is a contract change to increase pay. Whether the grower has changed companies matters little except that the growers who have not changed are more likely to recommend the business to others. As might be expected, growers who have enjoyed increasing flock numbers are less likely to say they have been left without birds for too long as are those whose income is more than, or about the same as, they expected and those whose contract has been changed to increase pay. Those growers whose flock numbers have risen are less likely to report higher than expected condemnation rates, as are those whose income is higher than expected and those whose contract has been changed to increase pay.

Table 35. Overall assessment of contract production and measures of change

264 - Broiler growing has been a good decision for me
265 - I would encourage others to become broiler growers
259 - Spent more time than expected
277 - Left without birds too long
285 - The condemnation rate is higher than I expected

Change Variables	N	Code 264	Code 265	Code 259	Code 277	Code 285
Number of Flocks per Year						
Gone Up	68	A 1.74	A 2.46	B 2.61	C 4.14	B 3.35
Gone Down	121	C 2.31	C 3.07	A 2.32	A 3.27	A 2.95
Gone Up & Down	115	C 2.27	C 3.01	A 2.37	A 3.34	A 2.95
Stayed the Same	691	B 1.99	B 2.69	B 2.59	B 3.91	A 3.11
Income Expectations						
More Than Expected	100	A 1.47	A 2.00	B 2.86	B 4.21	C 3.47
About What Expected	454	B 1.78	B 2.48	B 2.74	B 4.04	B 3.29
Less Than Expected	413	C 2.46	C 3.22	A 2.24	A 3.41	A 2.78
Contract Changed to Increase Pay						
Yes	563	A 1.89	A 2.57	B 2.66	B 3.93	B 3.24
No	319	C 2.29	C 3.07	A 2.30	A 3.54	A 2.86
Don't Know	55	B 2.09	B 2.81	B 2.52	B 3.95	A 3.01
Changed Companies						
Yes	303	A 2.10	B 2.91	A 2.54	A 3.77	A 3.11
No	689	A 2.02	A 2.67	A 2.54	A 3.81	A 3.10

Chapter 3

A Current Broiler Contract Analysis Addressing Legal Issues and Grower Concerns

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I. Introduction

A. Examining Broiler Contracts—The Basics

To consider the legal implications of the terms commonly found in a broiler growing contract it is important to first consider the nature of the activity contemplated in the agreement. In essence, the relation is fairly simple and straightforward. The integrator—or company—owns the baby chicks and delivers them to a grower—or producer—who agrees to care for the birds until they reach a size where the company decides to collect and take them for processing. The integrator generally agrees to provide not just the birds but also the feed, medicine, and professional supervision for the growout operation. The grower agrees to provide the physical facility, the utilities, and the labor and management to feed and care for the birds until they are removed for processing.

Most contracts are written for only one growing period—generally seven weeks for broilers—with provisions to allow for continuation or cancellation. The birds remain the property of the company, the contract is for provision of services rather than sale of goods, and invariably the legal relationship between the parties is described as being between independent contractors. The grower is compensated after the birds are removed, typically on the basis of a formula calculating his or her production efficiency—the number and weight of chickens harvested compared to the number of chicks and pounds of feed delivered. In most situations the grower’s compensation is adjusted based on a comparative ranking with a group of other poultry growers in the same geographic area whose birds were also processed by the company during the same time period. The contracts are exclusive with growers only raising birds for one company, which may be the only one operating in the area.

B. Examining Broiler Growing Contracts—the Analytical Approach Used

In determining how best to discuss the nature of the contract relations typically used to produce broilers in the U.S., the issue of how to analyze the contracts collected for review is an important consideration. For while there are many similarities in approach, each contract may contain unique provisions, and in some instances alternative methods for structuring the relations are found. As a general observation, the contracts examined fall into two main categories, the first can be described as traditional or typical in which, for the most part, no special contract language is used which could be described as favorable

to the grower on identified issues of concern. The second group of contracts can be described as “grower friendlier” which means that while still falling within the traditional structure of broiler contracting, as described in Part II.A of this chapter, the contracts include provisions that appear to provide some level of protection or assurance to growers. Many of these contracts, while still the minority, are of more recent vintage, which may indicate a trend toward contracts that are more responsive to grower concerns or the willingness of companies to “compete” for growers by offering more favorable terms.

In addition to the variation in contracts, there is also the variation in perspective one may bring to the relations. Most importantly, the concerns that an attorney experienced in contracts may identify about the agreements will be different than the practical concerns that growers might identify from their own experience. The analysis discussed here is done from the perspective of a lawyer considering the legal implications for growers who sign the agreements.

Based on these distinctions, the following analysis takes a three-pronged approach. First, contracts used by two of the nation’s largest poultry contractors are reviewed in some detail. These contracts are analyzed and contrasted for the purposes of identifying three different categories of contract provisions: (1) those common to most relations, (2) provisions which can be described as “grower friendlier,” and (3) provisions which present more serious legal concerns for growers. This three-part characterization is used to identify specific contract provisions, which are then discussed and analyzed. One purpose of this analysis is to provide a common understanding of the nature of poultry contracting and the legal implications of the contract language typically used. The two contracts used prove particularly valuable for this contrast because the contracts adopt distinctly different approaches in the relations with growers, with the one contract incorporating a range of “grower friendlier” terms not found in the other.

Second, the ten issues identified as grower concerns in the Broiler Grower Survey are reviewed in relation to common current contract language.¹ For the analysis in this section, the terms of broiler contracts either currently or recently used by eighteen (18) different

¹ These are: (1) concern about use of the ranking system to determine grower pay; (2) concern that grower pay is most affected by matters outside their control, namely the quality of inputs provided by the company; (3) confusion among a substantial number of growers regarding their settlement sheets; (4) higher than expected condemnation rates and inadequate explanations of condemnations; (5) concern about the dispute resolution procedures available to growers under growout contracts; (6) the disconnect between many growers’ negative perceptions of the value of improvements suggested by the companies and their belief that their contracts will not be renewed if the improvements are not made; (7) concerns and uncertainty about the accuracy of feed weighing and prompt weighing of birds; (8) the large majority of growers who receive no assistance from their company with the disposal of litter or dead birds; (9) the high percentage of growers earning less than expected and high percentages perceiving the causes to be related to chick quality, required improvements, and rising operating costs; and (10) growers being left without flocks long enough to suffer financially.

poultry integrators were reviewed and characterized. This analysis—using specific provisions from these agreements—is used to present a description of how the grower concerns identified in the survey are typically addressed in actual contract relations.

In terms of the review of actual contracts it is important to recognize that the language of the contract offered by any company can change—and experience shows that contracts are amended. One possible limitation on a study of this type is the ability to obtain a current set of contracts from across the industry. The contracts studied for this section were obtained from a variety of sources. The contracts reviewed for this analysis have all been used in recent years and are believed to still be in use. The broiler contracts reviewed were offered by the following companies: Case Farms, Cagle's Farms, ConAgra Poultry, Gold Kist, Pacific Northwest Poultry and Farming, Marshall Durbin Farms, Sanderson Farms, Choctaw Maid Farms, Townsend Farms, Mountaire Farms, Perdue Farms, Tyson Foods, Wampler Foods, Sylvest Farms, Arcadia, MBA Poultry, Piedmont Poultry Farms, and Wayne Farms. In order to keep the focus of this analysis on the terms of contracts per se and not on the company offering a particular contract provision at the time this analysis was done, this report does not use company names. The report will refer to companies only by arbitrarily assigned, but consistently used letters, as in "Company X."

Third, these various broiler contracts are used to identify other contract provisions that may not have been addressed in the survey or identified as concerns by the growers but that are worthy of comment from the perspective of an attorney considering the legal implications for growers who sign the agreements.

The study ends with a set of observations or conclusions about current state of broiler contracting which might be of value to policy makers and others considering the possible need for action on this topic.

II. Understanding Common Terms in Broiler Contracts—Comparing Two Widely Used Agreements

At first glance, broiler growing contracts give the impression that the relations between company and grower are highly standardized. Even though the contracts may be of differing lengths or be organized and captioned differently, most of the same issues are addressed and in much the same manner, regardless of the company offering the contract. This section of the analysis establishes as a background for the later discussion the categories of terms generally found in broiler contracts. This is done through comparison of two specific contracts and consideration of how each addresses the general contractual categories.

A. General Categories of Broiler Contract Terms

The Company A contract has 48 different substantive clauses (some of which may address multiple legal issues) in addition to a separate payment schedule. The Company B contract has approximately 38 separate legal clauses, many of which address multiple issues, as well as an attached payment schedule. In addition, both contracts incorporate by reference

an additional document that establishes specific standards for the grower's conduct and performance.

It is interesting to note that approximately 40 percent of the written content of the Company B contract deals with the procedure for the resolution of complaints and arbitration of disputes. In contrast, the Company A agreement includes no specific reference to either a complaint resolution procedure or arbitration of disputes.

The Company A contract incorporates by reference and makes part of the grower agreement, a separate document known as the "Company's Broiler Growing Guide." While the Company B contract does not specifically mention incorporating additional materials by reference (and in fact, specifically rejects inclusion of "representations or statements" not in the written agreement) it does refer to "Company B's established procedures," which are apparently used to establish standards for evaluating grower performance.

While the actual number and order of the terms found in the contracts may vary, there is much similarity in the agreements—and for that matter, in all of the broiler growing contracts reviewed for this study. Upon review, it appears there are at least sixteen (16) major legal issues or aspects of contracting relations addressed in both contracts in roughly the same way. In the following paragraphs, provisions from the Company A and Company B contracts are reprinted to illustrate and explain how the 16 provisions are actually addressed by companies and what the legal and practical implications are for growers.

1. Duties of the company.

Every broiler contract will include, and typically begin with, a provision that sets out the duties or commitments of the company. The purpose of this clause is to specify—and thus limit or constrain—the exact obligations being made. For example, the Company B contract provides:

[Company] Agrees:

- A. To consign available chicks to Producer to be raised for [Company].
- B. To provide and deliver to Producer or arrange for the provisions and delivery to Producer, feed, fuel, medications, vaccinations, and other supplies which are necessary for raising the chicks consigned to Producer by [Company].
- C. To provide Producer with an accounting of the chicks consigned and supplies provided under the terms of this Agreement.
- D. To compensate Producer for services provided herein as provided for in the attached "Producer Payment Schedule."

2. Duties of the grower.

The contract provision listing the duties of the grower can be rather extensive; for example, the Company B contract lists 13 separate clauses under "Producer Agrees" while the

Company A contract includes 10 clauses. While the exact wording of these provisions varies, the duties or expectations are fairly standard. These relate to providing the physical growing facilities, the utilities, and the labor necessary to care for the birds, and ensuring that the company has access to the houses in all types of weather for purposes of delivering feed and removing the birds. For example, the Company A contract provides in part:

The Producer agrees to furnish labor, utilities, bedding, supplies and well maintained housing and equipment as required by the Company specifications described in the Company's Broiler Growing Guide.

The Producer will supply sufficient help at the time of delivery of new chicks to assist in the expeditious unloading and placement of the new chicks. When the poultry is caught, the Producer or his agent shall be present and have prepared each house for the catching crews in accordance with the schedule provided by the Company.

The Producer will maintain all-weather roads to the poultry houses and keep the feed bins free of any overhanging wires or other obstacles. The Producer will provide adequate space to turn vehicles where necessary. Failure to provide such roads and turning areas will make the Producer liable for wrecker or towing charges in addition to any other damages the Company may sustain.

One obligation or duty placed on growers by all broiler contracts is the obligation to promptly remove and dispose of dead birds. For example, the Company B contract provides that the grower agrees, "To provide for prompt and proper disposal of all dead and cull poultry resulting from normal mortalities and/or catastrophic loss in a manner meeting the requirements of federal, state, and local regulations and codes."

Another grower obligation relating to the death of birds is the duty to maintain mortality records. Presumably, the purpose of such records would be not only to reflect both the number and timing of bird deaths but also to provide evidence that the grower did not otherwise transfer them. The Company A contract provides, "The Producer will be responsible for maintaining accurate mortality charts."

3. The grower's independent contractor status.

One term that is found in all broiler growing contracts, and most production contracts used in the U.S. regardless of the commodity being produced, is a clause making clear that in the relation between the parties the grower is an "independent contractor" and not something else—such as an employee or partner—that might create potential liability for the company. The manner in which this provision is addressed can vary from a simple statement of the relation to a more detailed expression of the grower's obligations and the company's rejection of possible liability. For example, the Company A contract provides in part:

Independent Contractor—it is understood that the Producer is engaged in and is exercising independent employment. The Producer is an independent contractor and is not a partner, agent, or employee of the Company.

Contrast that provision with the more detailed expression found in the Company B contract, which provides in part:

Producer's Independent Contractor Status

A. This is a service contract and not a contract of employment and [Company] and Producer are each independent contractors. Neither party, nor their agents or employees, shall be considered to be the employees of the other for any purpose whatsoever.

B. Producer is exclusively responsible for the performance of Producer's obligations under this Agreement. The employment, compensation, and supervision of any persons by Producer in the performance of such obligations is a matter of Producer's sole discretion and responsibility.

C. Producer accepts full and exclusive liability for payment of any and all applicable taxes for worker's compensation insurance, unemployment compensation insurance, or old age benefits or annuities imposed by any governmental agency, as to Producer and all persons as Producer may engage in the performance of this Agreement. Said taxes shall be paid directly by Producer and shall not be chargeable to [Company]. Producer agrees to hold [Company] harmless from any liability with respect to any such taxes or other charges.

4. Incorporation of an attached payment schedule subject to change by company.

From a grower perspective, the issue of how his or her payment or compensation will be calculated is perhaps the most important issue addressed by the contract. For most poultry contracts, the actual payment method is set out in a schedule that is incorporated by reference into the contract and usually attached to it. Both the Company A and Company B contracts make use of such attached schedules.

One aspect of the payment calculation that may seem obvious but can present an arena for concern or disputes is that the grower's payment is generally based on documents and determinations made solely by the company. For example, under its contract, Company A has the sole authority to determine the payment and the grower agrees to accept the company's determination. The contract provides, in part:

The Producer agrees to accept as compensation for this Contract and the Company agrees to pay as compensation to the Producer as determined by Schedule A attached hereto. Payments will be made to the Producer no later than ten (10) days following the week of slaughter.

In addition to agreeing to accept the company's determination of the payment, most broiler contracts also include a provision that lets the company make unilateral changes in the methods and amounts used to make the calculations. In the Company A contract, the implied ability to alter the payment method is reflected in the provision which reads, "Any payment method changes or pay rate changes that are periodically implemented by the Company will be conveyed to the Producer at such time, and Schedule A will be modified

to reflect said changes.” In other words, regardless of what payment rates might be communicated at the time a contract is entered, the rates or methods for determining payments can be unilaterally changed, presumably in either direction, whenever the company determines to do so

5. Term or length of the contract.

As discussed in more detail later, the “term” or length of the contract is an important element in establishing the nature of broiler contract relations. For most contracts the term is typically for one flock, or approximately seven weeks. However, it is not uncommon to find contracts that include provisions making the relations continuous until terminated or which even provide set periods of years during which the contract may operate. However, it is important to recognize that the fact the contract provides that the relation may last for a certain period does not mean there is any guarantee that the grower will be provided a certain number of flocks during that period. As discussed in the next section, this issue—the control over the timing and frequency of flocks provided to the grower—is generally addressed separately and is uniformly left to the sole discretion of the company.

The Company B contract does not contain a provision specifically listing its term or length. Instead, the contract states, “For the convenience of not having to initiate a new Agreement after each flock, this Agreement shall be continuous until the Agreement is terminated by either [Company] or Producer.” The Company A contract includes a provision in which the parties can write in a specific period. The clause reads, “The terms and conditions of this Contract will begin on ____ and shall remain in effect for ____ (years) unless terminated pursuant to this Contract.”

6. Timing, frequency, and number of flocks at company's discretion.

An issue more critical to the economic performance of a poultry contract than its length is the number of flocks a grower is given to raise per year. The more flocks a grower obtains during a year, the greater the potential for earning income and realizing a return on investment in buildings and equipment. Most broiler contracts do not include terms relating to the frequency or number of flocks, in part because the contracts are for only one flock of birds and there is no legal expectation of additional flocks. For example, even though the Company B contract contains a provision making it “continuous” unless terminated by either the company or the grower, there is no provision addressing the frequency or number of flocks, the implication being that there is no obligation for the company to ever provide a flock beyond the one being grown.

When decisions concerning the timing and frequency of flocks *are* addressed in broiler contracts, the determinations are given to sole discretion of the company. For example, the Company A contract provides, “The Company reserves the right to determine the number, frequency, and type of broiler chicks to be placed in the Producer’s houses.”

7. Timing of removal and processing of birds at company's discretion.

Just as the contracts make it the company’s decision whether to provide additional flocks, the issue of when the current flock of birds being grown in a facility are ready to be

removed for processing is also reserved to the discretion of the company. It must be recognized that the timing of this decision in the growth cycle of the birds is significant because it will affect both the final live weight and the feed conversion calculations which are the most important determinants of the grower's payment. In general, if removal of the birds is delayed past the optimum growth period, the birds will continue consuming feed with little or no growth. This can result in a drop in total feed conversion numbers for the flock. Delays in getting the birds processed once they have been removed from the facility can also result in shrinkage, which dramatically reduces the birds' live weight values and consequently also reduces feed conversion numbers.

The Company A contract addresses this issue directly by providing that, "The Company or its designee at its sole discretion shall have the right to schedule the broilers for processing."

8. Grower to be present or represented during catching or accept risk.

Broiler contracts generally require the grower to be present or have a representative be present during the catching of the birds. As part of this obligation, the contracts also require the grower take steps to prepare the houses for catching. The purpose of these provisions is two-fold. First, by having the grower present, any disputes about which birds were dead before the catching crews began and which were killed or injured during catching can be more easily addressed. Second, when the grower is required to prepare the house for catching, such as by removing feeders and locking personal property, the catching can proceed expeditiously and disputes over damaged or lost equipment can be minimized.

The Company A contract addresses these issues in several provisions. Under the duties of the grower, the contract provides, "When the poultry is caught, the Producer or his agent shall be present and have prepared each house for the catching crews in accordance with the schedule provided by the company." Under the provision titled "scheduling and catching" the company agrees to notify the grower in advance of the scheduled time for the pick up of the birds. Under this provision, "Damage to the Producer's equipment or facilities or equipment stolen from the Producer's facilities will be reimbursed or replaced by the Company upon prompt verification that said damage or theft was caused by the catching crew." Another provision in the Company A contract relating to the process of catching states:

In order to insure that all dead birds have been removed from the house the Producer or his authorized agent agrees to walk the houses with the catching foreman before catching the chickens begins. All chickens smothered during catching will be loaded on the truck and weighed as provided . . . below. In the event the Producer or his authorized agent is not present, the Producer agrees to accept the determination of the catching foreman between dead and smothered birds.

9. Title to the birds with the company and prohibition on grower liens.

Another legal issue that can arise given the nature of the broiler contracts concerns the legal rights of the grower to the birds that are on the farm. Understandably, the companies have no intention of relinquishing legal title to the birds or having to fight with creditors of the growers concerning who owns them. This issue is addressed in the Company B contract, which reads, “[Company] shall have the right to sell each flock consigned under this Agreement at any time without any liens, distraint proceedings, or charges whatsoever of creditors of Producer.” This language is representative of the terms companies use to address this issue. The Company A contract addresses this with a sentence that reads, “The Company bears the cost of and retains title to these chicks.”

Contracts often include other provisions that relate to the issue of ownership and title to the birds. For example, the Company B contract consistently uses the legal term “consignment” to refer to the relation between the grower and the company, apparently in an attempt to clarify its intent that the title to the birds does not pass. In addition, contracts that include lists of grower actions which are treated as conditions of default or breach of the contract often include any action of the grower which attempts to create a lien on the birds for the interest of another party.

10. Prohibition against keeping other fowl on grower's property.

Broiler contracts uniformly include a provision designed in part to reduce the potential for health problems with the company's birds. These provisions restrict the grower from maintaining any other fowl on the property. The provisions also have the perhaps unintended effect of making it impossible for a grower to contract with two different companies at the same time. An example of such a provision is found in the Company B contract, where the grower agrees, “To keep no other fowl, wild birds, exotic or domestic pet birds, caged or free running, on the premises and to rid the farm of all birds left on the farm on the same day of the final movement of birds.”

11. Prohibition against using supplies not provided by company.

Under most broiler contracts, the company provides most if not all of the supplies used by the grower. In fact, many contracts include provisions specifically prohibiting growers from using supplies not provided by the company. For example, the Company A contract includes a provision which states:

The Producer warrants that he will not use or allow to be used during the period of this Contract any feed, medication, herbicides, pesticides, rodenticides, insecticides or any other item except as supplied or approved in writing by the Company. In no way limiting any default provision herein, the Producer agrees that any breach of this section will result in immediate default by the Producer of this Contract and the Company may take action so provided for [] herein.

One purpose of a provision like this would be to limit the possibility of a grower using an unapproved medication in the feed that might affect the marketability or safety of the

product. However, the provisions can also be seen as restricting the ability of growers to obtain items for use in their facilities.

12. Company's right of access to the grower's facility.

Because the birds belong to the company, contracts uniformly include provisions that reserve for the company an unlimited right to have access to the grower's facilities to inspect the birds. For example, the Company B contract provides, "[Company] may enter upon the premises of the Producer where the flock is or shall be located to inspect the flock or facilities." The Company A contract provides, "The Company shall have the right of access at all times to the premises in which the poultry is grown for the purposes of inspecting birds, delivering feed, chicks, or supplies and removal of birds."

13. Company's right to take over the grower's facility or remove the birds.

Because the birds remain the property of the company, which has an interest in their health and performance, broiler contracts uniformly include provisions which allow the company to take action, perhaps even drastic action, if the company determines that the grower is not properly caring for the birds or the birds are somehow endangered. Typically these provisions allow for the company to take over the control and operation of the grower's facilities until such time as the birds are ready for processing, or, in the alternative, to remove the birds. The determination of when such action is needed is at the sole discretion of the company. For example, the Company B contract provides that:

If Producer is not satisfactorily performing Producer's obligations under this Agreement to care for, treat and maintain the flock, or do such other thing or things with reference to the flock as outlined by [Company's] established procedures, [Company] may remove the flock, or may undertake the maintenance, treatment, feeding and care of the flock on the Producer's property and Producer shall assume the costs for any necessary disbursement to accomplish such purposes.

The Company A contract includes a similar provision titled "Remedies of Company on Default of Producer."

14. Grower actions considered by company to be a default of the contract.

No matter how well a contract is drafted it cannot anticipate all of the events that might arise and impact the nature of the parties' relationship. As a result, it is not uncommon for broiler contracts to include terms that might be called "catch-all" provisions, which reserve to the company the right to take whatever action it feels is necessary to protect its financial interest in the contract and the flocks. The Company A contract includes an example of such a clause in the paragraph listing the "Events of Default." This list of default events includes, "The occurrence of any event which in the opinion of the Company endangers or impairs the Company's property." This clause is in addition to an earlier provision in the same section that covers, "Failure of the Producer to properly care for and protect any of the Company's property including, but not limited to, the care commonly defined as good animal husbandry practices." While the inclusion of these provisions may be understandable, the concern from the perspective of a grower is whether they establish

clear standards for identifying when conduct in fact creates a risk, or alternatively whether they present flexible opportunities for the company to create reasons to terminate an agreement.

One specific default item often included in broiler agreements relates to the grower's relationship with company employees. The authority and decision making ability given to the company representatives under broiler contracts to make determinations on such issues as the quality of a grower's performance or the adequacy of facilities or equipment create the potential for conflict. Understandably, the companies are eager to avoid subjecting their employees to potential threats or abusive treatment. As a result, it is not uncommon to find language in the contract that makes such actions by a grower a condition of default. Under the Company A contract, one listed "Event of Default" is "Use of abusive language, threat of physical harm, or in any way impeding the Company or its authorized representatives from inspecting or examining the Producer's facilities or flocks."

15. Only written contract terms applicable with no modification unless in writing.

A classic legal provision found in all broiler contracts is what is known as the "entirety clause." The purpose of this provision is to establish that all of the terms of the parties' agreement are present in the written contract and that any oral communications or other modifications are not enforceable unless reduced to writing. In the broiler growing context, these provisions are intended to prevent growers from arguing that company employees approved certain actions or stated that provisions of the contract would be enforced in a manner other than as written. These clauses may also include language repealing or superseding any previous agreements entered into between the parties, so that there is only one current agreement to be interpreted. The following example of an entirety clause is from the Company A contract:

This contract supersedes all prior agreements between the parties hereto. This broiler Contract, any amendment thereto, and the Company's Broiler Growing Guide constitute the entire agreement between the Producer and the Company regarding the production of broilers.

In a provision relating to the length of the agreement, the Company A contract also states, "The Producer understands and agrees that no agent, servant, or employee of the Company has authority to make any oral modification to this Contract. Modification of this Contract may only be accomplished by written instrument fully executed by the Producer and an authorized representative of the Company." The Company B contract includes a similar provision but adds a clause that "No representations or statements made by either party or their agents not contained herein shall be in any way binding on either party."

16. Assignment of contract only with approval of the company.

One issue that can arise for growers, especially those who may be interested in selling their farms and broiler houses, is whether such a sale would include the opportunity to continue producing broilers for the company. Broiler contracts uniformly address this issue of assignment by providing that the company has the right to assign the contract without any

limitation, but that growers can assign the contract only with the written approval of the company.

For example, Company B's contract reads, "This Agreement shall be freely assignable by [Company], and shall be assignable by Producer only with [Company's] prior written consent." While the company's desire to control assignment of the contract may be understandable, from the perspective of the grower the reservation by the company of the right to assign its contract at will creates a lack of symmetry in the relations and means that growers might find themselves dealing with a different company if, for example, the company sells or merges operations.

B. Provisions in the Contracts That Are "Grower Friendlier"

For the purposes of this study, contract terms that can be characterized as addressing growers' fairness concerns are described as "grower friendlier" provisions. These terms may also include contract provisions that incorporate grower protections mandated by state or federal law. Although the contracts do not cite statutory or regulatory protections nor indicate that the provision is legally required, the grower friendlier contracts do at least include the legally mandated provision, thus providing the growers with notice through the contract of their legal rights.

The best way to understand the possible effects of the inclusion of the grower friendlier terms is to review the exact language of each such provision. The following discussion uses the language of the Company A contract to explore the implications of grower friendlier provisions. In contrast to the Company A agreement, a reading of the Company B contract reveals no evidence of a similar "grower friendlier" orientation. For the 10 Company A grower friendlier contract terms listed below there is no equivalent in the Company B contract.

1. Right to join any organization or association.

Under the independent contractor term, the Company A agreement states, "The Producer may join or assist any organization or association of their choice with no effect on this contract in any way." The provision would appear most likely to address the concerns of growers that joining a state or national contract poultry grower organization might place them in jeopardy of retaliation. The term is also likely an attempt to demonstrate the company's compliance with the federal Agricultural Fair Practices Act, which prohibits companies from taking certain actions against growers because of the growers' involvement with a producer association.

2. Prompt weighing of live birds.

The Company A contract provides that the "Gross weight will be determined, on a certified scale normally used for such purpose, as promptly as possible after the poultry is loaded on the vehicle, and the Producer may witness this weighing." As noted in the discussion of grower concerns identified in the survey, the issue of delays in when birds are weighed after loading and the resulting issue of shrinkage and weight loss, can be a significant issue. The promise to conduct such weighing promptly is an attempt to

recognize this concern and also reflects the company's legal obligations under the federal Packers and Stockyards Act.

3. Chick placement from hatchery is random.

The number of birds still alive at the end of a growout period and their weight is directly influenced by the quality of chicks placed in a house. Many growers have expressed concerns about the quality of chicks they receive, with some growers even worrying that chick quality can be adjusted by the company and as used as a mechanism to "discipline" growers who raise concerns. The Company A contract is one of the only contracts reviewed that contains any language relating to these concerns. It states, "The Company agrees to furnish the Producer with chicks, randomly placed from the hatchery's production."

4. Payment possible if birds die due to Act of God.

Under most broiler contracts, the company as owner of the birds bears the risk of their death. However, the grower also is at risk when birds die because the grower loses any ability to be paid for the work done. The issue of the risk to growers of receiving compensation for the "effort" to raise birds can be especially significant in situations where some event, such as a heat wave, results in the loss of most or all of the flock. The Company A agreement provides some possibility that growers will be compensated in some circumstances of loss. The provision reads, "The Company will pay the Producer for the time the birds were in the Producer's houses on a pro-rata basis in event an Act of God destroys the birds during the grow out cycle." As discussed in the next section however, the types of loss covered by this provision may be quite limited based on the contractual definition of "Act of God" and a term providing that risk of loss from catastrophes that are *not* Acts of God remains with the grower.

5. Grower can view feed weighing and live bird weighing.

The payment a grower earns under a broiler contract is directly determined by the weights of the birds and the amount of feed they consumed. For that reason the ability of growers to view such weighing, in order to have confidence in the manner in which the weighing is done, can be an issue. The Company A contract provides, "The Company will bear the cost of delivering feed to the Producer's farm. The Company will allow the Producer to witness the weighing of the feed." Of course, to have a meaningful right to view the weighing there would have to be a process where by growers had advance notice of when and where the weighing was to occur.

Similarly, the issue of the weighing of the live birds is also a concern. As noted above, the Company A contract includes language noting that "the Producer may witness this weighing." This right is provided for growers in the federal Packers and Stockyards Act.

6. Company agrees to use certified scales for weighing.

Another aspect of the weighing issue concerns the actual equipment and personnel used to conduct the weighing. The Company A contract provides, "The Company agrees to provide certified scales to be used to weigh live broilers and feed. The Company shall

employ qualified persons to operate these scales. The Company will make provisions for alternate certified scales in the event the primary scale is inoperable.” This language acknowledges federal law that requires companies to maintain accurate scales and employed qualified people to operate them.

7. Delivery of weigh tickets and records.

A final aspect of the weighing issue concerns the documentation created to record the weights. Access to copies of these documents is necessary for a grower to independently verify the payment calculations used to determine the final settlement or payment and is required by federal law. Under the Company A contract, “The Company shall provide the Producer with a legible copy of the chick delivery ticket and feed delivery ticket at time of delivery. The Company will provide the Producer with a live bird scale ticket and a USDA condemnation certificate (form 9061-2) upon flock settlement.”

8. Assistance program for growers with poor performance.

It is common under most broiler growing arrangements for the contract to provide that growers who consistently perform below average, or have higher costs, are at risk for not have their contracts extended. For example, the Company A contract provides that “Failure of the Producer to consistently produce broilers in an efficient competitive manner, as provided ... herein (the Performance Improvement Procedure)” is a condition of default by the grower. Several contracts, including the Company A contract, incorporate programs designed to assist such lower performing growers in order to increase their returns and reduce the risk that they will be terminated. The Company A contract establishes a detailed “Performance Improvement Procedure” which provides that, “Producers’ [sic] whose performance is not consistent with the Company’s Broiler Growing Guide, may be placed on ‘Intensified Management’ status...” If this happens, it requires the grower to meet with the company’s technical advisor and broiler manager and respond to specific written recommendations for improving the grower’s performance.

9. Incorporation of a written “Broiler Growing Guide” establishing standards.

An issue which can cause concern on the part of growers is knowing in advance the standards against which their conduct or performance will be measured. One method for addressing this uncertainty is for the company to reduce to writing the guidelines that will be used to evaluate or measure a grower’s actions. The Company A contract addresses this issue by providing for technical advice and the use of the company’s Broiler Growing Guide. The provision states:

The Company agrees to provide technical advice at no cost to the Producer. The Company Technical Advisors shall visit the Producer periodically to give advice and assistance as required. The company will provide the Producer with a written guideline of recommended practices that optimize broiler performance, known as the Company’s Broiler Growing Guide. This guide is not a guarantee of successful results or profits, but contains those management practices that, in the Company’s opinion will prove most effective.

A later provision in the Company A contract specifically incorporates the terms of the Guide and makes it a part of the contract.

10. Company employees excluded from the payment pool.

The typical poultry contract provides for payment based on a pooled ranking system in which each grower's performance is measured against an average for a period. One issue that can cause concern on the part of growers arises when company employees or their families also raise birds. The concern is whether the employees are somehow given a preference when it comes to the delivery and quality of inputs, the length of layout time and the timing of the sell out of the birds. One way for a company to eliminate such fears is to take the employees out of the ranking system with other growers. The Company A payment schedule provides in part:

Producers who are Company management employees or their immediate family (including but not limited to spouse, parents, parents-in-law, brothers, sisters, brothers-in-law, sisters-in-law, sons or daughters, sons-in-law or daughters-in-law or stepchildren) shall be settled with all Producers, then removed from the calculation of the Average Efficiency Point Factor for the purpose of settling all remaining Producers.

C. Contract Provisions That May Raise Grower Concerns Beyond the Norm

While the analysis presented thus far indicates that the Company A contract has a more favorable grower orientation, this does not mean that even that contract is essentially balanced on all issues. In fact, it is important to remember when considering poultry contracts that in most situations the relations are inherently unequal, the growers have very little bargaining power, little or no autonomy of decision-making, and few alternatives as to other contractors or marketing outlets. The reality of the true nature of broiler contracting relations is reflected in the 16 core categories of contract provisions discussed earlier, the effect of which is to place near total and unilateral decision making authority with the company while at the same time leaving with the growers significant risks and responsibilities relating to the performance of the birds and the disposal of dead birds.

Even when starting from the basis of a relation that is demonstrably one-sided, many poultry contracts include additional provisions that further amplify this nature of the relations. The following list of provisions from the Company A and/or Company B contracts may either raise concerns for growers or evidence the use of unequal contracting power to allocate risk or responsibility with the grower.

1. Grower bears risk of loss if a catastrophe occurs.

One risk in broiler contracting is what happens to a grower if a catastrophe results in the death of a sizeable number of birds. While the Company A contract does include language that would require the company to pay a grower for the time the birds were in the houses on a pro-rata basis if the birds are lost through an Act of God, the contract also includes another provision which seems to counter this. The contract states, "The Producer will bear

the risk of loss of his own property. The Producer bears the risk of his compensation in the event of any catastrophe while birds are in his possession.” The distinction may be that a loss caused by a catastrophe such as fire would rest with the grower, while the risk of an “Act of God” such as a hurricane may qualify for compensation. The use of these two provisions may require growers to use a dispute resolution process to determine the scope of the “Act of God” protection.

2. Possible delay in grower's right to terminate contract.

The only effective response a grower might have to a negative company action, such as an amendment to the payment schedule reducing the payment, would be to utilize whatever provision is in the contract allowing for termination (or to refuse to sign a new contract). In the Company A contract, this provision, titled “Producer’s Right to Terminate” reads, “The Producer shall have the right to terminate this Contract with no less than sixty (60) days notice prior to scheduled flock removal from the Producer’s farm. This notice must be given to the Company’s Broiler Manager in writing.” The timing required in this provision is somewhat peculiar in that most production periods are of about 7 weeks or 50 days. To require 60-day notice prior to scheduled flock pick up would appear to mean the notice might not be effective until another flock has been placed.

3. Special concerns where company arranges for supplies to be provided by another party.

As discussed above, under a typical broiler contract the company is responsible for providing the feed, chicks, medications, and certain other supplies, and the grower is prohibited from using supplies not provided or approved by the company. Under most contracts the responsibility for providing those supplies rests with the company directly. The Company B contract, however, allows Company B to either “provide and deliver” the supplies to the grower or to “arrange for provision and delivery to Producer, feed, fuel, medications, vaccinations, and other supplies...” As a result, Company B may not actually be the source of the inputs. This language can be contrasted with the Company A contract, which says that Company A will deliver the inputs and it will be at “no cost.” While it may be assumed in the Company B contract that the supplies are provided at no cost to the grower, there is at least the possibility that a supply company could charge the grower for items.

A related issue that can arise concerning inputs supplied by an outside party is the quality or efficacy of the supplies and, more specifically, what happens if the supplies are defective or perform poorly. The Company B contract is silent on the topic of limiting any claims of warranties for supplies. The Company A contract includes a provision that is a limitation of warranties and thus a limitation on the potential liability of the company for defective supplies provided by an outside party that it recommends. It provides, “The Company does not warrant quality, merchantability, fitness for purpose or otherwise warrant any product delivered by or recommended by it to the Producer that is not manufactured or produced by the Company.”

4. Grower liability for excess use of supplies.

The Company B contract contains a provision that states that the grower is required, “To pay for supplies used in excess of usage programs when such excess usage is caused by improper management practices of the Producer. Payment shall be made by off-set against amounts due to Producer.” While the concern about the waste of supplies may be understandable, the issue from the grower’s perspective is how to determine when the use is excessive and what the standard is for determining when management practices have been “improper.” Company B, like some other companies, provides fuel and litter for the growout cycle in addition to chicks, feed, and medication. Where this is done, growers’ pay can be affected not only by feed conversion but also by the amount of fuel used.

5. Grower to hold the company harmless from liability.

In the Company B contract the independent contractor clauses are quite detailed and include specific provisions relating to the grower’s accepting responsibility for all employees, insurance, and taxes. The provision also requires the grower to hold Company B harmless from liability that might arise for any of these issues. The contract reads in part, “Producer agrees to hold Company B harmless from any liability with respect to any such taxes or other charges.” This clause isn’t unexpected but its inclusion is just another example of how this particular contract is more detailed in allocating risk to the grower and, therefore, more severe.

6. Failure to meet unspecified performance standards as a basis for takeover.

As discussed above, most broiler contracts, including the Company A and Company B agreements, allow the company to take over the grower’s facility if the company believes the grower’s performance has violated the standard of care or the flock is in jeopardy. The Company B contract provides:

If Producer is not satisfactorily performing Producer’s obligation under the Agreement to care for, treat and maintain the flock, or do such other thing or things with reference to the flock as outlined by [Company’s] established procedures, [Company] may remove the flock, or may undertake the maintenance, treatment, feeding, and care of the flock on the Producer’s property, and Producer shall assume the costs for any necessary disbursements to accomplish such purposes.

As noted, the inclusion of such a “takeover” clause is not uncommon, but what is interesting about the Company B provision is that it includes the first and only reference to “[Company B’s] established procedures.” Perhaps the most significant issues in this regard are whether these standards have been reduced to writing and whether they have been communicated to growers in advance. The contract does not specifically note how this other “document,” if it exists, is incorporated by reference into the agreement, in contrast to the Company A contract, which clearly incorporates the company’s “Broiler Growing Guide.”

7. Nondisclosure by grower of information.

The Company B contract includes a somewhat unusual provision that relates to the ability of the grower to share information about the broiler growing arrangement, both as to compensation formulas and the contract terms. The contract states, in bold print:

Producer shall not disclose or disseminate to any third party any information or materials or knowledge gained by Producer's relationship with [Company] including, but not limited to, information concerning [Company's] contracts, compensation formulas, operation procedures, and poultry management practices. Disclosure or dissemination of such information shall be considered as a material default of this Agreement.

8. Grower issues related to specific dispute resolution procedures.

The Company B contract incorporates a binding arbitration procedure for resolving disputes. While the arbitration mechanism is somewhat typical, it is slanted against the grower in several ways. First, the contract sets out specific, short time periods in which the grower must make a arbitration claim or waive his or her right to seek any review of the company's action. The contract provides in part, "Any Party which fails to utilize the Complaint Resolution Procedure described in V, or the Arbitration Procedure described in VI, within the express time limits identified in each section waives its right to request arbitration and otherwise have the dispute heard before any court of law." Also, the contract specifically provides that arbitration can only involve the company and a single grower, with multi-party arbitration only allowed if Company B agrees.

Further, the Company B contract requires growers to serve as members of the first-level dispute resolution body, called a "Peer Review Committee." By signing the Company B contract, a grower agrees, "To participate as a Peer Review Committee member, as described below in the Complaint Resolution Procedure, to resolve disputes regarding settlements or payments pursuant to settlements involving Company B Producers situated in close geographical proximity to Producer." While using peer review can create a readily available and somewhat informal method to respond to grower concerns, it is not without limitations. A survey of poultry growers in the Delmarva indicated that they have serious concerns about the potential for retaliation if they are perceived as acting against the interests of the company when serving on a dispute resolution committee. The question then becomes how likely it is that a grower forced to serve on a peer review committee would feel free to rule against Company B in a dispute.

III. Broiler Grower Survey—How Grower Concerns Relate to Contract Terms

A significant portion of this project relates to the grower survey that was conducted to discover growers' perceptions about a range of issues concerning broiler contracting. The results of this survey are discussed in an earlier chapter of this report, but some of the responses will be re-examined here as they relate to the nature of the contracts in use. In this section, the survey responses will first be used to make a series of general observations about the nature of broiler contracting and in particular the growers' perceptions of the

relations and their understanding of the legal aspects of the contracts. Second, the contract provisions used in broiler contracts offered by 18 different poultry companies are reviewed to determine how, if at all, they address each of the 10 main issues that were identified in the survey as causing the most concern for growers. In this section, examples of the typical contract language used to address each issue are highlighted and discussed.

A. General Observations from the Grower Survey

In reviewing the information obtained by the survey, both the general responses and the more detailed analysis that has been conducted, there are several important observations that can be made.

1. Observations about the growers and their operations.

First, most growers have been doing this for some time, with the average length of experience being 16 years. This means that many of the growers surveyed have considerable experience with poultry contracting, many have dealt with several companies, and most have been at it long enough to see any changes which might be taking place in the nature of contracting relations.

Second, for most growers broiler contracting is their main form of employment, with 63 percent having no off-farm job and more than half receiving over 50 percent of their family income from raising poultry.

Third, as to the reasons why most got into the business, the survey indicates the main reason was “to make more money” or some related financial desire such as to “provide more financial security” and to have something to retire on. Very few got into poultry production because it had been in their family—so it is not a “tradition”—but a surprising number, more than 70 percent, got into the business to be their own boss.

Fourth, as to the number of houses that each grower has in production, the average is 3.6 houses. The average cost of a new house is over \$140,000. It would cost well over \$500,000 to replace the broiler houses for the average respondent. These growers have very large financial interests at stake in their production facilities and reliance on the continuation of the broiler contracting relationship is significant.

Fifth, it is clear that the issue of making improvements to the houses is a common concern, as two-thirds of growers surveyed responded that they have made at least one “substantial improvement” (defined as being over \$3000) to their houses in the last 5 years. More than 44 percent of the growers have made at least two improvements. It would appear that many of these improvements might have been made in connection with qualifying for a higher pay schedule because 60 percent of growers indicate that their contract has been altered in the last three years to increase their returns, and several of the contracts reviewed include recent addenda that increase the payment rate in return for the construction of newer houses or other improvements.

Sixth, as to the issue of the potential competition between companies for growers, the survey asked growers how many other companies were operating in their area when they

began growing broilers and now. The average number was 2.8 when they began and 2.48 now, showing that there has been some decline in company activity. But it is important to note that close to 28 percent of growers have no other companies active in their area.

Seventh, the survey asked if the growers ever had changed companies. Thirty-one percent responded that they had done so indicating that there is some movement, with 40 percent of those saying they did so in part to get better terms. But for almost 70 percent of growers there has been no change, and half of those who have not changed believe the contract terms would be the same elsewhere, indicating a recognition among growers that the contracts are similar regardless of which company is involved.

Eighth, the survey indicates that, as to performance, the average number of flocks produced a year is around 5.5 and the average age of the broiler houses is 15.5 years. This average house age is somewhat high and indicates houses that have been in production for many years. Because the useful life of a new house is estimated to be around 25 years, most growers have presumably made significant improvements and equipment changes to keep their houses operational.

2. Observations about growers and their growout agreements.

From the standpoint of the contract analysis the survey asked about the growers' understanding of the contracts and their experiences with them, such as the use of dispute resolution processes. Several significant observations can be drawn from the answers.

First, 88 percent of the growers said they have made a real effort to read and understand their contract, and 82 percent say they do understand their contract. These answers indicate a fairly high "comfort" level on the part of the growers with understanding the terms of their contracts.

Second, growers' answers to other survey questions may raise doubts about whether growers' understanding of the legal meaning of their contracts is as high as they believe. Most notably, when asked about the dispute resolution provision used in their contract, 38 percent did not know the method, while 36 percent said that they knew what their process was and over 25 percent didn't believe dispute resolution was addressed in their contract. Among those who knew the procedure, over half said that arbitration was required and 9 percent said mediation. Another 30 percent said that their contract requires "peer review." This review and analysis of the contracts found no contracts that use only mediation as a dispute resolution process. Instead, that method when used is always tied to subsequent arbitration if no agreement can be reached. In some situations where peer review is employed, such as under the Company B contract, it also is part of the arbitration process.

When asked about their experience using dispute resolution, fewer than half the respondents chose to reply and only a handful of growers had had any personal experience with it. But the more interesting information may relate to the growers' answers why they have not used the dispute resolution processes provided for in their contracts. Fifty-three percent of growers responding said that they had not used the process because they had had no disputes, but 29 percent didn't think the procedure would work to their

benefit and 13 percent thought it would be too expensive. Perhaps the most interesting result for this question—why haven't you used the process—is that 33 percent thought the company would retaliate. This response is one of the few places in the survey where growers' "fear of retaliation" was addressed.

Third, it would appear that many growers believe that the flock performance and, therefore, their compensation under broiler contracting is largely determined by factors outside their own control. For example, 78 percent of growers said that their pay depends more on the quality of chicks and feed provided by the company than anything they do.

Fourth, many growers have concerns about their freedom not to implement company recommendations for the operation, even if they do not agree with the recommendations. This concern is seen in the responses that 50 percent of growers in the survey believe that their contract will not be renewed if they do not follow company recommendations on housing improvements, but only 51 percent believe the company's recommendations have made them better off.

Fifth, based on the survey questions concerning the growers' experiences with their companies, there are areas in which growers have strong and positive feelings about the relations. For example, 80 percent of growers in the survey feel that their company is helpful with flock management and 77 percent feel that their company service person is a good judge of their work quality. For the most part these answers indicate a fair level of general satisfaction with the broiler growing arrangements. This is further reflected in the response of 75 percent of growers in the survey that getting into broiler growing has been good for them.

Finally, while many growers believe poultry contracting has been good for them the survey also indicates a strong sentiment that growers would not recommend the practice to others. Only 35 percent of growers replied that they would encourage others to become growers and 51 percent replied that they would not. It is interesting when three-fourths of the growers believe poultry contracting has been good for them but over half would not recommend it to any one else. Part of the explanation for this could relate to the specific concerns growers have about how broiler contracting actually works.

B. Analysis of Contracts as Relates to Ten Grower Survey Concerns

To understand how the broiler growing contracts in use relate to the concerns identified in the survey, the study examined contracts used by 18 of the companies raising broilers. Each contract was examined to see how the contract language addressed the concerns identified in the survey. The following discussion presents the findings of the examination and uses the actual language found in the contracts to illustrate the discussion.

1. Use of the ranking system to determine grower compensation.

As noted above, the payment system used by the company is a major factor in both the growers' economic performance and in some ways their satisfaction with or confidence in the broiler contracting system. The vast majority of poultry contracts in use employ some form of comparative pooled ranking system to calculate the amount growers are paid. In

this “tournament” system, the individual performance of each grower’s flocks is determined and then compared to other growers’ performance to calculate an average level for the growout group as a whole. The payment for each individual grower is then determined in relation to this average cost of production. Growers who use more feed or have lower weight birds are paid less based on their higher cost of production per unit.

This method of payment is a source of concern for many growers. The survey responses show that 48 percent of growers surveyed do not feel that the ranking system provides an incentive for them to improve their performance. Growers’ distrust of and distaste for the ranking system are addressed through this contract analysis in two ways. The first concerns a possible modification of the ranking system to relieve some grower concerns. The second considers the use of alternatives to the ranking system as a basis for grower compensation.

One issue that can arise with the use of payment ranking pools is whether company employees or their family members who also raise broilers are included the pool and ranked with other growers. The concern on the part of growers is that the company employees may somehow be favored in the process, for example through their control over chick placement and feed deliveries. Of the contracts reviewed, most are silent on this issue. The implication seems to be that, if company employees (or their family members) are also growers for the company they are treated the same for purposes of payment and are included in ranking pools along with non-employee growers.

However, a few companies—including Company A, Company E, Company F, and Company G—do specifically address this issue in their contracts by providing for a separate process for handling employees’ birds. For example, the Company F contract addresses this issue by providing that the “weighted average production cost per pound” excludes “flocks of employees of [Company] and such employees’ immediate family (parents, brothers, sisters, spouse, and children).” The effect of such a provision is that the company employees’ flocks are not used when determining the averages and rankings for other growers.

The second, broader contract issue related to the use of the ranking system is whether there are viable alternatives to that payment system. Despite widespread concern among growers about the use of the ranking system to determine their compensation, a review of the contracts indicates that the ranking system is an industry standard. Only two contracts were identified which used another form of payment. The contracts offered by Company M and Company H provide for grower payment based at least in part on the square footage of the grower’s house(s). For example, the Company M agreement uses a square foot payment to establish a guaranteed minimum payment the grower would receive. It provides in part:

1. Subject to the terms of this Agreement, [Company] supplements to Grower, that, for each flock of Broilers placed with Grower by [Company] pursuant to a [Company] Broiler Agreement, Grower will realize from said Agreement not less than \$.2250 per square foot per flock (on 32,832 square feet) of floor space in said

poultry house during the term of ____ flocks. In the event that payments to Grower for any such flock amounts [sic] to less than such supplemental amount, [Company] will pay the difference to Grower so that the said ... Addendum per square foot will be paid.

The Company M contract also includes payment under a more traditional pooled system based on the birds' actual performance. If the payment based on that schedule would be higher than the payment available under the square-footage schedule, the ranking-based payment is what the grower receives.

The square footage system is one alternative to the ranking system for determining payment as demonstrated by its current use by at least two companies, but other alternatives may exist.

2. Concerns about the quality of chicks and other inputs supplied by the company.

A grower's payment under a broiler contract is determined by the number of birds alive at the end of the growout period and the amount of weight they have gained relative to the feed consumed. These factors, in turn, are affected by the health and quality of the birds raised and the feed and medical attention received. The survey indicates that a substantial majority (78 percent) of growers believe that their pay depends more upon the quality of inputs received than the growers' own work. Of the many inputs to the operation chick quality is a major concern for many growers, with only 44 percent believing that good quality chicks are usually delivered and 54 percent saying that this happens only sometimes or rarely.

A review of the contracts indicates that the issue of chick quality is not universally addressed. Instead, the issue of the type of chicks provided, if referred to at all, is at the sole discretion of the company in connection with its ability to determine the type, number, and frequency of flocks provided. The only exception on the issue of chick quality is the Company A contract which, while making no reference to chick quality, notes that the chicks will be "randomly placed from the hatchery's production." This reference would appear to be designed to address grower concerns that poorer quality chicks might be given to less favored growers.

3. Confusion about settlement sheets.

Thirty-one percent of growers in the survey indicated that they do not understand the calculations on their settlement sheets. The contract review did not include review of any settlement sheets, so no conclusions about this grower concern can be drawn from this analysis.

4. Condemnation rates high and explanations unsatisfactory.

Growers' final payments are affected, sometimes significantly, by the number of birds condemned at the processing plant for health or quality reasons. Twenty percent of growers in the survey indicated that the condemnation rate for their flocks is usually higher than expected, and 38 percent indicated that they are, at best, only sometimes satisfied by the company's explanation for the condemnation rate. Contract language

generally does not address condemnation rate levels or the identification of condemnation causes. Only one contract, Company K's, seemed to set a maximum condemnation rate, in this case 3 percent of live weight pounds delivered by the grower. Nonetheless, the contract review did reveal a broad spectrum of provisions for assigning liability between the company and grower for condemned whole birds and parts. These provisions ranged from making no mention of condemnations to specifically assigning grower liability for condemnations resulting from particular diseases.

For example, the Company O contract provides that the company will be responsible for one-half of the condemned parts and all poultry condemnations resulting from leukosis, inflammatory process, or plant error. The grower is responsible for whole birds condemned for any other reason as well as one-half the condemned parts. Company N and Company I similarly charge growers for half of condemned parts, but only excuse growers from whole bird condemnations resulting from plant error. The contracts for Company C, Company L, and Company P exclude plant error condemnations from growers' responsibility, but do not specify how condemned parts are treated. Company R apparently provides for the most limited grower liability for condemnations, making growers liable only for whole birds condemned for airsacculitis and sep-tox.

5. Contract dispute resolution procedures.

Experience shows that relations as involved and complicated as broiler production create the potential for disagreements between the parties involved. The nature of broiler contracts, which depend on growers providing the daily labor but which leave the vast majority of decisions as to management and measuring performance with the company, are especially prone to possible disagreements. The method of dispute resolution provided for in a contract creates not just the mechanism for resolving disputes that can arise in the growout relationship, but also determines the ability of growers to seek redress either from the courts or other authorities. The survey responses indicated some uncertainty among growers about the types of dispute resolution provided for in their contracts and little experience with them. The review of contracts indicates that several approaches are used, including arbitration, mediation, and peer review. Eleven of the contracts use some form of binding arbitration. Four of the contracts make use of a process of mediation but in all of these the mediation is a precursor to the use of arbitration. Four contracts make no reference to the issue of dispute resolution, apparently leaving the issue to the courts. Several of the contracts, for example Company C and Company B, make use of a peer review process using other growers and perhaps company employees. In Company B's case, peer review is followed by arbitration if unsuccessful. Under the Company C contract, however, peer review is the sole means of dispute resolution provided for.

One trend that is apparent both in broiler contracting as well as in other commercial activities in the U.S. is the adoption of mandatory arbitration as a method for resolving disputes. While arbitration may offer a viable process with certain advantages, it does have its limitations and is subject to criticism as being inherently biased toward institutions vis-à-vis individuals. Most broiler contracts that employ arbitration contain detailed procedures for how the arbitration process is to proceed. The following "Complaint

Resolution” provisions from Company D’s broiler production agreement, are representative:

Complaint Resolution: Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association, under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

A. Either party shall demand arbitration in writing within ninety (90) days after the alleged claim was known or reasonably should have been known. Such demand shall include the name and address of the arbitrator appointed by the party demanding arbitration.

B. Within thirty (30) days after such demand the other party shall name an arbitrator and notify the first party of the name and address of said arbitrator.

C. The two (2) arbitrators shall within thirty (30) days request a panel of seven (7) to be designated by the American Arbitration Association, one of who shall be selected as the third arbitrator. The party requesting arbitration shall make the first challenge/strike from the panel of seven. The third arbitrator shall serve as the chair of the proceedings. The parties may name anyone of their choice as their arbitrators, except that all arbitrators shall be persons having knowledge of and experience in the broiler production industry. By mutual agreement the parties may waive a three-member panel and proceed with one arbitrator only.

D. The expenses of witnesses shall be paid by the party producing such witnesses and each party shall pay for its own legal representation, if any. If Grower elects to appear at any hearing without an attorney and gives Company at least seven days notice of such election, Company will do the same unless the law requires otherwise. All other expenses of the arbitration will be borne equally by the parties; provided, however, that in order to encourage the resolution of claims, Company will pay all costs and expenses of the third arbitrator in excess of \$1,000, so that in no event will Grower be required to pay more than \$500 of the costs and expenses of the third arbitrator.

E. The arbitration hearing shall be held in _____ county, _____, within thirty (30) days of confirmation of the third arbitrator’s appointment unless the parties agree otherwise. Failure by either party to participate in the arbitration process shall preclude that party from objecting to the arbitration proceedings.

F. Both parties shall be allowed a period of time to submit post-hearing briefs within a period of time designated by the arbitrator acting as chairperson. The arbitrators may grant any relief they deem just and equitable and within the scope of the agreement of the parties, including, without limitation, monetary, equitable or declaratory relief. An award rendered by a majority of the arbitrators appointed

pursuant to this agreement shall be final and binding on all parties except as provided by law.

G. The parties stipulate that the provisions hereof shall be a complete defense to any suit, action, of [sic] proceeding instituted in any Federal, State or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of the agreement and which is arbitrable as herein set forth. The arbitration provisions hereof shall, with respect to such controversy or dispute, survive the termination or expiration of this agreement.

H. Nothing herein contained shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to or subtract from any provisions of this agreement.

As is apparent to anyone who takes the time to read the above provision, it sets forth a rather complex and involved legal procedure. While the use of arbitration may be an expected part of commercial activity there are legitimate issues concerning the ability of most poultry growers, or most lay people for that matter, to understand or appreciate the implications of this procedure. For example, it is questionable how willing a grower would be to initiate such procedure. Even once the procedure is implemented, the terms of section H raise questions about the exact scope of the remedy that the arbitrators may impose. While section F says the arbitrators have the power to impose “equitable” relief, section H notes that they may not alter or change the agreement. So, for example, it is doubtful that the arbitrators would have the authority to extend the agreement beyond its explicit term. The inherent problems with arbitration and the increasing use of it for “defensive” purposes by companies interested in shielding their conduct from review by the courts is one reason why legislation introduced in Congress and many state legislatures relating to production contracts prohibit such use of mandatory binding arbitration.

6. Value of company-recommended improvements and pressure to adopt them.

To enter a broiler growing contract a grower must make a significant investment in facilities and equipment. The current cost of a new broiler house averages around \$140,000, and most growers build at least three houses. One important issue of concern to growers is the ability of the company to require growers to make improvements in existing houses or to install new equipment. Experience shows and the survey responses indicate that broiler production is not a static enterprise but instead growers are frequently requested or encouraged to make changes in their facilities. Two-thirds of the growers in the survey made at least one substantial improvement in the last five years, and more than 44 percent made at least two. Company recommendations may relate to the adoption of new equipment or other improvements in the facilities, such as new waterers or curtains.

One issue is whether or not a grower is required to adopt the company’s recommendations or to make changes in order to keep a contract. If the contracts are on a flock-to-flock basis, growers may be faced with little option but to make the changes if they desire to continue raising poultry because the company can make adoption of improvements a condition of receiving a new contract. But if contracts are for set periods or are silent on the issue of a

grower's power to decide whether to follow company "recommendations" then the issue becomes more significant. The survey indicates that growers have some concern about this issue, with 42 percent responding that they do not feel free to not follow the recommendations of the company service person.

The issue of increases in contract payments in conjunction with improvements also may come into play because the survey indicates that 60 percent of growers have had their contracts amended in recent years to increase their payments. This response may indicate at least two things. First, the companies use their ability to make unilateral changes in the contracts fairly frequently; and second, the companies may be using contractual payment increases tied to improvements to encourage growers to make desired improvements.

On the issue of growers being required or expected to make improvements to the facilities as recommended by the company, the contract review reveals that it is uncommon for contracts to make specific reference to such an expectation. Instead, the contracts make references to such commitments as the grower's obligation to provide "proper housing" as determined by the company. In addition, because the contracts may typically be for only one flock, adopting new requirements concerning equipment or improvements can be made a condition of obtaining a *new* contract rather than be incorporated into the contract itself.

However there are some examples of contracts making more specific references to the necessity of making improvements. The Company A contract provides, "The Producer agrees to cooperate with the Company in adopting and/or installing recommended management practices and equipment." The exact nature of the grower's legal commitment to "cooperate" is uncertain. The following provision from the Company E contract provides a detailed statement of the expectation of growers concerning operation of the facility and the adoption of new improvements.

Grower acknowledges full and complete responsibility for the care, maintenance, upkeep and financial responsibility for all aspects of the farm's premises and the buildings and equipment made a part thereof (the "premises"); agrees to keep the premises and equipment in reasonable care in accordance with acceptable industry standards during the duration of this contract; and further acknowledges that from time to time in the event suggestions are made by Owner with respect to the improvement, maintenance or upkeep of said premises to make every reasonable effort to comply fully with all Rules and Regulations regarding the upkeep of the premises and any environmental concerns applicable thereto or other reasonable regulations from time to time in effect by the Owner.

7. Prompt and accurate weighing of chicks and feed.

From the grower's perspective, the weight of the birds raised and removed from the house for processing is the main indicator of their performance and the most important determinant of their final payment. As a result, one concern that can arise is how much time passes before the birds are weighed once they have been loaded and removed from the grower's houses. This concern arises because the longer it takes for the birds to be

weighed the more weight loss, or “shrinkage,” will occur. Feed weights are also critical to growers because their payment is based in part on the amount of feed consumed by the flocks.

The survey responses indicate that there is real uncertainty among growers about when their birds will be weighed after they leave the grower’s farm. Only 50 percent of growers believe that the birds are usually weighed promptly. With a large number, 42 percent, answering “other”—meaning they do not know or prefer for some other reason not to answer. Nineteen percent of growers responded that they are at least sometimes charged for more feed than is delivered, with 32 percent answering “other” to this question. The question of whether growers are able to observe the weighing of either the live birds or the feed relates to the confidence growers have in the company’s measures.

A review of the 18 contracts reveals that it is uncommon for broiler contracts to make any reference to prompt and/or accurate weighing of birds or feed. As to the issue of prompt weighing, only the contracts used by Company A, Company E, and Company F make this commitment. All of these contracts as well as that offered by Company L refer to the grower being entitled to and encouraged to view the weighing.

8. Responsibility for dead bird and litter disposal.

Under all of the contracts examined, the growers are responsible for the disposal of dead birds. For many of the contracts, similar provisions are included for the disposal of litter. Even for those contracts in which the issue is not addressed, the assumption is that the litter is the responsibility of the grower since it is in the facility and will have to be removed before new birds can be placed.

When the survey asked growers about the issue of disposal of dead birds and litter and whether the companies provide any assistance, 20 percent said they received some assistance from the company and 78 percent indicated they received no assistance. These answers are notable because, as the following discussion indicates, no contracts were found which make any provision for assistance to growers as relates to the disposal of litter or dead birds.

The issue of who is responsible for disposing of dead birds and litter is significant and, to the extent this responsibility is specifically addressed in the contracts reviewed, it uniformly rests with the growers. A review of all the contracts found no examples in which there was any specific or implied reference that the company would provide the grower any form of assistance in connection with the proper disposal of either manure and litter or dead and cull birds. The only exception to this might be provisions for circumstances where a large number of birds die due to a catastrophe. The following discussion details how the issues of dead bird and litter disposal are addressed in broiler contracts.

Bird Disposal. The contracts uniformly talk about the requirement for proper bird disposal and the need for growers to satisfy federal, state, and local requirements in this regard. For example, in the Company N contract, grower commitments include, “To provide approved dead chicken disposal facilities which meet State Department of Health requirements.” The

Company O contract reads, “Grower shall ... Maintain the premises relating to this Agreement in a clean, sanitary and orderly condition, providing a [sic] proper disposal of all dead birds in accordance with the requirements of Federal, State and Local environmental, health and other applicable codes and regulations....”

For the most part, the choice of how to dispose of the birds is left to the grower, however a few contracts provide specific disposal requirements such as incineration or composting pits. For example, the Company I contract requires the grower, “To provide for prompt disposal of all dead and cull birds by means of (i) an incinerator equipped with an afterburner meeting all requirements of state and local environmental, health and other codes and regulations: [sic] or (ii) a pit disposal system with at least 400 cubic feet for each 16,000 square feet of housing, meeting requirements of [Company] and all state and local environmental, health and other codes and regulations as to its installation and operation.”

Litter Disposal. A surprising number of contracts are silent on the issue of the disposal of litter and manure left in the houses after a growout cycle, with the contract containing no reference either to the litter or the grower’s responsibility for removing it. Contracts used by the following companies are among those taking this approach: Company B, Company K, Company E, Company O, Company N, Company J, and Company P. In light of the increasing public and regulatory scrutiny of poultry litter disposal, the failure to include contract language addressing it can hardly be accidental. The most likely explanation may be that the companies are taking the position that the litter is clearly the growers’ property and by not making a specific reference to the litter—and by not explicitly allocating this responsibility to the grower in the contract—the company can avoid any direct connection with the litter. The company is likely relying on the fact that, to the extent the broiler production facilities are licensed, the license is in the name of the grower and the grower would have a statutory and regulatory obligation to dispose of the litter properly. Whether this position is reasonable—or whether it would be effective in a regulatory enforcement context—is uncertain.

The silent approach does stand in stark contrast to the other companies’ approach to litter removal—namely the express allocation of the responsibility for litter to growers in the contracts. For example, the Company A contract provides that “The Producer shall be responsible for the removal of all dead birds and litter and shall dispose of dead birds and litter in accordance with the law applicable to this location.” Contracts used by Company L and Company G follow this approach, although in some situations the contracts include a reference to disposal in accordance with the company’s recommendations.

In some situations the contract language is even more explicit concerning the grower’s responsibility for proper litter disposal and the company’s immunity from any responsibility. For example, consider the following provision from the contract used by Company M:

Grower shall be solely responsible for providing for manure or other poultry waste product removal, handling and disposal for the Facilities in compliance with all applicable laws, rules, and regulations. Grower agrees to indemnify and hold

harmless [Company] from any claim, loss or damage which results from Grower's failure to comply with this provision, including any loss suffered by [Company] as a result of [Company] being forced to relocate its broilers from Grower's Facilities for failure to comply. In the event the Grower does not comply with Grower's manure and waste disposal responsibilities under this Agreement, Grower hereby grants [Company] full and complete access to the Facilities to carry out Grower's duties at the expense of the Grower. In such event, Grower agrees to indemnify and hold harmless [Company] from any claim, loss or damage which results from Grower's failure to comply with this provision, including without limitation any claim, loss or damage which results from [Company's] actions in performing Grower's responsibilities.

This provision is accompanied by a provision that similarly makes the grower responsible for implementing pollution prevention and odor control at the facility, and another provision that addresses the grower's responsibility to dispose of dead animals by composting or incineration.

The Company L contract also includes an extensive "hold harmless and indemnify" provision, under which the grower agrees to indemnify the company for any claims, liabilities, or damages which result from the growout arrangement, specifically including those which might arise in connection with pollution or waste disposal complaints. This provision includes the following language, "It being expressly understood and agreed that all manure waste material produced or resulting from the broilers shall be the sole property and responsibility of the Grower from and after its production or creation."

9. Risk disclosures and projections of expected returns.

One issue which surfaces indirectly in several of the survey questions concerns whether or not the experience of the growers has been as economically rewarding as they thought it would be. One issue in this regard is what the growers may have been told they could expect in terms of the financial returns, or conversely whether they understood the risks involved.

When asked if the income they receive is above or below what they expected when starting out, only 10 percent said above and 43 percent said below with 47 percent saying their returns were about what they expected. Those who said that they had earned less than expected were asked to indicate possible reasons why this was the case. A large number, 76 percent, said that they were given poor quality chicks, and 65 percent said that more chicks died than expected. Eighty-six percent said that operating costs had risen faster than expected, and 65 percent said the company required expensive improvements. More than 40 percent said they received fewer chicks or poorer quality feed than expected.

One interesting response was that 37 percent said they received less income than expected because the contract terms had changed, but in an earlier question 60 percent said the contract had changed in last three years to increase their net income. One possible explanation for these results is that while the contracts had changed over the past three

years to increase growers' net income they had not changed enough to put that income at the level that the growers had expected.

The issue of whether raising broilers on contract is as rewarding as growers expected is a function of many things. One issue can be what the growers may have been led to expect. At the same time, it is understandable that broiler companies would be unwilling to make promises or other obligations to growers about the return that the growers can expect in the business. For this reason, most contracts include provisions reflecting the fact that the arrangements involve significant risks. For example the Company A contract notes that, "The Producer will bear the risk of loss of his own property. The Producer bears the risk of loss of his compensation in the event of any catastrophe while birds are in his possession." Some contracts include more detailed disclaimers of any promises of specific economic performance. For example, the Company E contract provides:

Owner makes no representations or commitments other than those contained herein, and Grower acknowledges there are no representations or commitments other than as set forth in this Agreement.

In no event will Owner be liable for special, indirect, incidental, consequential damages, or punitive damages, or [sic] including but not limited to, the loss of profit, revenue or other losses, even if the Owner shall have been advised of the possibility of such potential loss or damages. The Owner and Grower agree that the limitations set forth in this paragraph will survive even if the remedies set forth in this section or other provisions of this Agreement are found to have failed in their essential purpose or are otherwise unenforceable.

All limitations upon Grower's remedy are made a part of the bargain between Owner and Grower and the Grower accepts the allocation of risk set forth herein and acknowledge [sic] that the allocation of risk are [sic] an exchange for other economic benefits to Grower.

As to statements concerning the expected returns a grower might expect, only five of the contracts include some sample calculation. In most cases, however, these examples are not provided as expectations as to what a grower will earn but instead are used to illustrate how the payment and settlement system will operate. Contracts used by Company L, Company F, Company J, Company M, and Company N include some form of payment calculation example.

10. Timing and frequency of flocks.

A major influence on the income and profitability of a poultry contract is the number of flocks raised in a year. Down time or periods between flocks represent possible lost production time. However, there is a certain amount of time between flocks, typically seven to ten days, which is required to clean and prepare a house for new birds.

The typical contract language addressing the issue of the timing and frequency of flocks is found in the Company A contract, which provides that "The Company reserves the right to determine the number, frequency and type of broiler chicks to be placed in the

Producer's houses." It is clear from reviewing the contracts that the companies do not want or accept any obligation as to the timing or frequency of flocks given to the grower. For example, the Company I contract provides that the company agrees "To consign flocks to the Producer ... as such flocks are available for placement from time to time under prevailing markets, production, and other factors." The Company J contract provides that: "[Company] has the right of sole discretion as to the placement density and time each flock will be marketed."

The issue of how many flocks will be delivered and when is also linked to the issue of the term or length of the contract. Because many contracts are for only one flock, there is no reason why those contracts would address the number of flocks or the interval between flocks. This is true even though the contracts may include language that makes them continuous, meaning they roll over from one period to the next if a flock is delivered and neither party has taken any required steps to terminate the agreement. For example, the Company L contract includes this provision concerning mutual obligations:

That the term of this Agreement is for that period required to grow and deliver one (1) flock of broilers, unless canceled by either party in accordance with provisions contained in this Agreement. It shall automatically renew for a like successive term unless cancelled by either party upon ten (10) days written notice thereof or superseded by a new contract. Notice shall be effective upon receipt.

The Company B contract contains a similar provision: "For the convenience of not having to initiate a new Agreement after each flock, this Agreement shall be continuous until the Agreement is terminated by either [Company] or Producer."

A different approach is for the contract to include much stronger language setting out the company's obligation to provide no more than the one flock. For example, the Company E contract provides:

Grower acknowledges that the execution of this Agreement does not create a continuing relationship between Owner and Grower and that Owner is not obligated to provide Grower with any flocks after the flock delivered hereunder has been grown to maturity. This agreement covers only poultry delivered by Owner to Grower at or simultaneous with the execution of this Agreement. Upon completion of the grow-out process for the flock applicable to this contract, this Agreement shall terminate. It is expressly understood and agreed that Owner shall be under no obligation to extend further growing contracts to Grower under any circumstances. While it is envisioned that in the event Grower continues to provide services to Owner in full compliance with all terms hereof that future contracts will be entered into between the parties, this is not an obligation of the Owner. Owner specifically reserves the right not to extend future contracts to Grower for poor performance, violations of state law or all other reasons. It is expressly understood and agreed that Grower shall be under no obligation to accept further growing contracts upon the completion of the grow-out process for the flock applicable to this contract.

Grower also specifically reserves the right not to accept future contracts from Owner.

Even contracts that are for a longer period of time—for example, a Company K contract that is for a period of two years—include language that puts the actual timing and thus number of flocks at the discretion of the company. The Company K contract provides that “During a period of 2 years from this date, [Company] agrees to sell and deliver to the Producer day-old flocks of chicks (each flock being referred to as a “Flock”), as such Flocks are available for placement from time to time under prevailing market and production conditions and other relevant factors. ... [Company] shall not be obligated to deliver any certain number of Flocks to Producer or to deliver Flocks to Producer at any certain time.”

C. Analysis of Contracts as Relates to Grower Retaliation Concerns

An issue that emerged in the survey, as well as in other surveys conducted over the years, is the worry some growers have about the possibility that the company will retaliate if the grower complains or causes problems. The potential for retaliation was identified in this survey in connection with answers relating to the use of dispute resolution and the implementation of recommendations, with 33 percent of growers who responded indicating that at least one reason why they had not used the contractual dispute resolution procedure available to them was a fear of retaliation. While 67 percent of growers reported that they felt free to complain to the company, 42 percent of growers indicated that they did not feel free to use their own judgment to not follow the company service persons’ recommendations, presumably because they feared non-renewal or some other adverse consequence if they did not defer to the company representative.

An issue that may be related to the question of retaliation—at least in the minds of some growers—is the effect of their decision to join an organization representing the interests of poultry growers. While the survey asked a question on this topic, the wording asked growers about joining an organization “to help them manage their operations better,” which is not the typical reason a grower might join a grower organization. In response to this question, 20 percent indicated that they belonged to a contract poultry grower association for that reason. While the issue of retaliation or other unfair practices may be covered by applicable federal and state law, as addressed in another part of the study, the issue as it relates to the contracts concerns whether there is any protection in contract language for growers joining organizations such as the National Contract Poultry Growers Association. Of the eighteen contracts reviewed, only three—those offered by Company A, Company E, and Company G—make any mention of this issue. For example, the Company G contract provides:

Participation in Organizations—Growers may join or assist any organization or association of their choice. A grower’s membership in any organization or association will not affect his settlement in any way.

D. Additional Grower “Friendlier” Contract Terms—Is a New Generation of Agreements Emerging?

As the section discussing the contrast between the contracts used by Company A and Company B shows, there are examples of poultry growing contracts that include what can be termed “grower friendlier” provisions. A review of broiler contracts indicates that several contracts being offered by companies in recent years may fit this category, including the contracts from Company A, Company G, and Company F. A contract offered by Company F in 1999 contains a series of such provisions. These include:

Long-term agreement and recognition of investments. The preamble section of the Company F contract includes this language:

[Company] and the Grower desire to enter into an agreement by which the Grower will grow and care for broiler chickens owned by [Company]. The parties acknowledge that [Company] has a significant investment in and is subject to significant risks with respect to the Flocks placed on the Grower’s farm, and that the Grower has a significant investment in, [sic] and is subject to significant risks with respect to his or her farm. The objective of this Agreement, and the attachments and schedules hereof, as amended and modified from time to time as provided herein, is to set forth a long term arrangement between the parties to protect the parties’ respective investments and to minimize the parties’ respective risks.

In keeping with this sentiment the contract provides that it “will be effective for 15 years unless terminated as provided herein.”

Grower guide incorporated into the contract. The Company F arrangement is to be guided by the terms of the contract and an additional set of standards that are incorporated by reference into the agreement. Under the terms of the contract, “The Grower agrees to operate the farm pursuant to and in accordance with the standards set forth in the [Company] Broiler Growing Program (a copy of which is attached hereto)”

Grower improvements. The Company F contract is one of the few contracts to address the controversial issue of growers being required to make improvements to houses or equipment either before the grower feels such improvements are required or without any financial assistance from the company. The contract includes the following provision:

As to equipment upgrades (i) [Company] will not require Grower to purchase and install individual items or additional equipment unless [Company] pays for such purchase and installation; (ii) [Company] will not, through density changes, reduce the Grower’s net income per square foot per annum (based on average expenses for Growers similarly situated as calculated and determined solely by [Company]) solely on the basis of equipment requirements; and (iii) any transfer or assignment of the Grower’s farm consented to by [Company] will not require equipment upgrades. This provision does not apply to worn out equipment or equipment that is not in good working order.

Additional provisions note that if the contract is terminated by either party the grower may have to reimburse the company for the un-depreciated cost of any equipment purchased by the company for the grower, and that the company is not obligated to purchase the same type of equipment for all growers.

Grower encouraged to view feed weighing. The Company F contract addresses the issue of feed weight accuracy by providing that feed will be weighed by a “bonded weigh master on scales (primary or alternatives) certified as required by state and federal law.” The section also provides in part:

The Grower has the right and is encouraged to be present at the time feed is loaded on trucks and weighed without prior notice to [Company]. If requested by Grower, [Company] will seal all bottom doors on the bins on the trucks at the time such are weighed. The Grower, if present at the time of delivery, may break the seals for unloading.

The provision also gives the grower 24 hours to report any concerns about a discrepancy between the amount of feed or the type delivered and what is indicated on the feed ticket.

Prompt weighing of flocks. The Company F contract includes a lengthy provision concerning the weighing of the birds. The provision notes that the flocks will be weighed according to the procedures required under the Packers and Stockyards Act, by a bonded weigh master, and that the Grower is encouraged to be present at the time of weighing. As to the timing of the weighing the contract provides, “[Company] agrees to weigh the Flock as promptly as possible.” The contract reserves for the company the right to have the birds processed at a plant other than the usual destination for the grower, but the contract includes a shrinkage table that will be used to adjust the weight of the birds for the additional travel time.

Employees not included in calculations for payment pool. The Company F contract addresses the issue of employees in the payment pool by providing that the weighted average production cost per pound is defined to exclude “flocks of employees of [Company] and such employees’ immediate family (parents, brothers, sisters, spouse, and children).”

Mediation of disputes, as pre-condition to arbitration. The Company F contract does require that any controversy or claim arising between the parties be submitted to binding arbitration. However, the contract also sets out a detailed “complaint resolution” procedure that provides for the use of mediation as a method of resolving complaints. The contract ends with a paragraph in bold capital letters that reads as follows:

THE UNDERSIGNED DOES HEREBY DECLARE THAT THE TERMS OF THIS AGREEMENT HAVE BEEN COMPLETELY READ AND FULLY UNDERSTOOD. THIS AGREEMENT CONTAINS ARBITRATION LANGUAGE WHICH IS BINDING.

The Company F contract is one of the longer and more detailed agreements reviewed, which may provide a disincentive for growers to read the agreement carefully. The

extensive detail may, therefore, counter the benefit of providing notice to growers of their statutory, regulatory, and contractual protections.

Another contract which includes some of these “grower friendlier” provisions is the Company G agreement. The terms are included in an attached schedule titled, perhaps inappropriately, “Best Management Practices.” Rather than dealing with best management practices in the sense of how the birds are raised or the litter disposed of, the schedule really sets out a series of good contracting practices. For example, the schedule includes provisions relating to feed weighing, flock weighing, the grower’s right to join grower associations, provision of documents, exclusion of employees from the payment pool, and the term of the agreement, which might be as long as 10 years for growers with newer facilities.

IV. Observations and Conclusions from the Broiler Contract Analysis

The preceding discussion has focused on a variety of practical and operational issues concerning contract production arrangements for the production of broilers. As the discussion indicates, while there is some variation in the type of contracts being used there is also great similarity in the structure and nature of most contracting relations. One’s perspective on these issues probably influences what conclusions will be drawn and the recommendations made.

This contract review was undertaken as part of a project designed to assess the impact of contract poultry growing arrangements on the growers. One component of this was to identify the issues that are perceived by growers to be of continuing concern in the industry. These issues, as identified in the grower survey, were addressed from a contract review perspective in Part III.B of this chapter. A second component of the project was the review and analysis of laws governing contract poultry growing arrangements, including common contract terms, with an eye toward identifying areas in the legal backdrop for the contract poultry growing arrangements that could be modified to improve relations in the industry. To provide assistance to anyone who might be engaged in this process, the following discussion identifies six conclusions or observations that can be drawn from the contract review portion of the analysis.

A. Similarity in Agreements—Lack of Grower Autonomy

The review of the contracts now in use and the examination of the relations that they create make it clear that the broiler industry has developed a fairly standard approach toward dealing with growers. Poultry growers do make significant day-to-day management decisions in caring for their flocks—important decisions that can and do influence their incomes. But as to the most important decisions relating to the nature of the poultry operation itself this is not true. For the most part, the approach developing under standard poultry production contracts is very one-sided, with most contracts reserving almost all the critical decision-making and autonomy to the companies. One result is that many of the significant risks in the relation are left to the growers. The risks of not receiving new flocks—even though a grower may have invested hundreds of thousands of dollars in

facilities—is perhaps the most significant concern, but it is certainly not the only risk growers must accept. The responsibility for complying with environmental laws relating to litter and dead bird disposal, increasingly costly and contentious issues in some areas, is another. When the agreements are boiled down to their essence, the only real decision a grower is left to make is whether to continue raising birds for one more flock. But given the nature of the investments and debts most growers have there is often little choice in this matter. More importantly, as the contracts demonstrate, the issue of whether a grower will even be offered the opportunity to raise another flock is largely beyond the grower's control.

B. Short Term Nature of Contracts Is the Critical Element

While broiler contracts may include dozens of legal clauses, the real essence of the relations is captured in just a few key provisions. The terms describing the growers as independent contractors, the pooled ranking system for payment, and the company's discretion to determine whether a grower's performance is acceptable are all fundamental features of broiler contracting. In thinking about the contracts, however, the provision that is the keystone appears to be the term of the agreement and the related ability of the company to decide whether to continue to use a grower's facilities. As discussed above, almost all broiler contracts are relatively short-term—many for only one flock. Even though some contracts have set periods or are made “continuous,” other terms in the contracts, for example the company's discretion to control the frequency, timing, and number of flocks placed with a grower, indicate that most contracts provide no guarantee to a grower that any given number of flocks will actually be raised.

When reduced to their essence the contracts operate much like employment at will agreements, with the companies essentially reserving the right to let a grower raise birds for them if the company feels like it or needs the facilities. The short-term nature of the relations is also the starting point for most of the difficulties that are present. It introduces vulnerability on the part of growers whose substantial investments are always at risk that the contract will not be extended. This threat helps make growers fearful of retaliation or less willing to take their own positions. It creates the “expectation” that a grower will need to adopt new improvements or equipment, even if the grower does not believe they are necessary to continue to raise birds efficiently.

C. Grower Friendlier Contracts Are Possible

The contract review revealed that while there is much similarity among broiler growing contracts there are also some companies offering contracts that are demonstrably more favorable to growers. For example, the contract which promises at least 48 flocks over a set period shows that contracts can provide more in the way of security to growers who are expected to invest all of their savings and life in the relations. Contracts providing that employees are not included with other growers for purposes of the ranking pools raise a similar feasibility issue. If the company does not need to use a ranking system for those growers, then why cannot the alternative be offered to other growers to provide more predictability in the returns?

The existence of these contract provisions is significant for several reasons. First, it shows that such contract terms are workable and have been found advantageous by some participants in the industry. Second, it may show that companies are willing or able to “compete” for growers by offering more favorable terms. Third, it shows that any regulatory or legislative effort to establish such “grower protections” will not disrupt the broiler industry. In fact, companies adopting grower protections might be supporters of such regulations.

D. Need for Grower Education About Contracting and Alternatives

While the survey indicates that most growers have read and believe that they understand their contracts, there is always the opportunity for more education and understanding. The legal detail and complexity of many contracts raises serious questions about the real ability of non-lawyers to appreciate the legal significance and economic implications of the terms used. One topic that might be particularly valuable for growers is more education about the alternative approaches companies might use, such as the use of grower-friendlier contracts.

E. Need for Public Education About the Nature of Contracting

The terms used in broiler contracts and the nature of the relations they create are of primary concern to the parties involved—the growers and the companies. However, if the fairness or transparency of broiler contracts are going to be issues considered by government officials or legislators, there needs to be more appreciation and understanding of the relations they govern. In many ways broiler contracting is the first form of widespread industrialization of agriculture and the form with which we have the most experience. Because industrialization of agriculture is the goal of some people and because the use of production contracts is spreading rapidly to other commodities it is important for people to understand how the contracts that may be used will function. By considering the aspects of broiler contracting which raise concerns it may be possible to avoid repeating these mistakes.

F. Considering How Changes in Contracting Practices Might Occur

While the goal of increasing grower understanding about the legal nature of contracting is a valuable objective, by itself this will not result in different or better contracts. The nature of the contract terms offered by poultry companies is influenced by several factors, most notably what is legal, what they can get growers to sign, and what they want to achieve. Conversely it is not difficult to identify the forces that might come into play if the goal is changing contract terms to make them fairer or more equitable for growers. Changes in contract terms will only come about for the following reasons: (a) market forces, such as competition from companies offering better terms or the refusal of growers to raise birds under existing contracts; (b) increased bargaining power on the part of growers which forces companies to offer better terms; (c) legal action by courts which prohibit the use of certain practices or require certain actions; (d) legislation or regulation by state or federal officials which establishes the standards for using contracts; or (e) enlightened self-interest and altruism, which lead companies to offer “better” contracts because it is fair or the right

thing to do. Because poultry contracting is at its base an economic relation, the most likely sources of influence to change contracting practices will be a combination of market forces, through competition or increased grower power, and legislation or regulation.

Chapter 4

Contract Broiler Production — The Legal Context and Recommendations

Farmers' Legal Action Group, Inc.

I. Introduction

The vast majority of boiler chickens in the United States are raised through production contracts, sometimes referred to as growout agreements, between a poultry processing company and a grower. The relationship between the broiler grower and the processing company are to a great extent controlled by the terms of these contracts. However, the relationship between the grower and the companies may also be subject to government regulation. This regulation is intended to protect the rights of individuals and companies, as well as the integrity of the United States poultry industry as a whole. This chapter of the report addresses the legal context for contract poultry production, including government regulation of growout arrangements.

First, this chapter will provide an overview of important federal and state laws that govern the relationships between poultry companies and growers. Next, the chapter will consider issues identified in the Broiler Grower Survey as trouble spots in the relations between growers and poultry processing companies and will discuss how existing laws may provide redress for those problems. Decisions by federal and state courts on these subjects will also be discussed. Finally, the chapter will offer recommendations for further measures to address issues raised by broiler growers in their response to the survey described in Chapter Two of this report and to promote a stable and equitable poultry industry in the United States.

II. Federal and State Laws Affecting Contract Poultry Production

An understanding of existing laws affecting grower-company relations is essential for fashioning workable improvements in the poultry industry. This section sets out an overview of federal and state laws that directly and indirectly govern poultry companies and growers.

A. Packers and Stockyards Act

The goal of the federal Packers and Stockyards Act (P&S Act) is to promote fair competition and ensure fair trade practices in livestock and poultry markets.¹ The U.S. Department of Agriculture (USDA) is charged with enforcement of the P&S Act and has passed regulations providing more detailed requirements than are found in the statutory

¹ 7 U.S.C. §§ 181-231.

provisions. These regulations are found at Part 201 of Title 9 of the Code of Federal Regulations.² Within USDA, the Grain Inspection, Packers and Stockyards Administration (GIPSA) is the agency that implements these regulations and enforces the P&S Act.³ GIPSA has headquarters located in Washington, D.C. and 12 regional offices.⁴

When the P&S Act was originally enacted in 1921, it applied only to sales of livestock and did not apply to poultry sales. In 1935, a provision regulating the sale of live poultry was added.⁵ A “live poultry dealer” was defined in the Act as “any person engaged in the business of buying or selling live poultry in commerce.”⁶ As the structure of the poultry industry changed to one in which processing companies owned the birds throughout their lives and raised them through contracts with growers, the P&S Act’s coverage of only the purchase or sale of live poultry left contract broiler growers unprotected. In 1987, the definition of a “live poultry dealer” in the P&S Act was changed to include companies that arranged for growers to raise and care for live poultry that the company continued to own.⁷ This statutory change brought contract broiler growing arrangements under the P&S Act for the first time.

1. Definitions Making P&S Act Applicable to Grower Contracts

Key definitions included in the P&S Act make it apply to the relationship between processing companies and growers who raise birds owned by the companies under production contracts. A “live poultry dealer” is defined as:⁸

any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce.

A “poultry growing arrangement” is “any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another’s instructions, for slaughter.”⁹

² 9 C.F.R. pt. 201 (2001).

³ 7 C.F.R. §§ 2.22(a)(3)(iii) and 2.81(a)(3) (2001).

⁴ 9 C.F.R. § 204.2(b)(1), (e) (2001). Some of the regional offices nearest to areas where the poultry industry is concentrated include Atlanta, Georgia; Bedford, Virginia; Fort Worth, Texas; and Memphis, Tennessee.

⁵ Act of Aug. 14, 1935, ch. 532, § 1, 49 Stat. 649 (1935) (codified until 1987 at 7 U.S.C. § 218b).

⁶ This is the language in former 7 U.S.C. § 218b, which was repealed in 1987. Pub. L. No. 100-173, § 10, 101 Stat. 922 (1987).

⁷ Pub. L. No. 100-173, §§ 2-3, 101 Stat. 917 (1987) (codified at 7 U.S.C §§ 182(10), 192).

⁸ 7 U.S.C. § 182(10).

⁹ 7 U.S.C. § 182(9).

A “poultry grower” is “any person 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, but not an employee of the owner of such poultry.”¹⁰

These definitions make clear that the P&S Act covers contracts between poultry processing companies and broiler growers.

2. The P&S Act Requires Some Practices and Prohibits Others

Since the 1987 amendments, the P&S Act has provided comprehensive federal regulation of the U.S. poultry industry, prohibiting “any unfair, unjustly discriminatory, or deceptive practice or device” in the industry.¹¹ The P&S Act seeks to accomplish this goal by requiring some practices of live poultry dealers and prohibiting others.

a. Live Poultry Dealers Must Pay Poultry Growers Promptly and Fully

The P&S Act requires live poultry dealers to make prompt and full payment to poultry growers.¹² Live poultry dealers must tender timely payment under a growing arrangement by delivering the full amount due to the poultry grower by the close of the 15th day following the week in which the poultry is slaughtered.¹³ In the case of cash sales, payment must be made by the close of business on the day following the day the purchase was made.¹⁴

b. Live Poultry Dealers Must Take Steps to Weigh Birds Accurately

Under most contract broiler growing agreements the broiler grower’s income depends in large part on the weight of the birds when they are handed over to the live poultry dealer for processing. The regulations issued under the P&S Act include detailed requirements for weighing procedures and other actions that may affect weight.¹⁵

(1) Reasonable Care and Promptness

Under the P&S Act, live poultry dealers must use reasonable care and promptness with respect to loading, transporting, holding, yarding, feeding, watering, weighing, or otherwise handling live poultry to prevent waste of feed, shrinkage, injury, death, or other avoidable loss.¹⁶

¹⁰ 7 U.S.C. § 182(8).

¹¹ 7 U.S.C. § 192(a).

¹² 7 U.S.C. § 192(a).

¹³ 7 U.S.C. § 228b-1.

¹⁴ 7 U.S.C. § 228b-1.

¹⁵ 9 C.F.R. § 201.108-1 (2001).

¹⁶ 9 C.F.R. § 201.82(a) (2001).

Live poultry obtained under a poultry growing arrangement must be transported promptly after being loaded.¹⁷ The gross weight for grower-payment purposes must be determined immediately upon arrival at the processing plant, holding yard, or other scale normally used for such purpose.¹⁸

(2) Maintenance and Operation of Scales

Under the P&S Act, all scales used by live poultry dealers to weigh live poultry for the purposes of payment must be installed, maintained, and operated to insure accurate weights and meet applicable standards.¹⁹ Detailed USDA regulations describe the proper operation of scales on which poultry is to be weighed for purposes of determining a grower's payment.²⁰ Live poultry dealers must employ qualified people to operate the scales used to weigh live poultry.²¹ Persons with a legitimate interest in a load of poultry—including poultry growers and poultry dealers—must be allowed to observe the procedures involved in balancing the scale between loads, in weighing, and in recording the actual weight.²² The weigher must check the zero balance of the scale or reweigh a load of poultry when asked to do so by an interested party or by authorized GIPSA representatives.

(3) Scale Tickets

Under USDA's P&S Act regulations, all scales used to weigh live poultry for the purpose of settlement by a live poultry dealer must have a printing device that records weight values on a scale ticket or other document.²³ The weight on a scale ticket should be machine-printed, not merely hand-

¹⁷ 9 C.F.R. § 201.82(b) (2001).

¹⁸ 9 C.F.R. § 201.82(b) (2001).

¹⁹ 9 C.F.R. § 201.71(a) (2001). The use of accurate scales to weigh poultry is also required by 9 C.F.R. § 201.108-1 (2001).

²⁰ 9 C.F.R. § 201.108-1 (2001). Scales must be inspected in accordance with the regulations at least twice a year, at approximately six-month intervals. 9 C.F.R. § 201.72(a) (2001). The live poultry dealer must file a report of tests and inspections with GIPSA. 9 C.F.R. § 201.72(b) (2001). If a scale fails a test and inspection, it may not be used again until it is found in a later test and inspection to meet all accuracy requirements. 9 C.F.R. § 201.71(d) (2001). All vehicle scales used to weigh live poultry for the purpose of settlement or payment must be long enough and have enough capacity to weight the entire vehicle as a unit. 9 C.F.R. § 201.71(c) (2001). A trailer may be weighed as a single unit.

²¹ 9 C.F.R. § 201.73 (2001). The live poultry dealer must give copies of the instructions for weighing live poultry found in the Code of Federal Regulations to the scale operators, and require them to comply with the regulations. 9 C.F.R. §§ 201.73, 201.108-1 (2001).

²² 9 C.F.R. § 201.108-1(e)(4) (2001).

²³ 9 C.F.R. § 201.71(b) (2001).

written.²⁴ The scale ticket must include certain information specified in the regulations.²⁵ If the poultry is weighed on a vehicle scale, the scale ticket must show weather conditions, whether the driver was on or off the truck at the time of weighing, and the license number of the truck or the truck number.²⁶ The payment or settlement to the grower must be based on the actual weight of the live poultry shown on the scale ticket.²⁷ The scale tickets should be in at least duplicate form, should be serially numbered, and used in numerical sequence.²⁸ One copy of the scale ticket is to be given to the grower, and one kept by the live poultry dealer.²⁹

c. Live Poultry Dealers Must Take Steps to Weigh Feed Accurately

On May 5, 2000, new P&S Act regulations became effective requiring live poultry dealers to weigh feed whenever the weight of feed is a factor in determining payment or settlement for a poultry grower under a poultry growing arrangement.³⁰ Many of the rules for accurate weighing of feed are the same as those for weighing of live poultry.

(1) Maintenance and Operation of Scales

Under USDA's P&S Act regulations, all scales used by live poultry dealers to weigh feed for the purposes of payment to growers must be installed, maintained, and operated to insure accurate weights and meet applicable standards.³¹ Detailed USDA regulations describe the proper operation of scales on which feed is to be weighed for purposes of determining a grower's payment.³² Live poultry dealers must employ qualified people to operate the feed scales.³³

²⁴ 9 C.F.R. § 201.71(b) (2001).

²⁵ 9 C.F.R. § 201.49(b) (2001). In addition to the information mentioned in the text, that information includes: the name of agency performing the weighing service; the name of the live poultry dealer; the name and address of the grower; the name or initials or number of the person who weighed the poultry (state law may require a signature); the location of the scale; gross weight, tare weight, and net weight; the date and time gross and tare weights were determined; and the number of poultry weighed.

²⁶ 9 C.F.R. § 201.49(b)(9)-(11) (2001). The company's failure to accurately record truck identification numbers has been a factor in at least one poultry case under the P&S Act. See *Jackson v. Swift-Eckrich, Inc.*, 53 F.3d 1452, 1454-55 (8th Cir. 1995).

²⁷ 9 C.F.R. § 201.55(a) (2001).

²⁸ 9 C.F.R. § 201.49(b)(11) (2001).

²⁹ 9 C.F.R. § 201.108-1(e)(2) (2001).

³⁰ 65 Fed. Reg. 17,758 (2000) (codified at 9 C.F.R. pt. 201).

³¹ 9 C.F.R. § 201.71(a) (2001).

³² Scales must be inspected in accordance with the regulations at least twice a year, at approximately six-month intervals. 9 C.F.R. § 201.72(a) (2001). The live poultry dealer must file

(2) Scale Tickets

Whenever poultry feed weight is a factor in determining payment to a poultry grower, the payment must be based on the actual weight of feed as shown on a scale ticket.³⁴ USDA's P&S Act regulations require that all scales used by a live poultry dealer to weigh feed for payment purposes have a printing device that records weight values on a scale ticket or other document.³⁵ The weight on a scale ticket should be machine-printed, not merely hand-written.³⁶ The scale ticket must include certain information specified in the regulations.³⁷ In part, the scale ticket must show whether the driver was on the truck at weighing and the license number and other identification numbers on the truck and trailer weighed.³⁸ The scale tickets should be in at least duplicate form, should be serially numbered, and used in numerical sequence.³⁹ One copy should be given to the grower, and one kept by the live poultry dealer.

(3) Returned Feed

Whenever the weight of feed is a factor in determining payment to poultry growers, USDA regulations require that any feed that is picked up from or returned by a poultry grower must be weighed (or its weight reasonably determined) using a method that is mutually acceptable to the live poultry

a report of tests and inspections with GIPSA. 9 C.F.R. § 201.72(b) (2001). If a scale fails a test and inspection, it may not be used again until it is found in a later test and inspection to meet all accuracy requirements. 9 C.F.R. § 201.71(d) (2001). All vehicle scales used to weigh feed for the purpose of settlement or payment must be long enough and have enough capacity to weight the entire vehicle as a unit. 9 C.F.R. § 201.71(c) (2001). A trailer may be weighed as a single unit.

³³ 9 C.F.R. § 201.73 (2001). The live poultry dealer must require the scale operators to comply with the P&S Act regulations governing weighing of feed for payment purposes. 9 C.F.R. § 201.73 (2001).

³⁴ 9 C.F.R. § 201.55(a) (2001).

³⁵ 9 C.F.R. § 201.71(b) (2001).

³⁶ 9 C.F.R. § 201.71(b) (2001).

³⁷ 9 C.F.R. § 201.49(c) (2001). In addition to the information mentioned in the text, that information includes: the name of agency performing the weighing service; the name and address of the grower; the name or initials or number of the person who weighed the poultry (state law may require a signature); the location of the scale; gross weight, tare weight, and net weight of each lot assigned to the individual grower; the date and time gross and tare weights were determined, if applicable; and the identification of each lot assigned to the grower, by vehicle trailer or compartment number and seal numbers, if applicable.

³⁸ 9 C.F.R. § 201.49(b)(9)-(11) (2001).

³⁹ 9 C.F.R. § 201.49(c)(2) (2001).

dealer and the poultry grower.⁴⁰ The live poultry dealer must document and account for the picked up or returned feed.⁴¹

d. Growout Contracts Must Provide Basic Information

Under USDA's P&S Act regulations, each live poultry dealer who enters into a growout contract with a poultry grower must furnish the grower with a true written copy of the contract that clearly specifies the duration of the contract and conditions for the termination of the contract by each of the parties.⁴² The contract also must clearly specify "all terms relating to the payment to be made to the poultry grower."⁴³ These include, but are not limited to: (1) the party liable for condemnations, including those resulting from plant errors, (2) the method for figuring feed conversion ratios, (3) the method for converting condemnations to live weight, (4) the per unit charges for feed and other inputs furnished by each party, and (5) the factors to be used when ranking growers.

e. Live Poultry Dealers Must Provide Final Accountings

USDA's P&S Act regulations require that each live poultry dealer who acquires poultry through a contract with a poultry grower prepare a true and accurate "settlement sheet" and give a copy to the grower at the time of settlement.⁴⁴ The settlement sheet must contain all information necessary to compute the payment due to the poultry grower from the live poultry dealer.⁴⁵ If the weight of birds affects the payment, the settlement sheet must show the number of live birds marketed, the total weight and average weights of the birds, and the payment per pound.⁴⁶

If the contract provides for payment based upon a ranking of growers, at the time of settlement the live poultry dealer must give the grower a copy of the ranking sheet showing the grower's precise position in the ranking, as well as the actual numbers upon which the ranking was based for each grower.⁴⁷ The names of other growers are not required.

If the growout contract provides that official USDA condemnations or grades, or both, are factors in determining the grower's payment, the live poultry dealer must obtain an official USDA condemnation grading certificate for the poultry

⁴⁰ 9 C.F.R. § 201.55(b) (2001).

⁴¹ 9 C.F.R. § 201.55(b) (2001).

⁴² 9 C.F.R. § 201.100(a)(1) (2001).

⁴³ 9 C.F.R. § 201.100(a)(2) (2001).

⁴⁴ 9 C.F.R. § 201.100(b) (2001).

⁴⁵ 9 C.F.R. § 201.100(b) (2001).

⁴⁶ 9 C.F.R. § 201.100(b) (2001).

⁴⁷ 9 C.F.R. § 201.100(d) (2001).

and must provide a copy of that certificate to the grower prior to or at the time of settlement.⁴⁸

f. Live Poultry Dealers Must Keep Records and Provide Information

The P&S Act requires that live poultry dealers keep complete and accurate records of their transactions, including records showing the true ownership of the business.⁴⁹

Upon the request of the Secretary of Agriculture or persons designated by the Secretary, live poultry dealers must provide within a reasonable specified time information needed by GIPSA to carry out the provisions of the P&S Act and the implementing regulations.⁵⁰ Live poultry dealers must permit authorized representatives of the Secretary to examine their records and inspect their facilities subject to the P&S Act.⁵¹ Disclosure of facts and information regarding a live poultry dealer's business acquired through such examination is strictly limited.⁵²

g. Monopolistic Practices Prohibited

Practices that restrain competition or control prices are forbidden by the P&S Act.⁵³ The P&S Act uses broad language to describe the types of practices that are prohibited. In particular, a live poultry dealer may not "make or give an 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."⁵⁴ Under the P&S Act it is unlawful for a live poultry dealer to buy, transfer, receive, or sell any article for the purpose or with the effect of manipulating or controlling prices, or of apportioning the supply, if the apportionment will tend to restrain commerce or create a monopoly.⁵⁵ It is also unlawful under the P&S Act for a live poultry dealer to conspire, combine, agree, or arrange with any other person to apportion territory for carrying on business.⁵⁶

⁴⁸ 9 C.F.R. § 201.100(c) (2001).

⁴⁹ 7 U.S.C. § 221.

⁵⁰ 9 C.F.R. § 201.94 (2001).

⁵¹ 9 C.F.R. § 201.95 (2001).

⁵² 9 C.F.R. § 201.96 (2001).

⁵³ 7 U.S.C. § 192(c)-(g).

⁵⁴ 7 U.S.C. § 192(b).

⁵⁵ 7 U.S.C. § 192(c)-(e).

⁵⁶ 7 U.S.C. § 192(f).

3. Enforcement of the P&S Act

a. Regulation

GIPSA is authorized to issue regulations necessary to carry out and enforce the P&S Act.⁵⁷ GIPSA's publication of P&S Act rules in the publicly available Federal Register and Code of Federal Regulations is intended to give all members of the poultry industry clear direction about what is needed for compliance with the P&S Act.

b. Investigation

Many of the powers given the Secretary of Agriculture under the P&S Act relate to gathering information, whether by investigation, required reports, subpoena, or deposition.⁵⁸ The Secretary is authorized to gather and compile information and to conduct investigations of any company subject to the provisions of the P&S Act.⁵⁹ The Secretary may issue subpoenas requiring the attendance and testimony of any person or requiring the production of documentary evidence relating to any matter under investigation.⁶⁰ The Secretary has broad powers to require live poultry dealers to file annual or special reports and answers made under oath to specific questions.⁶¹ The President may direct various government agencies to provide information to the Secretary relating to live poultry dealers.⁶²

The Secretary may investigate and report on live poultry dealers' compliance with final decrees entered in lawsuits brought by the United States.⁶³ At the request of the President or either House of Congress, the Secretary may investigate and report on any alleged violation of the P&S Act.⁶⁴ The Secretary

⁵⁷ 7 U.S.C. § 228.

⁵⁸ The United States General Accounting Office has issued a report evaluating GIPSA's efforts to implement the P&S Act. "Actions Needed to Improve Investigations of Competitive Practices," United States General Accounting Office, GAO/RCED-00-242 (Sept. 2000). While the report focuses on GIPSA's efforts with respect to the cattle and hog industries, it may provide general insight into GIPSA's investigative function.

⁵⁹ 7 U.S.C. § 222; 15 U.S.C. § 46(a). GIPSA has created "rapid response teams" of investigators that are "designed to deal with high priority investigations that require fast action to prevent or minimize major competitive or financial harm caused by violations of the Act." *USDA Responds to Mississippi Poultry Growers' Concerns*, GIPSA Release #04-00 (Feb. 11, 2000), available at <http://www.usda.gov/gipsa/newsinfo/release/04-00.htm>.

⁶⁰ 7 U.S.C. § 222; 15 U.S.C. § 49. See also *United States v. Marshall Durbin & Co. of Haleyville, Inc.*, 363 F.2d 1, 4-5 (5th Cir. 1966).

⁶¹ 7 U.S.C. § 222; 15 U.S.C. §§ 46(b), 50.

⁶² 7 U.S.C. § 222; 15 U.S.C. § 48.

⁶³ 7 U.S.C. § 222; 15 U.S.C. § 46(c).

⁶⁴ 7 U.S.C. § 222; 15 U.S.C. § 46(d).

may also report to Congress and make recommendations for additional legislation related to the P&S Act.⁶⁵

GIPSA maintains a telephone hotline for participants in the poultry industry to alert the agency to possible violations of the P&S Act. The toll-free number is 1-800-998-3447. Callers who identify themselves may be better able to facilitate GIPSA's investigative efforts. GIPSA asks that anonymous callers leave complete information. Poultry growers may also complain to their regional GIPSA office about many problems related to the poultry industry.

c. Administrative Hearings

While the Secretary has extensive investigatory powers for all possible violations of the P&S Act, secretarial powers are limited in other respects. The Secretary lacks the authority to provide formal administrative hearings for most problems in the poultry industry. In other words, the Secretary may investigate, but may not bring an administrative action to resolve many types of violations of the Act. For the poultry industry, the Secretary only has authority to institute formal administrative hearing procedures for problems related to payment.⁶⁶

d. Statutory Trust to Secure Grower Payment

The P&S Act provides a specific, strong administrative remedy to ensure that growers are paid for all poultry and poultry products they deliver to live poultry dealers. If a grower does not receive full and prompt payment, he or she may file a notice with the Secretary of Agriculture.⁶⁷ Once a poultry grower files a timely notice of non-payment, GIPSA will invoke a "statutory trust," which forces the poultry company to hold certain assets in trust until the poultry grower has been paid in full.⁶⁸ The purpose of the trust is to ensure that if a live poultry dealer is unable to pay all of its debts, the poultry growers will be paid before the live poultry dealer's other creditors. The assets that must be held in trust are generally those that can be traced to the poultry company's purchase or sale of poultry and poultry products.⁶⁹

A grower's administrative notice about a live poultry dealer's failure to pay must reach GIPSA within 30 days of the final date the live poultry dealer should have

⁶⁵ 7 U.S.C. § 222; 15 U.S.C. § 46(f).

⁶⁶ 7 U.S.C. § 228b-2. GIPSA has greater enforcement authority relating to unfair practices in the livestock industry. 7 U.S.C. §§ 193-195.

⁶⁷ 7 U.S.C. § 197. The complaint must also be sent to the poultry company.

⁶⁸ 7 U.S.C. § 197(b).

⁶⁹ The assets that must be held in trust include "[a]ll poultry obtained by a live poultry dealer, by purchase in cash sales or by poultry growing arrangement, and all inventories of, or receivables from such poultry or poultry products derived therefrom." 7 U.S.C. § 197(b).

paid the grower.⁷⁰ The grower must also send written notice to the live poultry dealer within the required time frame.⁷¹ In most cases involving growout contracts, the company should make payment to the grower by the fifteenth day following the week in which the poultry is slaughtered.⁷² If a grower receives notice that payment which was timely offered was dishonored—for example, a check was rejected for insufficient funds—he or she may file a notice of nonpayment within 15 days.⁷³

The grower need not use a specific complaint form or method. The notice should state that it is notice of intent to preserve trust benefits and it should include the grower's name and address, the live poultry dealer's name and address, a description of the problem, the date on which the problem occurred (including the date notice was received that the live poultry dealer's payment was dishonored, if applicable), and the amount of money which has not been paid or is in dispute.⁷⁴

GIPSA will process the complaint even if some of this information is left out, as long as there is timely written notice to the live poultry dealer and the Secretary of the live poultry dealer's failure to pay.⁷⁵ While other complaints to GIPSA may be anonymous, non-payment claims must identify the grower.

GIPSA may file a formal complaint against the live poultry dealer and require the dealer to attend and testify at an administrative hearing.⁷⁶ Following the hearing, if it is found that there has been a violation, the Secretary will make written findings of fact and will order the live poultry dealer to "cease and desist" from continuing violations.⁷⁷ The Secretary may also levy a civil penalty against the live poultry dealer.

Furthermore, whenever the Secretary has reason to believe that a poultry company has failed to pay or is unable to pay a poultry grower what is due under a poultry growing arrangement, the Secretary may go to federal district court to seek a temporary injunction or restraining order against the company.⁷⁸ The court could prohibit the company from acting as a "live poultry dealer"

⁷⁰ 7 U.S.C. § 197(d).

⁷¹ 9 C.F.R. § 203.15 (2001).

⁷² 7 U.S.C. § 228b-1.

⁷³ 7 U.S.C. § 197(c), (d).

⁷⁴ 9 C.F.R. § 203.15(a) (2001).

⁷⁵ 9 C.F.R. § 203.15(b) (2001).

⁷⁶ 7 U.S.C. § 228b-2(a).

⁷⁷ 7 U.S.C. § 228b-2(b).

⁷⁸ 7 U.S.C. § 228a.

within the meaning of the P&S Act until a final resolution of the payment dispute is reached.

The trust requirement does not apply to small live poultry dealers with annual sales of live poultry—or average annual value of live poultry obtained by purchase or by poultry growing arrangement—of \$100,000 or less.⁷⁹

e. Civil Action by the U.S. Department of Justice

The Secretary of Agriculture may report violations of the P&S Act to the United States Department of Justice. The Attorney General has a duty to file a civil lawsuit for violations of the P&S Act reported by the Secretary of Agriculture.⁸⁰

f. Civil Action by Growers

Growers may file suit against live poultry dealers for violations of the P&S Act whether or not the growers file a complaint with GIPSA.⁸¹ The P&S Act explicitly provides for damages as a remedy for violation of the Act.⁸²

B. Agricultural Fair Practices Act

The Agricultural Fair Practices Act (AFPA)⁸³ protects the right of farmers and ranchers to “join together voluntarily in cooperative organizations as authorized by law.”⁸⁴ Under this law, the right of contract poultry growers to decide freely whether or not to join associations of growers is protected from interference by poultry companies.

1. AFPA Establishes Standards for “Handlers”

The AFPA establishes standards of fair practices required of handlers of agricultural products.⁸⁵ A “handler” is any person who: (1) acquires agricultural products from producers or associations of producers for processing or sale; (2) grades, packages, handles, stores, or processes agricultural products received from producers or associations of producers; (3) contracts or negotiates contracts or other arrangements—written or oral—with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or (4) acts as an agent or broker for a handler in any of the above actions.⁸⁶

⁷⁹ 7 U.S.C. § 197(b).

⁸⁰ 7 U.S.C. § 224.

⁸¹ 7 U.S.C. § 209(b).

⁸² 7 U.S.C. § 209(a).

⁸³ 7 U.S.C. §§ 2301-2306.

⁸⁴ 7 U.S.C. § 2301.

⁸⁵ 7 U.S.C. § 2301.

⁸⁶ 7 U.S.C. § 2302(a).

2. Coercion, Discrimination, or Intimidation Related to Membership in an Association Prohibited

The AFPA prohibits handlers from knowingly taking a variety of actions against an individual grower because of the grower's decision to join or not to join an association of growers.⁸⁷ In general, attempts to persuade growers to join or dissuade growers from joining producer associations are unlawful if they involve coercion, discrimination, or intimidation of any kind.

Specific unlawful practices include: (1) coercing a grower to either join or refrain from joining an association of producers; (2) refusing to deal with a producer because he or she has exercised the right to join and belong to a producer association; (3) discriminating against a producer in terms of price, quality, or other terms because of his or her membership in or contract with a producer association; (4) coercing or intimidating a producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with a producer association or a contract with a handler; (5) paying or loaning money, giving anything of value, or offering any reward to a producer for leaving or refusing to join a producer association; (6) making false reports about producer associations; or (7) arranging with another person to do any act prohibited by the AFPA.⁸⁸

A recent **Georgia** case, which appears to be the only case addressing these AFPA issues in a poultry production context, included some important holdings.⁸⁹ First, the court held that the grower association need not satisfy the technical definition of an "association" under the federal Capper-Volstead Act or the Agricultural Marketing Act in order to qualify for protection under the AFPA.⁹⁰ The court found that the focus of the AFPA is the handler's motivation for its treatment of the producer, not the producer's technical membership in an association.⁹¹ Second, the court rejected the company's argument that the grower must be a member in good standing of an association to bring an AFPA claim. The court concluded that Congress did not intend to deny AFPA protection to growers due to a technicality such as failure to pay

⁸⁷ 7 U.S.C. § 2303.

⁸⁸ 7 U.S.C. § 2303.

⁸⁹ *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 12-15 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001).

⁹⁰ The technical definition that the company sought to impose as a threshold test for AFPA coverage is the standard for authorized farm cooperatives, including a one-member/one-vote rule, a limitation on dividends paid on member capital, and a limitation on the percentage of products handled by the association for nonmembers rather than members. See 7 U.S.C. § 291; 12 U.S.C. § 1141j(a).

⁹¹ *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 9 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001).

membership dues. Therefore, the court held, a handler violates the AFPA if the handler retaliates against a producer based on the producer's perceived membership in an association, even if the producer is technically not a member.⁹² This decision was affirmed by the Eleventh Circuit Court of Appeals in May 2001.⁹³

3. *Limitations of the AFPA*

It is important to keep in mind, however, that the AFPA does not require that a poultry company deal with growers who are members of an association or with the association itself so long as the reason for the decision not to deal with them is not based on membership in the association. The AFPA states: "[n]othing in this Act shall prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer's membership in or contract with an association of producers, nor require a handler to deal with an association of producers."⁹⁴ This means that a poultry company may defend against a claim of violating the AFPA by showing that it had another, lawful reason for the decision not to deal with the grower or the association.

This then puts the burden on the grower or the association to show that the reason offered is not the real reason for the refusal to deal, but is just a pretext. Poultry growers who cannot show that a poultry company refused to deal with them *because* the growers are members of an association are not likely to bring successful AFPA claims. This burden on growers may be mitigated to a certain extent. In the recent **Georgia** case discussed above, the court held that the grower did not have to show that his membership in a grower association was the *sole* reason for the company's adverse action in order to receive protection under the AFPA.⁹⁵ Furthermore, in at least one **Florida** case, the court held that if a company cites no economic justification for its refusal to deal with a producer, the court may conclude that the refusal stemmed from the grower's membership in a producer association, in violation of the AFPA.⁹⁶

4. *Enforcing the AFPA*

The AFPA may be enforced in a variety of ways. If a poultry grower has been adversely affected by a handler's failure to abide by the requirements of the AFPA, or

⁹² *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 16 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001).

⁹³ See *Burger v. Cagle's Farms, Inc.*, 260 F.3d 627 (11th Cir. 2001).

⁹⁴ 7 U.S.C. § 2304.

⁹⁵ *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 12-15 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001).

⁹⁶ *Baldree v. Cargill, Inc.*, 758 F. Supp. 704, 706 (M.D. Fla. 1990), aff'd without opinion by 925 F.2d 1474 (11th Cir. 1991).

if a poultry grower has reasonable grounds to believe that a handler is about to engage in a prohibited act, that grower may bring a civil action for preventive relief in court.⁹⁷ A grower who has been injured in his or her business or property by any violation of the AFPA may sue the handler and recover money damages and attorneys' fees.⁹⁸ Suits under the AFPA must be brought within two years after the violation occurred.⁹⁹

Any party may also complain to USDA about an AFPA violation. If the Secretary of Agriculture has reason to believe that any handler or group of handlers has engaged in any act prohibited by AFPA, the Secretary may bring a civil action against the handler.¹⁰⁰

C. Other Federal Laws Impacting Poultry Growout Arrangements

In addition to the P&S Act and the AFPA, a number of other federal laws may affect relations between poultry companies and broiler growers. These include laws having to do with alternative dispute resolution, the environment, and taxation. These laws are discussed briefly in this section to complete the picture of federal laws that may affect contract broiler production.

1. Federal Arbitration Act

As discussed in the contract analysis in Chapter Three of this report, many poultry production contracts include a clause stating that any disputes that arise under the contract will be resolved in arbitration. Inclusion of this type of arbitration provision in a growout contract generally means that disputes covered by the provision cannot be taken to court for resolution.

There has been some controversy over the general issue of whether a person's waiver of the right to go to court to resolve contract disputes should be enforceable even when the waiver was included in a contract that was signed before the person knew what the dispute would be. The Federal Arbitration Act (FAA) resolves this issue for contracts that involve interstate commerce.¹⁰¹ The FAA provides that written agreements to arbitrate disputes that may arise during the course of the contract are valid and enforceable, if the contract involves interstate commerce.¹⁰² Interstate commerce simply means trade across state lines. Because poultry raised under most broiler contracts is likely to cross states lines once processed, it is very likely that

⁹⁷ 7 U.S.C. § 2305(a).

⁹⁸ 7 U.S.C. § 2305(c).

⁹⁹ 7 U.S.C. § 2305(c).

¹⁰⁰ 7 U.S.C. § 2305(b). The Secretary's authority to enforce the AFPA is delegated to the Administrator of the Agricultural Marketing Service, an agency within USDA. 7 C.F.R. §§ 2.22(a)(1)(viii)(Q), 2.79(a)(8)(xxiii) (2001).

¹⁰¹ 9 U.S.C. §§ 1-16.

¹⁰² 9 U.S.C. § 2.

broiler growout contracts would be considered contracts involving interstate commerce.

The FAA includes some general procedural provisions. If the agreement does not describe how arbitrators will be appointed, or if for any reason an arbitrator has not been chosen, a court may name one.¹⁰³ Regardless of how the arbitrators have been selected, they may summon witnesses and direct witnesses to bring material evidence.¹⁰⁴ If a person who has been summoned by an arbitrator does not appear, a court may compel the witness's attendance or find him or her in contempt.¹⁰⁵

If a party attempts to bring to court a dispute that is subject to an arbitration agreement, the FAA authorizes the court to issue a "stay of proceedings."¹⁰⁶ This means that the judge declines to hear the matter, and refers the dispute to arbitration. In very rare cases, a court might be persuaded to deny a request for a stay of proceedings. A party would need to show that there were serious problems with the contract from the outset, such as fraud, duress, or a mutual mistake made by the parties to the contract.¹⁰⁷ Under the FAA, courts may also compel arbitration if a party fails, neglects, or refuses to arbitrate in accordance with a written arbitration agreement.¹⁰⁸

There is no automatic appeal to a court of an arbitrator's award. In fact, once a dispute has been submitted to arbitration, it is extremely difficult to get the arbitrator's decision overturned by a court. However, an award could be set aside if the arbitrator engaged in misconduct.¹⁰⁹ Examples of misconduct would be accepting money in return for deciding a certain way or refusing to hear relevant evidence. A court could

¹⁰³ 9 U.S.C. § 5.

¹⁰⁴ 9 U.S.C. § 7.

¹⁰⁵ 9 U.S.C. § 7.

¹⁰⁶ 9 U.S.C. § 3.

¹⁰⁷ 9 U.S.C. § 2 (providing that arbitration provisions in contracts involving interstate commerce are valid, irrevocable, and enforceable, unless there are grounds that would lead to the revocation of any contract).

¹⁰⁸ 9 U.S.C. § 4.

¹⁰⁹ 9 U.S.C. § 10. The narrow circumstances under which the FAA allows a party to the arbitration to seek an order from a court to vacate the decision include: (1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. If the award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

also modify an arbitration award to correct an obvious factual mistake.¹¹⁰ However, an arbitration decision that is incorrect under the law will not necessarily be overturned. Some judges' willingness to review arbitration awards for "fundamental fairness" has been criticized and reversed by appeals courts.¹¹¹

Many individual states also have arbitration laws. Provisions of state arbitration laws that are in conflict with the FAA may be preempted.¹¹² Preemption recognizes the supremacy of federal law over conflicting state laws. For example, under the laws of some states, arbitration agreements entered into prior to the dispute are not enforceable by either party.¹¹³ However, to the extent a contract involves interstate commerce, the arbitration clause in the contract would be enforceable against an individual who had signed the contract regardless of state law because the FAA would preempt any conflicting state law.¹¹⁴

2. *Clean Water Act*

A thorough analysis of federal environmental regulation of poultry operations is beyond the scope of this report. However, it is important to note that the potential for water pollution from poultry operations is receiving increasing attention from federal and state environmental regulatory agencies and legislatures. Contract poultry growing facilities face the potential for significantly more stringent environmental regulation in the future. How the responsibilities for and costs associated with obtaining required environmental permits and compliance with environmental regulation are distributed between the grower and the poultry company in growout contracts will have a significant impact on the financial returns growers may receive from that contractual relationship.

The federal Clean Water Act addresses water pollution from concentrated animal feeding operations (CAFOs).¹¹⁵ Regulations issued under the Clean Water Act prohibit CAFOs from discharging potential pollutants, such as animal wastes, into waters of the United States except in a 25-year, 24-hour storm event.¹¹⁶ These regulations also

¹¹⁰ 9 U.S.C. § 11. Courts may only modify an arbitration award under the FAA if: (1) there was a material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award; (2) arbitration award is on a matter not submitted for arbitration; or (3) the arbitration award is imperfect in form not affecting the merits.

¹¹¹ See, for example, *Hoffman v. Cargill, Inc.*, 59 F. Supp. 2d 861 (N.D. Iowa 1999), reversed and remanded by 236 F.3d 458 (8th Cir. 2001).

¹¹² *Southland Corp. v. Keating*, 465 U.S. 1 (1984).

¹¹³ See, for example, Ala. Code § 8-1-41(3).

¹¹⁴ See *Continental Grain Co., Inc. v. Beasley*, 628 So. 2d 319 (Ala. 1993).

¹¹⁵ 33 U.S.C. §§ 1251-1387. See, 33 U.S.C. § 1362(14), defining "point source."

¹¹⁶ 40 C.F.R. pt. 122, Appendix B (2001). For CAFO non-discharge regulations generally, see 40 C.F.R. pt. 412 (2001).

require many CAFOs to obtain National Pollution Discharge Elimination System permits.¹¹⁷ Currently, the regulations only apply to chicken facilities if they use continuous overflow watering or liquid manure handling systems, conditions that exempt most, if not all, broiler operations.¹¹⁸

However, on January 12, 2001, the Environmental Protection Agency (EPA) published proposed rules that would require permits for all poultry operations of a certain size, regardless of the type of manure management system or watering system used.¹¹⁹ The rule would also require operators to develop a nutrient management plan for both the production site and any manure application sites and would require certain record keeping, monitoring, and reporting.¹²⁰ The proposed EPA rules also provide that all entities that exercise substantial operational control over a CAFO would be subject to the NPDES permitting requirements as an “operator” of the facility.¹²¹ The EPA has entered into a Consent Decree requiring it to take final action on the proposed rule by December 15, 2002.¹²²

3. National Poultry Improvement Plan

Although not a law, the National Poultry Improvement Plan is a potentially significant voluntary program that may impact company-grower relations. This plan is a cooperative program of the federal government, participating state governments, and participating members of the industry.¹²³ The chief goal of this program is preventing the transmission of disease by breeding flocks, as well as the spread of disease by hatcheries.¹²⁴ The Plan is updated regularly to incorporate new sampling

¹¹⁷ 40 C.F.R. § 122.23 (2001).

¹¹⁸ 40 C.F.R. pt. 122, App. B (2001).

¹¹⁹ 66 Fed. Reg. 2959 (2001). For a discussion of the expanded coverage of chicken operations, see 66 Fed. Reg. 3010-12 (2001). For proposed rule language, see 66 Fed. Reg. 3135 (2001) (proposing two alternatives to be codified at 40 C.F.R. § 122.23(a)(3)).

¹²⁰ See the discussion in the prefatory comments at 66 Fed. Reg. 2964, 3032-42, 3065-66 (2001). Proposed rule language can be found at 66 Fed. Reg. 3139, 3142 (2001) (proposed to be codified at 40 C.F.R. §§ 122.28(b)(2)(ii), 412.31(b)(1)) and 66 Fed. Reg. 3143 (2001) (proposed to be codified at 40 C.F.R. § 412.37).

¹²¹ See the discussion in the prefatory comments at 66 Fed. Reg. 3023-29 (2001). Proposed rule language can be found at 66 Fed. Reg. 3136-37 (2001) (proposed to be codified at 40 C.F.R. § 122.23(a)(5)(ii), (c)(3)).

¹²² See 66 Fed. Reg. 2962 (2001) for a discussion of the consent decree as it relates to regulation of animal feeding operations.

¹²³ 9 C.F.R. pt. 145 (2001). A list of participating states may be found at www.aphis.usda.gov/vs/npip/osa-npip.pdf.

¹²⁴ There are special provisions for meat-type chicken breeding flocks and products. See 9 C.F.R. pt. 145, subpart C (2001).

and testing procedures for Plan participants and participating flocks.¹²⁵ If companies meet the requirements of the plan, participating flocks and the eggs and chicks produced from them may be described using certain terms.¹²⁶ These terms may also be used in official USDA designs on the product packaging.¹²⁷

While participation in the Plan is voluntary, some states mandate that companies meet its requirements.¹²⁸ Non-participating and non-compliant companies may not describe their flocks as “clean” with respect to specified diseases, a description and label that is available to compliant participants. If a company were participating in a poultry improvement plan, but failed to use the prescribed disease control measures, the company could be excluded from the program, after receiving notice and the opportunity to become in compliance or show that they already are compliant.¹²⁹ Several leading poultry producing states treat violations of the requirements of the Plan as misdemeanors, and some levy fines for violations.¹³⁰

4. Internal Revenue Code

As discussed in Chapter Three, poultry growing contracts typically describe the growers as “independent contractors.” Defining the relationship between the poultry company and the poultry grower is important because, if there were an employment relationship, the companies’ responsibilities towards the growers could be significantly altered. For example, if growers were employees, companies would be required to make certain tax payments, as well as withhold income and other taxes from the growers’ checks. In the absence of an employment relationship, the growers must make these payments on their own behalf.¹³¹

An extensive body of court decisions considers the issue of when someone is an employee and when he or she is an independent contractor.¹³² These opinions

¹²⁵ See, for example, 65 Fed. Reg. 8014 (2000) (final rule amending the National Poultry Improvement Plan and its Auxiliary Provisions); 66 Fed. Reg. 37,919 (2001) (proposed rule to amend the Plan and its Auxiliary Provisions).

¹²⁶ 9 C.F.R. § 145.33 (2001).

¹²⁷ 9 C.F.R. § 145.10 (2001).

¹²⁸ See, for example, Ala. Code § 2-16-4 (only applies to chick sales); N.C. Gen. Stat. § 106-543 (only applies to chick sales); Tex. Agric. Code Ann. § 168.002.

¹²⁹ 9 C.F.R. § 145.13 (2001).

¹³⁰ See, for example, Ala. Code § 2-16-9; Ga. Code Ann. § 4-7-8; N.C. Gen. Stat. §§ 106-549, 106-549.01.

¹³¹ A full discussion of federal tax issues is beyond the scope of this report. For general information on federal tax obligations of employers and self-employed individuals, see Internal Revenue Service publications *Circular E, Employer's Tax Guide*, Publ. 15 and *Self Employment Tax*, Publ. 533.

¹³² See, for example, *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318, 323-24 (1992) (discussing the common law test for determining whether a person is an employee or an independent contractor within the context of an ERISA case).

generally look at a whole range of characteristics of the relationship, including the degree of control exercised by the purported employer. How the relationship is described in the contract is not the determining factor.

In 1958, the Internal Revenue Service issued a ruling that a farmer who had a broiler production agreement with a feed company was not an employee of the company for federal employment tax purposes.¹³³ The ruling noted that the feed company did not supervise the grower's operation. Significant changes in the poultry industry since the 1958 ruling might make this a closer question.¹³⁴ In the absence of a revenue ruling or binding court case overruling the previous IRS ruling, however, poultry growers are generally not treated as employees for federal tax purposes.

D. State Laws Affecting Poultry Growout Arrangements

In addition to federal laws, state laws may also apply to the contractual relations between contract broiler growers and poultry companies. The state law analysis in this chapter focuses on the laws of the leading poultry producing states including: Alabama, Arkansas, Delaware, Georgia, Maryland, Mississippi, North Carolina, South Carolina, Texas, and Virginia. Laws from other states are also discussed to demonstrate both typical and unique legislative approaches to regulating business relationships such as those found in the U.S. poultry industry. This analysis aims to address the most significant state law provisions related to contract broiler production, but it makes no claim to address every potentially relevant law. For example, state laws having to do with taxation and labor and employment are not discussed.

Section 1 below addresses two threshold issues that must be considered when reviewing possible state law claims: jurisdiction and choice of law. Section 2 focuses on certain state statutes that may specifically regulate agricultural production contracts. Section 3 discusses broad state laws that may affect the rights and responsibilities of growers and poultry companies. It is important to note that state laws which do not specifically mention poultry contracts—or even target agricultural production—may still set limits on lawful conduct under poultry growing arrangements.

1. Threshold Questions for State Law Claims

If a dispute between a poultry company and a grower involves questions of state law, it will necessary to first resolve two issues. First, where may the lawsuit be brought? That is, which state's courts have the power to decide the issue? This issue is called "jurisdiction." Depending on the circumstances, more than one state may have jurisdiction over a case. In such cases, the party bringing the suit can choose which

¹³³ Rev. Rul. 58-568, 1958-2 CB 730.

¹³⁴ Okla. Atty. Gen'l Opinion 01-17 (Apr. 11, 2001) (stating that contract growers and producers may be employees). See also, *Tyson Foods, Inc. v. Stevens*, 783 So. 2d 804 (Ala. 2000) (upholding a finding that a contract hog producer was an agent of the company and describing independent contractor status as a question of fact).

jurisdiction the dispute will be heard in. Some growout contracts may include a provision that sets out the state in which a lawsuit must be heard.

The second threshold issue is which state's laws will be followed to decide the dispute. Usually, the court hearing the case will apply its state's laws when making a decision. However, in some cases a contract may include what is called a "choice of law" provision stating that a specific state's laws will apply to disputes under the contract no matter what court has jurisdiction.

2. State Statutes Directly Regulating Agricultural Production Contracts

Some state statutes clearly and directly govern aspects of agricultural production contracts. These laws may govern agricultural production generally, or they may govern one specific type of commodity, such as poultry, swine, livestock, grains, or vegetables. Some states have laws that govern the purchase and sale of agricultural commodities through marketing contracts, but do not yet have laws that address modern production contracts. The statutes and rules discussed below either regulate poultry growing arrangements or are examples of regulation of other commodities that could be applied to poultry growing arrangements.

a. Licensing Requirements

A number of states have licensing requirements for at least some livestock or produce dealers.¹³⁵ Licensing requirements not only ensure initial compliance with the license standards, their renewal provisions also provide a quick and easy method for the state to check on and enforce on-going compliance. In **Mississippi**, poultry companies that produce baby chicks in their own hatchery operations in order to provide them to growers who produce broilers must obtain a license.¹³⁶ Other states, including **Georgia** and **North Carolina**, also require that hatcheries obtain licenses.¹³⁷ Some poultry companies would likely fall under these provisions.

While not a top poultry producing state, **Minnesota** is a state with significant poultry production that has a powerful licensing requirement. Under Minnesota's Wholesale Produce Dealers Act, poultry is defined as "produce" and comes under that Act's protections.¹³⁸ This Act requires that all produce dealers

¹³⁵ Some sample state requirements may be found at: Ala. Code § 2-16-3; Cal. Food and Agric. Code § 56181; Del. Code Ann. tit. 3, § 2502; Fla. Stat. § 604.17; Idaho Code § 22-1303; Md. Code Ann., Agric. § 13-203; Minn. Stat. § 27.03; Miss. Code Ann. § 69-7-203; N.C. Gen. Stat. § 106-418.11; Or. Rev. Stat. § 585.020; S.C. Code Ann. § 46-41-30; Va. Code Ann. §§ 3.1-722.2, 3.1-722.17; and W. Va. Code § 19-10B-2. Some states specifically exclude poultry companies. See, for example, Ga. Code Ann. § 2-9-1(1).

¹³⁶ Miss. Code Ann. § 69-7-203. See also, Miss. Attorney General Opinion, 2000-0210 (May 8, 2000).

¹³⁷ See Ga. Code Ann. § 4-7-3; N.C. Gen. Stat. § 106-542.

¹³⁸ Minn. Stat. § 27.01, subd. 2(3).

must be licensed.¹³⁹ The definition of “produce dealer” under the Act was revised in 2000 to make it clear that companies that contract with farmers for production of agricultural commodities are produce dealers within the meaning of the Act.¹⁴⁰ Companies may face civil or criminal penalties or lose their licenses if they violate certain requirements.¹⁴¹ Potential violations include making false statements, breaching the terms of the contract, and failure to make payment in full. Administrative rules implementing the **Minnesota** statute also list “unfair trade practices” as violations that could place a company in danger of losing its license.¹⁴²

b. Commercial Feed Laws

Commercial feed generally refers to several materials mixed together for use as feed for animals. Chicken feed would be considered a type of commercial feed under most state laws. Many states have laws regulating the manufacture, sale, and distribution of commercial feed. In general, state commercial feed laws may require licensing, registration, labeling—or a combination of these—and they may forbid misbranding (false or misleading labeling) and adulteration (adding poisonous or harmful substances). A number of states require that commercial feed come with a legible label, delivery slip, or invoice. These laws generally require that the label, delivery slip, or invoice must state the net weight (or other quantity term) of the feed, or of each commercial feed or feed ingredient that is part of the mixture.

States vary in the consequences they impose for violation of their commercial feed laws. States may impose assessments for violations, seize or detain feed, impose orders to stop its sale, warn persons not to distribute it, or condemn it.¹⁴³ States may also seek legal action against persons who violate their commercial feed laws by issuing written warnings, seeking injunctions, imposing penalties, and initiating misdemeanor prosecutions.¹⁴⁴

The laws vary in the protection they potentially provide to contract growers in another way as well. Some states regulate only sales of commercial feed, while

¹³⁹ Minn. Stat. § 27.03.

¹⁴⁰ 2000 Minn. Laws 477, § 24 (codified at Minn. Stat § 27.01, subd. 8).

¹⁴¹ Minn. Stat. § 27.19, subds. 2-3.

¹⁴² Minn. R. 1500.1401. These practices include making a false or misleading statement for a fraudulent purpose, including statements made to persuade a person to sign a contract, as well as using coercion, intimidation, or the threat of retaliation or contract termination to achieve various ends.

¹⁴³ For example, Del. Code Ann. tit. 3, § 1711; Md. Code Ann., Agric. § 6-113; Miss. Code Ann. § 75-45-177; Tex. Agric. Code Ann. § 141.121; Va. Code Ann. §§ 3.1-828.11, 3.1-828.14.

¹⁴⁴ One of the most comprehensive enforcement schemes is in Texas. Tex. Agric. Code Ann. §§ 141.121 through 141.149.

other states regulate the kinds of transfers that take place under a typical poultry production contract. This review focuses on commercial feed laws in the major poultry producing states covered by the Broiler Grower Survey, beginning with those state commercial feed laws that apply to poultry growing arrangements. States whose commercial feed laws appear to apply in cases where poultry companies supply feed to contract growers include: **Delaware, Maryland, Mississippi, Texas, and Virginia.**

Delaware's commercial feed law specifically applies to the provision of commercial feed to contract growers.¹⁴⁵ In Delaware, each type of commercial feed must be registered and labeled.¹⁴⁶ The labels must include several pieces of information, including the net weight of the feed (or each type of feed in the case of a mixture). It is unlawful to supply a grower with feed that has been misbranded or adulterated.¹⁴⁷

Maryland's law is similar to Delaware's, though the label for feed delivered to a contract grower may be in the form of an invoice or delivery ticket.¹⁴⁸

Mississippi provides some protection to contract growers related to feed.¹⁴⁹ The state commercial feed law's registration, labeling, misbranding, and adulteration provisions also apply to feed provided to contract growers.

Texas's commercial feed law applies to the "distribution" of commercial feed.¹⁵⁰ "Distribute" under this law is defined to include "sell, offer for sale, barter, exchange, or otherwise supply."¹⁵¹ This language appears to be broad enough to make the law's licensing and labeling requirements applicable to feed provided under poultry growing contracts.

Virginia's commercial feed law provisions relating to licensing and labeling apply only to manufacturers and guarantors who distribute commercial feed.¹⁵² "Distribute" is defined to include providing commercial feed to contract growers.¹⁵³ A guarantor is defined as a person or company whose name appears on the label of commercial feed.¹⁵⁴ Thus the commercial feed law requirements

¹⁴⁵ Del. Code Ann. tit. 3, § 1703(2).

¹⁴⁶ Del. Code Ann. tit. 3, §§ 1704, 1705.

¹⁴⁷ Del. Code Ann. tit. 3, §§ 1703(2), 1707, 1708.

¹⁴⁸ Md. Code Ann., Agric. §§ 6-101(e), (f), 6-110.

¹⁴⁹ Miss. Code Ann. §§ 74-45-153(b), 74-45-159, 74-45-161.

¹⁵⁰ Tex. Agric. Code Ann. §§ 141.051-141.054.

¹⁵¹ Tex. Agric. Code Ann. § 141.001(9).

¹⁵² Va. Code Ann. §§ 3.1-828.5, 3.1-828.6.

¹⁵³ Va. Code Ann. § 3.1-828.2, "Distribute."

¹⁵⁴ Va. Code Ann. § 3.1-828.2, "Guarantor."

apply if the company manufactured the feed or if the company's name appears on the label of the feed.

Other states' laws clearly do not apply to poultry growing contracts, or are unclear whether they apply. **Arkansas** law states that feed supplied to independent contractors—the status of most poultry growers under the terms of their contracts—is not considered to be commercial feed, and is exempt from the licensing requirement if granted an exemption license.¹⁵⁵

Alabama law recognizes a specific category of feed that is “vertical-integrator feed,” defined as feed manufactured by a livestock or poultry owner for the purpose of feeding to livestock or poultry.¹⁵⁶ It appears that the state licensing requirements still apply, but the labeling information for vertical-integrator feed may be kept at the manufacturing site and need not be given to the grower.¹⁵⁷

In **Georgia**, license and labeling requirements apply to all persons or companies that distribute—meaning to offer for sale, sell, exchange, or barter—commercial feed.¹⁵⁸ It seems likely that most poultry companies would not fall within this requirement for their activities related to poultry growing contracts. Similarly, **North Carolina** law requires registration and labeling of commercial feed and prohibits misbranding or adulteration, but these requirements reach only traditional buy/sell and barter exchanges.¹⁵⁹

South Carolina's commercial feed law is confusing because it regulates distribution without defining “distribute,” which is an important clue to the scope of the law in other states.¹⁶⁰ South Carolina's rule with respect to labeling appears to apply only to commercial feed that is “sold or offered or exposed for sale.”¹⁶¹

¹⁵⁵ Ark. Code Ann. §§ 2-37-103(c), 2-37-104(f).

¹⁵⁶ Ala. Code § 2-21-17(25).

¹⁵⁷ Ala. Code §§ 2-21-19, 2-21-20(3).

¹⁵⁸ Ga. Code Ann. §§ 2-13-1(4), 2-13-6, 2-13-8.

¹⁵⁹ N.C. Gen. Stat. §§ 106-284.30 through 106-284.46. The law expressly recognizes “contract feeder” arrangements, such as would exist under a typical broiler growout contract. N.C. Gen. Stat. § 106-284.33(4a). However, the only special provision for such arrangements is that feed is exempt from the inspection fees and reporting requirements of the law to the extent the feed is delivered to a contract feeder. N.C. Gen. Stat. § 106-284.40(6).

¹⁶⁰ S.C. Code Ann. § 46-27-40.

¹⁶¹ S.C. Code Ann. § 46-27-310.

c. Marketing and Bargaining Laws

Several states have enacted state agricultural marketing, bargaining, and fair practices laws.¹⁶² Some of these laws are concerned with protecting farmers from retaliation due to their membership in a producer association. Some of these laws also empower associations of farmers to bargain on behalf of their members. The most relevant laws for the poultry industry address not only collective bargaining relative to price in buy/sell situations, but also address collective bargaining relative to production contract terms.

A number of state marketing and bargaining laws also require alternative dispute resolution for disputes between a company and a grower association. This issue is discussed further in the section below dealing with alternative dispute resolution.

Maine has one of the more comprehensive state marketing and bargaining acts.¹⁶³ In Maine, individuals who produce under contract are explicitly included as producers who have the right to join associations and receive the protections of the act.¹⁶⁴ The law requires that associations be “qualified” in terms of their ability to represent a majority of growers in relations with a given company.¹⁶⁵ Maine law imposes an obligation on growers and handlers to negotiate in good faith; it also specifies prohibited practices.¹⁶⁶

Minnesota, though not one of the 10 top broiler producing states, has a marketing and bargaining act that would cover most broiler growout situations.¹⁶⁷ A producer is defined under this act as someone who owns agricultural commodities or who provides management, labor, machinery, facilities, or any other production input with the assumption of risk under a written contract.¹⁶⁸ A handler is defined to include those who contract with

¹⁶² States with marketing and bargaining laws include: California, Cal. Food and Agric. Code §§ 54401-54463; Kansas, Kan. Stat. Ann. §§ 16-1501 through 16-1506 (swine marketing pools); Maryland, Md. Code Ann., Agric. §§ 10-201 through 10-204 (appears to apply to sales transactions only); Michigan, Mich. Comp. Laws §§ 290.701-290.726; Minnesota, Minn. Stat. §§ 17.691-17.710; and Washington, Wash. Rev. Code §§ 15.83.005-15.83.905.

¹⁶³ Me. Rev. Stat. Ann., tit. 13 §§ 1953-1965.

¹⁶⁴ Me. Rev. Stat. Ann., tit. 13 § 1774(8-A).

¹⁶⁵ Me. Rev. Stat. Ann., tit. 13 § 1957.

¹⁶⁶ Me. Rev. Stat. Ann., tit. 13 §§ 1958, 1965.

¹⁶⁷ Minn. Stat. §§ 17.691-17.710.

¹⁶⁸ Minn. Stat. § 17.693, subd. 4.

producers for the production of any agricultural commodity.¹⁶⁹ Agricultural commodities are defined broadly, and include poultry and poultry products.¹⁷⁰

The Minnesota law specifies unfair practices—including coercion, discrimination, and intimidation—that are prohibited for handlers and producer associations.¹⁷¹ A company may not refuse to bargain with a grower association that the company has had prior dealings with, but there is no requirement that either party enter into a contract if the negotiations are unsuccessful.¹⁷²

The Minnesota Commissioner of Agriculture is authorized to investigate complaints alleging violations of the act and to hold hearings if needed.¹⁷³ If the commissioner determines that there has been a violation of the act, he or she may order that the violation cease and may order other affirmative action necessary to effectuate the purposes of the act.¹⁷⁴ The act gives the authority to adopt implementing rules, but these rules currently do not include fines or other penalties for violations.¹⁷⁵

To receive the benefits of the Minnesota law, an association of growers must be accredited by the state Commissioner of Agriculture.¹⁷⁶ The commissioner will determine the bargaining unit for the association, considering factors such as the plant, processor, company, and geographic area represented by the association's members.¹⁷⁷

The marketing and bargaining process provided for under the Minnesota law begins when representatives of a grower association and the company agree to meet to discuss a contract for the upcoming marketing year.¹⁷⁸ Once the process begins, the company and association must meet at least twice a minimum of 60 days prior to the beginning of the marketing year.¹⁷⁹ The parties are required to make a “serious, fair, and reasonable” attempt to reach agreement.¹⁸⁰ If the parties fail to reach agreement during the two information meetings, they may

¹⁶⁹ Minn. Stat. § 17.693, subd. 6.

¹⁷⁰ Minn. R. 1500.3300, subpt. 2.

¹⁷¹ Minn. Stat. § 17.696.

¹⁷² Minn. Stat. §§ 17.696, subd. 1(g), 17.697, subd. 4.

¹⁷³ Minn. Stat. § 17.70, subd. 1.

¹⁷⁴ Minn. Stat. § 17.70, subd. 2. The Commissioner may also ask the Attorney General to seek enforcement in the courts.

¹⁷⁵ Minn. Stat. § 17.701; Minn. R. 1500.0101-1500.3600.

¹⁷⁶ Minn. Stat. § 17.694, subd. 1.

¹⁷⁷ Minn. Stat. § 17.694, subd. 2.

¹⁷⁸ Minn. Stat. § 17.697.

¹⁷⁹ Minn. Stat. § 17.697, subd. 2.

¹⁸⁰ Minn. Stat. § 17.697, subd. 1.

continue negotiations at mutually agreeable times or may pursue mediation, as discussed in the next section.¹⁸¹

Michigan law authorizes producer associations for contract producers of perishable fruits and vegetables, but not contract poultry growers.¹⁸²

d. Dispute resolution

As discussed in Chapter Three, many poultry growing contracts provide for use of alternative dispute resolution (ADR) in case of a dispute arising under the contract. ADR is a general term for mechanisms for resolving problems that do not involve going to court.

The most common forms of ADR in the poultry industry are mediation, peer review, and arbitration. In mediation, the mediator—a neutral third party—tries to help the parties to resolve their disagreement. A mediator may persuade the parties but has no power to impose a solution on them. If the parties do not agree to a solution in mediation, they may go to court or, if required by the contract, seek arbitration.

In peer review, a small group of people decides how to resolve a dispute. The contract states who will be in the group. Typically the group will be made up of experienced growers, but in some cases it will also include company employees. If a party to the dispute objects to the peer review committee's decision, the party generally may go to court or, if required by the contract, seek arbitration.

In arbitration, one or more arbitrators—neutral third parties—hear the arguments from each side and make a final decision on how to resolve the dispute. As discussed above in the overview of the Federal Arbitration Act, it is very likely that the parties will not be able to appeal to anyone, including a court, if they are unhappy with the arbitrator's decision.

Most states have adopted an arbitration act setting forth procedural rules for arbitration.¹⁸³ There may be case law in the state that elaborates on the rules. In addition, state laws may address two types of ADR situations. One of these

¹⁸¹ Minn. Stat. § 17.697, subd. 3.

¹⁸² Mich. Comp. Laws § 290.702(f).

¹⁸³ One good source of information on arbitration is the American Arbitration Association. The Association's website has links for the arbitration acts for most states. The website is www.adr.org. The arbitration acts of the leading poultry states can be found at: Ala. Code §§ 6-6-1 through 6-6-16; Ark. Stat. Ann. §§ 16-108-101 through 16-108-224; Del. Code Ann. tit. 10, §§ 5701-5725; Ga. Code Ann. §§ 9-9-1 through 9-9-18; Md. Code Ann., Cts. & Jud. Proc. §§ 3-201 through 3-234; Miss. Code Ann. §§ 11-15-1 through 11-15-37; N.C. Gen. Stat. §§ 1-567.1 through 1-567.20; S.C. Code Ann. §§ 15-48-10 through 15-48-240; Tex. Civ. Prac. & Rem. Code Ann. §§ 171.001-171.098; Va. Code Ann. §§ 8.01-577 through 8.01-581.016.

involves disputes between an individual poultry grower and the company he or she has a contract with. The other is where a grower association and a poultry company turn to ADR because they have been unable to successfully negotiate on their own.

(1) Individual Disputes

Some states require that agricultural contracts contain a clause providing that the parties will attempt to resolve certain disputes through ADR. None of the top 10 poultry producing states currently has such a requirement.

Minnesota requires that agricultural production contracts include a clause providing for mediation or arbitration of contract disputes.¹⁸⁴

Wisconsin law provides for voluntary mediation or arbitration of vegetable production contracts and requires companies to submit disputes to arbitration if the producer so requests.¹⁸⁵ In **Iowa**, mediation is required before a dispute relating to a livestock “care and feeding contract” can be brought to court, but the statute does not define livestock.¹⁸⁶

Some state laws—not particular to agriculture—attempt to make arbitration agreements non-binding in some cases. According to **Alabama** law, for example, arbitration agreements entered into prior to the dispute are not enforceable by either party.¹⁸⁷ However, as discussed above, the Federal Arbitration Act provides that written agreements to arbitrate disputes that may occur in the future are valid and enforceable if the contract involves interstate commerce.¹⁸⁸ In a 1993 case, the Supreme Court of Alabama determined that a contract between poultry growers and a poultry company involved interstate commerce because the parties expected most of the poultry produced to be sent to other states.¹⁸⁹ Thus, under the Federal Arbitration Act, the arbitration clause in the contract was enforceable against growers who had signed the contract, despite the state law to the contrary.

¹⁸⁴ Minn. Stat. § 17.91, subd. 1; Minn. R. 1500.0901, subpt. 3; Minn. R. 1572.0020, subpt. 6. Kansas has a similar provision. Kan. Stat. Ann. § 16-1505 (swine production contracts). A contract that provides for just one form of ADR is permissible under these state laws.

¹⁸⁵ Wis. Stat. § 93.50, Wis. Admin. Code § 101.02(6).

¹⁸⁶ Iowa Code § 654B.3. In another context, an Iowa statutory definition of “livestock” does not include poultry. Iowa Code § 202.1(10).

¹⁸⁷ Ala. Code § 8-1-41(3).

¹⁸⁸ 9 U.S.C. § 2.

¹⁸⁹ *Continental Grain Company v. Beasley*, 628 So. 2d 319 (Ala. 1993). The current rule in Alabama looks at whether the transaction in the contract involves interstate commerce in fact, regardless of what the parties expected. *Coastal Ford, Inc. v. Kidder*, 694 So. 2d 1285, 1287 (Ala. 1997).

Iowa law provides that an agreement to submit a future dispute to arbitration is valid and enforceable, unless the arbitration agreement is part of an adhesion contract.¹⁹⁰ An adhesion contract is a form that is offered as a “take it or leave it” proposition, where individual clauses or provisions are not subject to negotiation.¹⁹¹ It seems likely that this law, too, would be preempted by the Federal Arbitration Act in cases involving interstate commerce.¹⁹² Iowa has not had any cases that have considered this issue.

(2) Group Disputes

As part of their agricultural marketing and bargaining laws, some states have ADR requirements for negotiations and disputes between grower associations and companies. ADR is mandatory in certain circumstances in some states; in other states it is always optional.¹⁹³

Minnesota has developed an elaborate dispute resolution system for contract negotiations between producer associations and companies, including formal negotiation and mediation.¹⁹⁴ Under the Minnesota act, once a company and a producer association have begun contract negotiations covered by the act, either party may trigger a mandatory mediation process.¹⁹⁵ If an agreement on contract terms is not reached during mediation, and both parties give written consent, binding arbitration may be used to resolve the dispute.¹⁹⁶ Within five days after the arbitrator’s decision, the company must prepare a contract that includes all terms agreed to in the bargaining or awarded in arbitration.¹⁹⁷ The association must accept the contract within five days of its presentation.

¹⁹⁰ Iowa Code § 679A.1(2).

¹⁹¹ See *Carnival Cruise Lines v. Shute*, 499 U.S. 585, 600 (1991) (Justice Stevens, dissenting).

¹⁹² See *Southland Corp. v. Keating*, 465 U.S. 1 (1984).

¹⁹³ See, Cal. Food & Agric. Code §§ 54451-54458; Me. Rev. Stat. Ann. tit. 13, § 1958-B; Mich. Comp. Laws § 290.714; Minn. Stat. § 17.697.

¹⁹⁴ Minn. Stat. § 17.697.

¹⁹⁵ Minn. Stat. § 17.697, subd. 6. The parties may agree on a mediator, or the state Commissioner of Agriculture will appoint one.

¹⁹⁶ Minn. Stat. § 17.697, subd. 12. The parties must notify the commissioner of their desire to use binding arbitration. The notice must (1) set forth in contractual language all matters that the parties agree on, (2) identify all matters that the parties do not agree on, and (3) set forth in contractual language each party’s final offer for resolution of each of those disagreements. The parties must notify the commissioner of their desire to use binding arbitration. Minn. Stat. § 17.697, subd. 13.

¹⁹⁷ Minn. Stat. § 17.697, subd. 15.

The Minnesota act sets forth 14 categories of factors that are to be considered in mediation and arbitration.¹⁹⁸ Those factors include prices paid by competing companies, the producers' cost of production, cost of production of similar-sized companies, and a fair return on investment.¹⁹⁹

In **Michigan**, if a grower association and handler are unsuccessful in mediation, either party may simply choose not to bargain with the other party for that marketing period.²⁰⁰ If a party does not make this choice, however, it must continue to negotiate, or the dispute will be sent to arbitration.²⁰¹

In **Maine**, the parties may begin with voluntary mediation, but if they are unable to reach agreement by 30 days before the contract date, they are required to participate in mediation, and then arbitration, of the dispute.²⁰²

e. Payment Protections

As discussed earlier, the federal Packers and Stockyards Act protects the right of contract growers to full and prompt payment by creating a statutory trust. States may also have laws that seek to protect agricultural producers' right to full and prompt payment, using a variety of means to achieve that end, including trusts, bond requirements, and liens. It is not always clear, however, whether these laws apply to contract poultry production.

(1) Prompt Payment Requirements

Minnesota law requires wholesale produce dealers, which include contract poultry processors, to pay producers by the date specified in the contract *or* by 10 days after delivery if the contract does not specify a due date.²⁰³ The statute provides for 12 percent interest on payments not received by the required date.

Georgia has a law requiring prompt payment when an independent contractor harvests an agricultural product, with "prompt" meaning within 20 days after delivery unless another term is specifically set out in the contract.²⁰⁴ The provision does not appear to apply to poultry.²⁰⁵ In addition,

¹⁹⁸ Minn. Stat. § 17.698.

¹⁹⁹ Minn. Stat. § 17.698(1), (4), (6), and (11).

²⁰⁰ Mich. Comp. Laws § 290.715.

²⁰¹ Mich. Comp. Laws § 290.716.

²⁰² Me. Rev. Stat. Ann tit. 13, § 1958-B(2), (5).

²⁰³ Minn. Stat. § 27.03, subd. 4; Minn. R. 1500.1101, subpt. 2(D).

²⁰⁴ Ga. Code Ann. § 2-9-11.1(b).

²⁰⁵ Compare the definitions of "agricultural products" in Ga. Code Ann. §§ 1-3-3 and 2-9-1. The latter, more restrictive, definition appears to apply.

the statutory language addresses “purchases” of agricultural products, so it is not clear how much protection it would provide in the contract growout context.

California law requires payment for farm products within 30 days from delivery or by the time set in the contract.²⁰⁶ Poultry is included in the farm products covered by the requirement, but only in cases of *purchases*.²⁰⁷

In another agricultural sector, **Arkansas** law provides prompt payment protection for catfish producers in part by authorizing civil penalties against processors who fail to make timely payment.²⁰⁸ **Mississippi** similarly offers special protection for catfish producers, making it an “unfair practice” and a violation of statute for processors to delay or attempt to delay payment.²⁰⁹

(2) Statutory Trusts

Minnesota law creates a statutory trust similar to that created at the federal level, but allows producers 40 days to file notice of a claim.²¹⁰ This trust clearly applies to contract poultry growers.²¹¹

California law creates a state-operated farm products trust fund.²¹² The fund is supported by fees charged to farm product dealers and is available to *sellers* of farm products.²¹³

(3) Bonds

A number of major poultry producing states—including **South Carolina**,²¹⁴ **Virginia**,²¹⁵ and **Georgia**²¹⁶—have bonding requirements for dealers and handlers of agricultural products, including poultry. However, these

²⁰⁶ Cal. Food & Agr. Code § 56302.

²⁰⁷ See Cal. Food & Agr. Code § 56109.

²⁰⁸ Ark. Code Ann. § 2-6-106(d) (up to \$50 per day for failure to pay by statutory deadline of 14 days; up to \$100 per day for failure to pay by contractual deadline; up to \$200 per day for invalid or non-sufficient funds checks).

²⁰⁹ Miss. Code. Ann. § 69-7-659(3).

²¹⁰ Minn. Stat. § 27.138, subd. 2 (wholesale produce dealer’s trust); Minn. R. 1500.1101.

²¹¹ Minn. Stat. § 27.01, subds. 2(3) and 8 (defining “produce” and “wholesale produce dealer”).

²¹² Cal. Food & Agr. Code §§ 56701-56717.

²¹³ See Cal. Food & Agr. Code §§ 56702.5, 56704.5.

²¹⁴ S.C. Code Ann. § 46-41-60 (maximum bond \$25,000). See S.C. Code Ann. § 46-41-10(1) for a definition of “Dealer in agricultural products.”

²¹⁵ Va. Code Ann. § 3.1-722.4 (maximum bond \$40,000). See Va. Code Ann. § 3.1-722.1 for a definition of “agricultural products.”

²¹⁶ Ga. Code Ann. § 2-9-4 (maximum bond equals highest amount of products purchased from Georgia producers in one month). See Ga. Code Ann. § 2-9-1(1) for a definition of “agricultural products.”

requirements do not seem to apply to contract poultry production, whether because of the specific agricultural products covered or because they only address cases of purchase or consignment. Most other state bonding laws have similar limitations.

Arkansas requires bonding of all out-of-state poultry processors, distributors, and truckers, but the provision only applies to those who *purchase* poultry from Arkansas producers.²¹⁷

Minnesota's bond requirements for wholesale produce dealers clearly apply to contract poultry production arrangements.²¹⁸

In the mid-1980s, **Arkansas** and **Mississippi** enacted legislation to ensure full and prompt payment to catfish producers, including requiring all catfish processors having more than \$100,000 in average annual purchases to be bonded.²¹⁹

(4) *Liens*

A number of states create liens in favor of agricultural producers or suppliers, but most of these appear to apply only to sales, or do not apply to poultry.²²⁰

Minnesota law provides for a statutory lien on poultry in favor of growers who have not been paid for their labor.²²¹ The lien is only available for 20 days after delivery, unless it is perfected by filing within those 20 days.²²²

Oregon also creates a lien on all agricultural produce, apparently including poultry, which is “delivered” to a processor.²²³

Mississippi, a leading poultry producing state, provides for a statutory lien against the interest of a company in harvested crops.²²⁴ The lien is in favor of

²¹⁷ Ark. Code Ann. § 2-35-213 (bond amount \$10,000). This statute has not been changed since 1957, before the production contract model came to dominate the poultry industry.

²¹⁸ Minn. Stat. § 27.041, subd. 1 (maximum bond \$1 million).

²¹⁹ Ark. Code Ann. § 2-6-107(b) (bond amount \$250,000); Miss. Code Ann. § 69-7-659(2) (bond amount \$250,000).

²²⁰ See, for example, Ala. Code § 35-11-91 (agricultural laborer's lien); Cal. Food & Agr. Code § 57510 (lien on poultry and eggs for feed and materials supplied); Ga. Code Ann. § 44-14-320 (laborer's lien); Idaho Code § 45-1802 (agricultural producer's lien for commodity sales); and Tex. Prop. Code Ann. § 58.002 (farm worker's lien).

²²¹ Minn. Stat. § 514.945 (agricultural producer's lien). See Minn. Stat. § 17.90, subds. 2 and 4 for definitions of “agricultural commodity” and “producer.”

²²² Minn. Stat. § 514.945, subd. 2.

²²³ Or. Rev. Stat. §§ 87.700, 87.705. See Or. Rev. Stat. § 603.010 for a definition of “meat animal.”

²²⁴ Miss. Code Ann. § 85-7-1(2).

persons who contract with the company for the making, gathering, or preparing for sale of “any crop” with their labor.²²⁵ It is not entirely clear whether this provision applies to animal crops, including poultry.

Iowa law provides for a statutory lien in favor of custom cattle feedlot operators and non-poultry commodity production contracts.²²⁶ It does not apply to poultry production contracts.

f. Recapture of Capital Investment

Though not a top broiler producing state, **Minnesota** is a state with significant poultry production that has enacted legislation designed to provide some protection for growers’ investments in the poultry industry. Minnesota law provides that until certain conditions are met, a poultry company must not terminate or cancel a written contract that requires a grower to make a capital investment of \$100,000 or more in buildings or equipment with a useful life of five years or more.²²⁷

The conditions are: (1) the company must have given the grower written notice of its intent to terminate or cancel at least 180 days before the effective date of the termination or cancellation, and (2) the grower must have been reimbursed for damages incurred by the termination or cancellation. Even if the company believes that the grower has breached the contract, the company may not cancel or terminate the contract in most cases unless it gives the grower written notice of the problem and the grower fails to correct the problem within a specified time.²²⁸

Minnesota’s recapture rule does not apply if the term of the contract simply expires and the company chooses not to renew it.²²⁹ This is a significant limitation on the scope of the protection for broiler growers, in light of the prevalence of flock-to-flock contracts in that industry.

²²⁵ Miss. Code Ann. § 85-7-1(2). There is no accompanying definition of “crop” in this portion of the Mississippi Code. Elsewhere in the Code, “emerging crops” include both plant and animal crops. Miss. Code § 69-2-9(b). The lien is against the crop for which the labor was supplied. *Flora Compress & Whse. Co. v. Virden*, 642 F. Supp. 466 (S.D. Miss. 1986).

²²⁶ Iowa Code §§ 579A.1-579A.5, 579B.1-579B.7. The first lien type is upon cattle and identifiable cash proceeds for the contract price for feed and care of cattle. The second is on livestock, raw milk, and crops and their proceeds.

²²⁷ Minn. Stat. § 17.92. Kansas has adopted a rule similar to the Minnesota rule for contract swine production. Kan. Stat. § 16-1502.

²²⁸ Minn. Stat. § 17.92, subd. 1.

²²⁹ Minn. R. 1572.0030, subpt. 1.

g. Allocating Responsibility for Environmental Management

Many of the leading poultry producing states are beginning to address the questions of what is required and who is responsible for the proper disposal of dead birds and poultry litter when poultry is raised by independent contractors. In some cases, new state laws may demand more than is currently required under the federal Clean Water Act and the regulations that implement it.

In December 2000, a new general permit rule for poultry waste management went into effect in **Virginia**.²³⁰ The rule, adopted by the state Water Control Board, provides general regulation of poultry waste management at all operations with 20,000 or more chickens or 11,000 or more turkeys.²³¹ Growers whose operations are covered by the rule must complete a waste management training program and must develop a nutrient management plan for proper storage, treatment, management, and tracking of poultry waste, including dry litter.²³² Routine disposal of dead birds in disposal pits is not permitted under the general permit rule, but this form of carcass disposal would still be allowed if a grower were operating under an individual waste management permit.²³³

Georgia requires “any person who owns or is caring for” a dead animal, to dispose of it within 12 hours after death or discovery of the carcass.²³⁴ The definition of dead animal includes poultry, and applies to carcasses, parts of carcasses, effluent, or blood of the bird.²³⁵ The regulations quarantine the land of people who grow poultry for themselves or others, unless they use a method of carcass disposal approved by the state Commissioner of Agriculture.²³⁶ Growers who provide and maintain an approved method of poultry carcass disposal are issued certificates of compliance by the state Commissioner of Agriculture.²³⁷

Maryland is currently phasing in requirements for farm nutrient management plans that were adopted in 1998.²³⁸ The requirements apply to all farms in the state except agricultural operations with less than \$2,500 in annual gross farm income and livestock operations with less than 8,000 pounds of live animal weight.²³⁹ The focus of the requirements is chemical fertilizer, sludge, and manure

²³⁰ 17 Va. Regs. Reg. 398 (Oct. 23, 2000) (codified at 9 Va. Admin. Code §§ 25-630-10 through 25-630-60). The program was required by Va. Code Ann. § 62.1-44.17:1.1.

²³¹ 9 Va. Admin. Code §§ 25-630-10 through 25-630-60.

²³² 9 Va. Admin. Code § 25-630-50.

²³³ Va. Code Ann. § 3.1-743; 9 Va. Admin. Code § 25-32-260(2).

²³⁴ Ga. Code Ann. § 4-5-5.

²³⁵ Ga. Code Ann. § 4-5-2.

²³⁶ Ga. Comp. R. & Regs. 40-16-2-06(1).

²³⁷ Ga. Comp. R. & Regs. 40-16-2-06(2).

²³⁸ 1998 Md. Laws 324-325 (codified at Md. Code Ann., Agric. §§ 8-801 to 8-807).

²³⁹ Md. Code Ann., Agric. § 8-803.1(b).

use. A farm operator who uses manure must have a nutrient management plan for nitrogen by December 31, 2001, and a plan for both nitrogen and phosphorus by July 1, 2004.²⁴⁰ The operator must be in compliance with the nitrogen plan by December 31, 2002, and the nitrogen and phosphorus plan by July 1, 2005.

In addition to direct regulation of the water quality impacts of poultry operations through the nutrient management plans, **Maryland** uses Poultry Processor Discharge Permits to require poultry companies to ensure that their contract growers have nutrient management plans and are making a good faith effort to comply with them.²⁴¹ The permits require companies to provide sufficient technology and assistance to growers to ensure that poultry litter is disposed of properly. The permit language explicitly holds the company responsible for the management of poultry litter generated at contract growers' farms and makes compliance with the permit requirements the responsibility of the company, regardless of any language in a contract between the grower and the company.²⁴² Although the Poultry Processor Discharge Permit does not directly regulate growers and growers are not liable for penalties under the permit, these permits can have a serious impact on grower operations. If the company is notified that certain violations of the state water quality law have occurred at a grower's farm, the company is prohibited under the permit from placing additional chickens at the grower's farm until the violations are corrected.²⁴³

Maryland law also requires that feed used for chickens grown under contract contain enzymes to reduce phosphorus in poultry waste.²⁴⁴ Maryland has also created a four-year voluntary pilot program offering cost-share assistance to poultry companies to encourage them to transport poultry litter from areas with too much phosphorus in the soil to other parts of the state.²⁴⁵ Finally, Maryland grants a tax deduction to farm owners or tenants for the purchase of poultry manure spreading equipment to be used in accordance with a nutrient management plan.²⁴⁶

²⁴⁰ Md. Code Ann., Agric. § 8-803.1(e).

²⁴¹ "MDE Announces Final Determination in Poultry Industry Integrator Permit," Maryland Dep't of the Environment News Release 039-01 (July 18, 2001), available at www.mde.state.md.us/press/nr_mde-010718.html.

²⁴² See www.mde.state.md.us/wma/poultry/intelang.PDF, part IV.E.1, page 2.

²⁴³ See www.mde.state.md.us/wma/poultry/intelang.PDF, part IV.E.6.f, pages 5-6.

²⁴⁴ Md. Code Ann., Agric. § 6-107.1.

²⁴⁵ Md. Code Ann., Agric. § 8-704.2; Md. Regs. Code tit. 15, § 20.05.01.

²⁴⁶ Md. Code Ann., Tax-Gen. §§ 10-208(m), 10-308(b)(4).

Delaware will require individual poultry growers to develop a nutrient management planning program by a specified year between 2003 and 2007.²⁴⁷ These plans are to address generation, handling, and land application of poultry litter and other agricultural wastes. Delaware also imposes special waste handling and storage requirements for poultry operations that qualify as confined animal feeding operations (CAFOs) under federal Clean Water Act regulations.²⁴⁸

The major poultry companies operating in **Delaware** have entered into a Memorandum of Understanding (MOU) with the Delaware Nutrient Management Commission, Department of Agriculture, and Department of Natural Resources and Environmental Control.²⁴⁹ In the MOU, the poultry companies committed themselves to assist growers with nutrient management and litter and manure disposal.

Kentucky law requires that the owner of poultry that have died or been destroyed due to disease must dispose of the carcasses within 48 hours after the carcass is found.²⁵⁰ The disposal must be by a scientifically proven method, including incineration, composting, rendering, or burial under specific conditions.

In August 2000, administrative rules became effective in **Kentucky** that place conditions on National Pollutant Discharge Elimination System permits issued by the state for CAFOs.²⁵¹ As related to contract broiler production, the rules required the grower and the company to apply for and obtain a pollution discharge permit for the operation and made them jointly and severally liable for any violation of the permit.²⁵² Joint and several liability means that the state could sue either the company or the grower, or both, in case of violations.²⁵³ The rule

²⁴⁷ Del. Code Ann. tit. 3, §§ 2201-2290. If the disposal of poultry carcasses and dry poultry litter are conducted in a manner that threatens human health or the environment, the poultry growing operation might come under the state's Solid Waste Disposal regulations. Code of Del. Regs. § 70-100-102(2)(C).

²⁴⁸ Del. Code Ann. tit. 3, § 2248.

²⁴⁹ Del. Dep't of Natural Resources and Environmental Control News, Jan. 12, 2001, p. 4. The newsletter can be found on the Internet at www.dnrec.state.de.us/dnrec2000/admin/news/01-12/0112news.htm.

²⁵⁰ Ky. Rev. Stat. Ann. § 257.160.

²⁵¹ See the August 25, 2000, entry in the online "Latest News and Updates" from the Kentucky Division of Water, available at <http://water.nr.state.ky.us/dow/cafo2.htm>.

²⁵² 401 Ky. Admin. Reg. 5:072.

²⁵³ If only one party were sued, that party could sue the other party to pay its share of the penalty.

expired when the state legislature adjourned in March 2001.²⁵⁴ The state Natural Resources and Environmental Protection Cabinet then issued an emergency rule establishing standards for NPDES permits.²⁵⁵ This rule was challenged in court, and in May 2001, a state district court judge held that the rule was void because its adoption violated Kentucky's laws of administrative procedure.²⁵⁶ This situation is continuing to develop, with appeals in the court system and further initiatives by the agency and the legislature.

Alabama requires "every person who raises, grows, feeds, or otherwise produces poultry for commercial purposes" to be equipped with adequate facilities for disposing of dead poultry, poultry carcasses, and other poultry waste.²⁵⁷ Poultry operations that are not equipped with adequate waste disposal facilities may be quarantined.²⁵⁸

h. Implied Promise of Good Faith

In some states, companies and growers who enter into poultry production contracts are held by law to be promising to act in good faith, whether or not they actually make such a promise. Generally, "good faith" means honesty in fact in making and carrying out the contract.²⁵⁹ This type of law can be important because it can provide a remedy for behavior that, although not otherwise illegal, creates unfair advantage through deception.

Minnesota has imposed a duty of good faith on participants in the poultry industry by statute.²⁶⁰ In **North Carolina**, an implied promise of good faith has been recognized for poultry growing contracts in a federal court opinion, rather than in a statute.²⁶¹ In a recent **Georgia** case, another federal district court recognized an implied promise of good faith and fair dealing in a poultry

²⁵⁴ *Kentucky Farm Bureau Federation v. Commonwealth of Kentucky*, Civ. Action No. 00-CI-00706, p. 3 (Franklin Circuit Ct., May 25, 2001). Available as an attached document from <http://water.nr.state.ky.us/dow/cafo2.htm>.

²⁵⁵ 401 Ky. Admin. Reg. 5:074E.

²⁵⁶ *Kentucky Farm Bureau Federation v. Commonwealth of Kentucky*, Civ. Action No. 00-CI-00706 (Franklin Circuit Ct., May 25, 2001).

²⁵⁷ Ala. Code § 2-16-41.

²⁵⁸ Ala. Code § 2-16-42.

²⁵⁹ See, for example, Uniform Commercial Code § 1-201(19).

²⁶⁰ Minn. Stat. §§ 17.94, 336.1-201(9).

²⁶¹ *Philson v. Cold Creek Farms, Inc.* 947 F. Supp. 197, 203 (E.D.N.C. 1996), *aff'd* in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998) (citing *Dull v. Mutual of Omaha Ins. Co.*, 354 S.E.2d 752, 756 (N.C. App. 1987) and *Weyerhaeuser Co. v. Godwin Building Supply Co.*, 253 S.E.2d 625 (N.C. App. 1979)).

production contract.²⁶² Some states also impose a duty on grower associations and poultry companies to negotiate in good faith.²⁶³

i. Disclosure of Contract Terms

In **Minnesota**, a growout contract between a grower and a poultry company may not include terms that prohibit the grower from disclosing the terms, conditions, and prices agreed to in the contract.²⁶⁴ Any clause that purports to bar disclosure is void. **Iowa** has a similar law, but it does not currently apply to poultry.²⁶⁵

j. Plain Language and Risk Disclosure Requirements

Few states currently have laws addressing the use of plain language in agricultural contracts, but this issue is one focus of the proposed model Producer Protection Act being promoted by a group of 16 state Attorneys General.²⁶⁶

In **Minnesota**, a law passed in 2000 provides that all agricultural contracts that were first entered into or substantively modified after January 1, 2001, must meet certain plain language requirements.²⁶⁷ First, the contract must be accompanied by a cover sheet to help the grower understand the terms of the contract as well as the risks associated with the contract.²⁶⁸ The cover sheet must state that the document is a legal contract, direct the parties to read the contract carefully, describe the material risks the grower would face if he or she entered into the contract, note the grower's right to cancel the contract within three days (this right under Minnesota law is discussed in the next section), and provide an index of the major provisions of the contract and the pages they are on (if the contract is more than one page).²⁶⁹ The risks associated with the contract may be described in a clear written statement or in a checklist.

Second, the law requires that the contract itself use "words and grammar that are understandable by a person of average intelligence, education, and experience

²⁶² *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 20-21 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001).

²⁶³ See, Me. Rev. Stat. Ann. tit. 13, §§ 1953, 1958; Mich. Comp. Laws § 290.713.

²⁶⁴ Minn. Stat. § 17.710. This is true for contracts entered into, renewed, or amended on or after July 1, 1999.

²⁶⁵ Iowa Code §§ 202.1(2), 202.3.

²⁶⁶ See Appendix 4-A of this report.

²⁶⁷ 2000 Minn. Laws 470 (codified at Minn. Stat. §§ 17.90–17.9443).

²⁶⁸ Minn. Stat. §§ 17.91, subd. 2, 17.942.

²⁶⁹ Minn. Stat. § 17.942.

within the industry.”²⁷⁰ The law also forbids the use of “fine print,” stating that the typeface used in the contract must be of a certain minimum size.²⁷¹

Individual growers may not waive these protections, but these requirements do not apply to contracts negotiated by an accredited bargaining organization.²⁷² A violation of the plain language requirements by the company does not excuse a breach of the contract by a grower.²⁷³ However, the grower may recover actual damages if the company’s violation of the statute caused the grower to not understand the rights, obligations, or remedies of the contract.²⁷⁴

k. Cooling Off Period

In **Minnesota**, a law passed in 2000 provides that a grower may cancel an agricultural contract by mailing a written cancellation notice to the company within three business days after the grower receives a copy of the signed contract.²⁷⁵ A later cancellation deadline may apply if included in the contract. The grower’s right to cancel, the method a grower must use to cancel, and the deadline for canceling the contract must be disclosed in every agricultural contract entered into or substantively modified after January 1, 2001.²⁷⁶ The law is not clear about the timing and process for cancellation if a grower does not in fact receive a copy of the signed contract.

l. Parent Company Liability

In **Minnesota**, if a poultry company that is the subsidiary of another company fails to pay its debts, the law clearly makes the parent company liable for those debts.²⁷⁷ Neither “parent company” nor “subsidiary” are defined in the statutes.

m. Use of Insurance Proceeds

In **Wisconsin**, written contracts or poultry growing arrangements must clearly set out how payments received due to loss of poultry because of fire, disease, or unanticipated causes will be divided between the parties.²⁷⁸ This is in contrast to many of Wisconsin’s other laws relating to agricultural production contracts, which apply only to certain vegetables.

²⁷⁰ Minn. Stat. § 17.943, subd. 1. Factors in determining readability are listed in Minn. Stat. § 17.944, subd. 3.

²⁷¹ Minn. Stat. §§ 17.943, subd. 1, 17.90, subd. 3a.

²⁷² Minn. Stat. §§ 17.9442, subd. 3, 17.9443.

²⁷³ Minn. Stat. § 17.9441, subd. 4.

²⁷⁴ Minn. Stat. § 17.9441, subd. 4.

²⁷⁵ 2000 Minn. Laws 470, § 5 (codified at Minn. Stat. § 17.941).

²⁷⁶ 2000 Minn. Laws 470, § 6 (codified at Minn. Stat. § 17.942, subds. 1, 2(4)).

²⁷⁷ Minn. Stat. §§ 17.93, subd. 2, 27.133; Minn. R. 1500.1001, subpt. 2; Minn. R. 1572.0040. Kansas has a similar law for contract hog production. Kan. Stat. Ann. § 16-1501(d).

²⁷⁸ Wis. Stat. § 100.04.

n. Waivers Unenforceable

In **Minnesota** and **Iowa**, contract provisions that require waiver of certain producer protections are void or unenforceable.²⁷⁹ This means that farmers who agree to forego the exercise of their rights as a condition of receiving a contract are free to decide to exercise those rights later.

3. General State Law Claims

All states have generally applicable laws that may help resolve specific disputes in the poultry industry. The following general state law claims are available in most states—including the major poultry producing states—to determine the outcome of disputes between private parties. The availability and particular requirements for each type of law varies from state to state.

a. Unfair and Deceptive Trade Practices

A state's unfair and deceptive trade practices act could be similar to the federal Packers and Stockyards Act, though it is unlikely to be limited to agriculture. States vary on the range of practices regulated by their unfair and deceptive practices acts. Unfair and deceptive trade practices in agriculture may also be regulated through licensing requirements and marketing and bargaining acts.²⁸⁰

Alabama law prohibits actions in restraint of trade and deceptive trade practices.²⁸¹ At the end of a list of specific prohibited activities, the law generally prohibits “engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.”²⁸²

Arkansas law prohibiting deceptive trade practices similarly includes a general prohibition on “engaging in any other unconscionable, false, or deceptive act in business, commerce, or trade.”²⁸³ Arkansas law also includes a specific prohibition on unfair trade practices in the catfish industry, making it “unlawful for any processor to engage in or use any unfair, unjustly discriminatory, or deceptive trade practice.”²⁸⁴

Minnesota law specifies prohibited business and trade practices in the context of agricultural production contracts.²⁸⁵ Prohibited acts include failure to make a

²⁷⁹ Minn. Stat. § 17.9443; Iowa Code § 579B.6.

²⁸⁰ See Cal. Food and Agric. Code § 54431; Minn. Stat. §§ 17.692, 17.696; Wis. Stat. §§ 96.02, 100.01.

²⁸¹ Ala. Code §§ 8-19-1 through 8-19-15.

²⁸² Ala. Code § 8-19-5(26).

²⁸³ Ark. Code § 4-88-107(a)(10).

²⁸⁴ Ark. Code § 2-6-106(a)(1).

²⁸⁵ Minn. Stat. § 27.19; Minn. R. 1500.1401; Minn. R. 1572.0045, subpt. 1.

settlement with a producer within the required time and failure to comply with the terms and conditions of the contract.²⁸⁶

North Carolina's unfair and deceptive trade practices law has been tested in a case involving a poultry growing contract.²⁸⁷ In that case, a turkey grower recovered against a poultry company under the state unfair and deceptive trade practices act for the company's admitted misweighing of birds.²⁸⁸

b. Fraud

Fraud is an intentional deception that causes harm to another person. A fraud claim generally includes the following elements: (1) a statement by a person who either knows that it is false or does not know whether it is true; (2) the person making the statement intends and reasonably believes that the person to whom it was said will rely upon it; (3) the person to whom the statement was made is unaware of its falsity and reasonably relies upon it; and (4) the person relying on the false statement suffers harm.²⁸⁹

Sometimes a fraud claim may be based on misrepresentations that led a person to enter a contract that he or she would not have entered if the truth had been known.²⁹⁰ This is generally referred to as "fraudulent inducement to contract."

Alabama law prohibiting fraud has been tested in a case involving contract poultry growing. In *Braswell v. ConAgra, Inc.*, a large class of growers brought a successful fraud claim against a poultry company based on the company's misweighing of birds.²⁹¹ In another poultry case in Alabama, growers recovered on a claim of fraud after showing that the company had entered into a written

²⁸⁶ Minn. Stat. § 27.19, subd. 1(a)(4) and (5).

²⁸⁷ N.C. Gen. Stat. § 75-1.1.

²⁸⁸ See *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998). In denying the company's motion for summary judgment, the district court had disavowed the holding of an earlier poultry case that had held that only consumers were able to bring an action under North Carolina's unfair and deceptive trade practices law. *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996).

²⁸⁹ See, for example, Ala. Code §§ 6-5-100 through 6-5-104; *MFA Mutual Ins. Co. v. Keller*, 623 S.W.2d 841, 842-43 (Ark. 1981); *Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1074 (Del. 1983); Ga. Code. Ann. §§ 51-6-1 through 51-6-4; *Ellerin v. Fairfax Savings*, 652 A.2d 1117, 1124 (Md. App. 1995); *Allen v. Mac Tools, Inc.*, 671 So. 2d 636, 642 (Miss. 1996); *Myers & Chapman, Inc. v. Thomas G. Evans, Inc.*, 374 S.E.2d 385, 391 (N.C. 1988); *Mishoe v. General Motors Acceptance Corp.*, 107 S.E.2d 43, 49 (S.C. 1958); *Sears, Roebuck & Co. v. Meadows*, 877 S.W.2d 281, 282 (Tex. 1994); *Jefferson Std. Life Ins. Co. v. Hedrick*, 27 S.E.2d 198, 202 (Va. 1943).

²⁹⁰ See, for example, *Allen v. Mac Tools, Inc.*, 671 So. 2d 636 (Miss. 1996).

²⁹¹ 936 F.2d 1169 (11th Cir. 1991).

agreement to place birds with them if certain improvements were made, when it knew that it was likely to cease operations in the growers' county.²⁹²

An action that by itself is a violation of the federal P&S Act may also be the basis of a fraud claim. For example, if a poultry company misweighs poultry, this is likely to be a P&S Act violation. If the company then intentionally includes the inaccurate weights on a settlement sheet, this may be a fraudulent act. In one case, a group of turkey growers successfully argued that settlement sheets including incorrect or deceptive figures or calculations may be submitted as evidence in support of a fraud claim under **Arkansas** law.²⁹³ More recently, an Arkansas state court held that deliberately issuing false weighing tickets may constitute concealment of fraud, which may stop the running of the statutory deadline for bringing a fraud claim.²⁹⁴

c. Negligence

Negligence involves situations where a person owes a duty of care to another person or to the public and the failure to use reasonable care causes harm to another person. Negligence may also include cases where a person should have known how to prevent a problem, but failed to act in a way that would have prevented the problem.

In some circumstances, persons injured by the negligence of another are not able to recover damages or are limited in their recovery if they do not attempt "self-help" measures to minimize their damages. Self-help measure may include substitution, which means finding replacement goods or services if the negligent party fails to provide them or provides ones of inferior quality.

In a **Georgia** case from 1980, an egg producer refused to pay for feed that he believed was defective and had caused a drop in his production.²⁹⁵ The supplier sued to recover payment for the feed and the producer counterclaimed for his lost production damages, arguing that the supplier had been negligent in supplying bad feed. The jury found in the supplier's favor, and the Court of Appeals of Georgia affirmed. The court's decision was based in large part on the producer's failure to take any steps to avoid harm by changing feed or stopping delivery of the feed once he had reason to believe that it was bad.

d. Breach of Contract

A breach of contract claim arises when one party promises to perform certain actions in a contract, but partially or entirely fails to do so. Lawsuits brought by

²⁹² *Marshall Durbin Farms, Inc. v. Landers*, 470 So. 2d 1098 (Ala. 1985).

²⁹³ *Renfro v. Swift Eckrich*, 53 F.3d 1460 (8th Cir. 1995).

²⁹⁴ *Adams v. Wolf*, 2001 Ark. App. LEXIS 336 (Ark. App. 2001).

²⁹⁵ *Brooks v. Ralston Purina Co.*, 270 S.E.2d 347 (Ga. App. 1980).

growers against poultry companies frequently allege breach of contract, as do many cases brought by companies against growers. In *Braswell v. ConAgra, Inc.*, a large class of growers recovered under **Alabama** law against a poultry company for the company's breach of production contracts by misrepresenting the weight of broilers and paying the growers less than they were entitled to under the contracts.²⁹⁶ In another case, turkey growers recovered under **Arkansas** law on claims that the company breached their contract by mishandling and misweighing their birds.²⁹⁷

One type of damages that may be available under a breach of contract claim is the loss of profits that the plaintiff would have earned if the other party had not breached. In an early **Arkansas** case, a grower was awarded lost profits resulting from a company's failure to supply a flock of chicks as required under the contract.²⁹⁸ In a **Georgia** case involving a claim for lost profits, a grower had entered a contract to develop a breeder flock and produce eggs for a poultry company.²⁹⁹ The grower alleged that the company provided bad feed, breaching the contract and caused the grower to suffer lost profits. The trial court allowed the grower to bring the lost profits claim and awarded the damages against the company. On appeal, the Court of Appeals of Georgia affirmed, finding that lost profits were recoverable because there was a "patent correlation" between the feed given to the chicks and the number of eggs produced, so that bad feed provided by the company would reduce the amount of profit that a grower could earn from the contract.

e. Breach of Fiduciary Duty

A fiduciary is a person who has accepted a duty to act primarily for the benefit of another person in certain matters. In a 1999 Iowa case, contract hog producers were allowed to go to trial to make the claim that the hog company was in a fiduciary relationship to them based upon contractual language placing "unprecedented control, dominance, and influence" in the company's hands.³⁰⁰ This case suggests that, depending on the circumstances and a state's particular standards for fiduciary duty, a poultry grower might be able to claim that a poultry company has a fiduciary duty to act for the benefit of the grower with respect to certain terms of the contract.

²⁹⁶ 936 F.2d 1169 (11th Cir. 1991).

²⁹⁷ *Renfro v. Swift-Eckrich, Inc.*, 53 F.3d 1460 (8th Cir. 1995).

²⁹⁸ *Farmers Cooperative Assn., Inc. v. Phillips*, 422 S.W.2d 418 (Ark. 1968). The case does not address language in the contract that allowed the company to change or cancel the contract due to changes in the industry.

²⁹⁹ *Glennville Hatchery, Inc. v. Thompson*, 298 S.E.2d 512 (Ga. App. 1982). The court's analysis of the ongoing vitality of the oral contract, despite a merger clause in the written contract, is notable.

³⁰⁰ *Corcoran v. Land O' Lakes, Inc.*, 39 F. Supp. 2d 1139 (N.D. Iowa 1999).

This argument may be even stronger for growers for agricultural cooperatives. One **Georgia** court emphasized that the “confidential relationship” between growers and a cooperative might entitle the growers to rely on statements by the cooperative where reliance would otherwise not be reasonable.³⁰¹

f. Interference with Contractual Relationships

In some states, statutes or case law prohibit intentional interference with an existing contractual relationship or with one that could form in the future.³⁰² To establish interference, a person generally must show: (1) the existence of a contract between the parties; (2) actual or implied knowledge on the part of a non-party that the contract existed; (3) intent by the non-party to induce a breach of contract by one of the parties; (4) action by a party which breaches the contract; and (5) damages to the other party. In a 1999 Iowa case, contract hog producers were allowed bring a claim that the hog company’s actions made it impossible for the producers to cash flow and therefore wrongfully interfered with their existing and potential contracts with lenders.³⁰³

g. Nuisance

Nuisance is a legal claim based on interference with a person’s use and enjoyment of their own property.³⁰⁴ Flooding and odor are two common types of nuisance claims. A nuisance claim would generally be brought by someone other than the grower or the poultry company, such as a neighbor of the grower. Disputes over whether the grower or the company must defend against nuisance lawsuits and pay for them if they lose are beginning to arise in the poultry industry. Unlike many other laws, nuisance laws may be “strict liability,” meaning that the claimant need only prove that the nuisance was caused by the defendant, not that the defendant did anything wrong.

Although it is beyond the scope of this report to discuss the full range of possible types of nuisance lawsuits and defenses to them, one issue that may be addressed in nuisance lawsuits is whether the poultry company can be held liable for a nuisance caused by a contract grower’s facility.³⁰⁵ A legal issue that is related to whether a company may be held liable for a nuisance caused by a contract grower’s facility is the issue of agency. An agent acts on behalf of another party, called the principal. Because of this relationship, the principal may be liable for the agent’s actions that are taken for the principal’s benefit. Neighbors or others bringing a nuisance claim may argue that the grower is an

³⁰¹ *Gold Kist v. Wilson, Inc.*, 444 S.E.2d 338 (Ga. App. 1994).

³⁰² See, for example, *Nicholson v. Simmons First Nat’l Corp.*, 849 S.W.2d 483, 487 (Ark. 1993).

³⁰³ *Corcoran v. Land O’ Lakes, Inc.*, 39 F. Supp. 2d 1139 (N.D. Iowa 1999).

³⁰⁴ See, *Nugent v. Pilgrim’s Pride Corp.*, 30 S.W.2d 562 (Tex. App. 2000).

³⁰⁵ For more on nuisance generally, see Neil D. Hamilton, A LIVESTOCK PRODUCER’S GUIDE TO: NUISANCE, LAND USE CONTROL, AND ENVIRONMENTAL LAW (1992).

agent of the company and therefore the company should be liable for odors, water pollution, or other nuisances caused by the poultry operation. If the grower is held to be an agent of the company, generally the neighbor who brings the lawsuit may attempt to recover the damages from the grower, the company, or both.

In a recent **Alabama** case, a company and farmer had entered into a contract for the farmer to raise hogs owned by the company.³⁰⁶ As is true of most poultry contracts, the contract described the hog producer as an “independent contractor.” Neighbors complained that odor and wastes associated with the hog operation were causing a nuisance on their property. The Alabama Supreme Court concluded that it was reasonable for the jury to find that the farmer was acting as the company’s agent. Because the farmer was found liable for nuisance, the fact that he was the company’s agent meant that the neighbor could attempt to recover the damages from the farmer or from the company.

h. Breach of Warranty of Merchantability

A warranty of merchantability is a promise that a product or service is reasonably fit for the purposes for which things of that kind are generally used. Such a warranty is said to be “implied” when the seller does not actually make such a promise but the warranty is automatically included in the transaction because the state law requires it. Virtually all states have enacted (with some revisions) provisions of the Uniform Commercial Code (UCC), which provides for an implied warranty of merchantability in certain sales transactions.³⁰⁷ It is likely, therefore, that most states’ laws include some implied warranty of merchantability that may cover a grower’s *purchase* of chicks, feed, or other inputs.³⁰⁸

In one **Arkansas** case, turkey growers who purchased poult from a company that later repurchased the grown birds were allowed to bring a claim of breach of implied warranty of merchantability for poor poult quality, but the jury found that the company had not breached the warranty.³⁰⁹

It is doubtful whether an implied warranty of merchantability would apply in contract poultry production if the company supplies, but does not sell, the chicks, medicine, and feed to growers. However, if a clause in the contract

³⁰⁶ *Tyson Foods, Inc., v. Stevens*, 783 So. 2d 804 (Ala. 2000).

³⁰⁷ An implied warranty of merchantability is found in section 314 of Article 2 of the Uniform Commercial Code.

³⁰⁸ See, for example, Md. Code Ann., Com. Law § 2-314. This statute provides that a merchant who sells covered goods, simply by virtue of selling the goods, indicates that the goods, “pass without objection in the trade under the contract description” and are “of fair average quality within the description.” Md. Code Ann., Com. Law § 2-314(2).

³⁰⁹ *Jackson v. Swift-Eckrich, Inc.*, 53 F.3d 1452 (8th Cir. 1995).

represents that the chicks and other inputs will be of a certain quality, a grower could argue that the company has made an express warranty of quality that can be enforced.

i. Product Liability

Product liability claims are claims that a product is defective in some way that made it unreasonably dangerous and in fact caused injury to a person or property.³¹⁰ Growers who actually purchase inputs such as feed and who suffer injury to themselves or their property due to defects in the inputs may be able to bring a product liability claim.³¹¹ In theory, it may be possible for a contract grower to maintain a product liability claim against a company, despite the absence of a sales transaction, if the state statutory language regulates “manufacturers” of products as well as “sellers.”³¹²

j. Promissory Estoppel

Promissory estoppel is a legal claim that allows a party to enforce another’s promises in certain circumstances.³¹³ The party claiming promissory estoppel must have been harmed by his or her reasonable reliance on the promise, for example, by spending money in preparation for a job that was later canceled. If the promissory estoppel claim is successful, the party who made the promise can be prevented—also called “estopped”—from acting in a way inconsistent with its promise. An example for the poultry industry would be an argument that, if a poultry company promises a grower that the relationship will continue for a certain period in order to convince the grower to sign a growout contract, once the grower has signed the contract the company should not be able to argue that the promise of a long-term relationship was not binding.

Promissory estoppel may be a difficult claim to raise in a contract poultry growing context, however, because the contracts often include clauses stating that the entire agreement between the parties is in the written contract and no other promises are binding. Anyone who has signed a contract with such a clause—often called a “merger clause” or “entirety clause”—is understood to have read the contract and agreed that all terms of the agreement between the parties are written in the contract; any promises either party may have made outside the contract are therefore considered unenforceable.

³¹⁰ See, for example, Miss. Code Ann. § 11-1-63.

³¹¹ See *McMillen Feeds, Inc. of Texas v. Harlow*, 405 S.W.2d 123 (Tex. App. 1966).

³¹² See Miss. Code Ann. § 11-1-63.

³¹³ See *Lee v. Paragon Group Contractors, Inc.*, 337 S.E.2d 132, 135 (N.C. App. 1985). However, promissory estoppel is not recognized as a legal claim in some jurisdictions. See *W.J. Schafer Assoc., Inc. v. Cordant, Inc.*, 493 S.E.2d 512 (Va. 1997).

Because of the regular use of merger clauses in poultry production contracts, it is important for all parties to those contracts to make sure that all promises between them are written into the contract.

In an **Arkansas** case involving a contract to produce eggs, the court held that the written contract represented the full agreement between the growers and the company and refused to allow the growers to submit evidence of oral statements that were made before the written contract was entered into.³¹⁴ The court rejected the growers' argument that they should be allowed to enforce the oral promises under a claim of promissory estoppel. The court held that promissory estoppel—a claim generally made when there is no contract—would not apply to this case where there was a written contract.

k. State Business Opportunity Sales Act

In general, a business opportunity sale takes place when the parties to a contract agree that the seller shall provide to the buyer any product, equipment, supplies, or services enabling the purchaser to start a business and the seller makes representations about the opportunities awaiting the buyer. Some states have laws that prohibit a business opportunity seller from using any untrue or misleading statement in the sale of a business opportunity, failing to give any disclosures required by law, or failing to deliver the products or services necessary to begin substantial operation of the business opportunity.³¹⁵ These laws may require a written disclosure statement to be provided a certain number of days before the buyer of the business opportunity makes a commitment to the contract.³¹⁶ The laws may also prohibit business opportunity sellers from making any claims related to the income or earning potential of the business unless they have documented data to support those claims.³¹⁷

The unique nature of poultry growing arrangements makes it difficult to determine whether this type of law applies. Because poultry companies generally do not sell or lease the flocks, feed, or other supplies to growers, contract poultry production does not fit neatly under these laws' requirements. Growers might argue that the company inputs such as feed are effectively sold to them, because the growers "buy" these inputs through the calculation of their final payment. However, a federal district court that considered this issue concluded that **North**

³¹⁴ *Cogburn v. ConAgra Poultry Co.*, 1997 Ark. App. LEXIS 174 (Ark. App. 1997).

³¹⁵ See, for example, N.C. Gen. Stat. §§ 66-94 through 66-100; Tex. Bus. & Com. Code Ann. §§ 41.002-41.303.

³¹⁶ See, for example, N.C. Gen. Stat. § 66-95; Tex. Bus. & Com. Code Ann. §§ 41.151-41.163.

³¹⁷ See, for example, N.C. Gen. Stat. § 66-98(1); Tex. Bus. & Com. Code Ann. § 41.301(3).

Carolina's business opportunity sales act does not apply to poultry growing arrangements if there is no sale of the poultry.³¹⁸

III. Applying the Law to Grower Concerns Identified in the Broiler Grower Survey

This section examines how existing law may address areas of concern about the relationships between broiler growers and poultry companies that were identified in the Broiler Grower Survey. The analysis focuses upon statutes, rules, and court decisions that directly apply to issues raised. A decision not to discuss the application of a legal theory or claim with respect to any particular problem area represents a judgment that the application of the theory is simply not known under the current state of the law. Note that court decisions are binding authority only upon the court that issued it and the courts below it, but the reasoning in the opinion may be persuasive to other courts.

A. Use of the Ranking System to Determine Grower Compensation

Most broiler growing contracts use a ranking system to calculate the amount that the grower will be paid. Generally, in a ranking system the feed and other input costs for all growers whose birds are settled during the same week are averaged. These costs are compared with the total bird weight and used to figure the average base price. An individual grower who has lower than average input cost per pound is generally paid a premium over the average base price. An individual grower who has higher than average input costs per pound may have a deduction taken from the average base price. The exact method used for ranking growers varies among poultry companies.

The Broiler Grower Survey described in Chapter Two of this report asked growers if they agreed that “the ranking method provides a good incentive to work hard.” The responses to the survey regarding the ranking system were mixed. Forty-eight percent of those surveyed disagreed with the statement that the ranking method provides a good incentive to work hard, while 45 percent agreed. More striking, 78 percent of growers agreed (with 44 percent in “complete agreement”) that their pay depends more on the quality of chicks and feed supplied by the company than on the quality of their work. These results suggest many growers believe that the ranking system does not provide a good incentive for them to work hard because the factors determining the level of the grower’s payment are controlled by the company.

Another practice related to the ranking system that growers indicated dissatisfaction with in the Broiler Grower Survey is the practice of including company employees in the same ranking group as non-employees. This practice sometimes means that employee-growers may be responsible for delivering inputs to their competitors within a ranking group. Given the percentage of growers in the survey who indicated that input quality is a key determinant of their pay, the control of inputs by employee-growers is likely one point of concern. Seventy percent of the growers responding to the survey agreed that “broiler

³¹⁸ *Bunting v. Perdue, Inc.*, 611 F. Supp. 682 (E.D.N.C. 1985).

growers who are also company employees should not be included in the same growout group as others.” Despite this large majority of growers believing that employee-growers should not be included, 23 percent reported that employees are always included in their growout groups and only 18 percent of growers surveyed reported that company employees are never included in their growout groups.

1. Packers & Stockyards Act

The federal P&S Act and its implementing regulations address some aspects of the ranking systems in broiler contracts.

a. P&S Act Regulations

As discussed earlier, under P&S Act regulations, poultry companies must supply growers with a true written copy of the contract, which clearly specifies the factors used in calculating the grower’s payment.³¹⁹ The regulations require that, when applicable, the contract must clearly specify the factors to be used when grouping or ranking poultry growers.

By requiring that the factors used to rank growers be clearly spelled out in the contract, this regulation increases the chances that a grower would have a legal remedy if those factors were not properly applied in calculating the grower’s pay. Failure to follow the ranking procedures set forth in the contract would likely be a violation of the P&S Act, as well as a breach of the contract.

The P&S Act regulations also require that the company provide the grower with important information about how he or she was actually ranked. If payment to a grower is based upon a ranking with other growers, at the time of settlement the company must give the grower a copy of the ranking sheet with the actual figures upon which the ranking is based.³²⁰ The names of other growers are not required, but the ranking sheet must show the grower’s precise rank for that period. The ranking sheet should help growers evaluate whether the company’s payment is in accordance with the contract.

These rules do not address growers’ concern about having company employees included in the ranking groups along with the non-employee growers.

b. P&S Act—Unfair Practices

Some growers have asked whether the ranking system could be considered an unfair or deceptive practice or undue preference and thus be considered a violation of the P&S Act.³²¹ Neither the language of the Act itself nor the regulations addresses whether the ranking system is inherently unfair, deceptive, or unjustly discriminatory under the Act. It may be argued that by requiring

³¹⁹ 9 C.F.R. § 201.100(a) (2001).

³²⁰ 9 C.F.R. § 201.100(d) (2001).

³²¹ 7 U.S.C. § 192(a) and (b).

disclosure of the factors used in ranking growers the regulation discussed above implicitly accepts ranking systems as permissible under the P&S Act, but this is not conclusive. The regulatory language would not necessarily preclude a grower from bringing a legal challenge to a specific form of ranking system as a violation of the Act. Research for this report uncovered no court decisions considering a P&S Act challenge to a ranking system.

2. State Unfair and Deceptive Trade Practice Laws

As discussed at pages 41 to 42 of this chapter, many states have broad prohibitions on unfair and deceptive practices in trade and commerce.³²² Actions prohibited may include: engaging in any “unconscionable, false, misleading, or deceptive” act in the conduct of trade or commerce, failing to comply with the terms of a production contract, or failing to make settlement with a producer within the required time.

It may be difficult to demonstrate a violation of these state acts simply through a ranking of growers against other growers for purposes of calculating payment under the contracts. A challenge to the ranking system under such acts is more likely to be successful if there were evidence demonstrating that a company used the ranking system to treat growers differently, for example, through funneling higher quality inputs that affected costs per pound of production. At least one court has determined that contract poultry growers may pursue a lawsuit under the **North Carolina** unfair and deceptive trade practices act, though the case did not involve a challenge to the use of a ranking system for calculating the grower’s pay.³²³

Other poultry producing states whose unfair and deceptive trade practices laws may be applicable are **Alabama**,³²⁴ **Arkansas**,³²⁵ **Georgia**,³²⁶ **Texas**,³²⁷ **Minnesota**,³²⁸ and **Wisconsin**.³²⁹ Some states, including **California** and **Minnesota**, regulate unfair and deceptive trade practices related to a grower’s membership in a producer association.³³⁰ Discrimination in the ranking system due to the grower’s membership

³²² See, for example, Ala. Code § 8-19-5(26); Ark. Code Ann. § 4-88-107(a)(10); Ga. Code Ann. § 10-1-393(a); N.C. Gen. Stat. § 75-1.1.

³²³ N.C. Gen. Stat. § 75-1.1; *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), aff’d in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998). The court disavowed the holding of an earlier poultry case, *Bunting v. Perdue*, 611 F. Supp. 682 (E.D.N.C. 1985), that had held that only consumers were able to bring an action under North Carolina’s unfair and deceptive trade practices law.

³²⁴ Ala. Code §§ 8-19-1 through 8-19-15.

³²⁵ Ark. Code Ann. §§ 4-88-101 through 4-88-115.

³²⁶ Ga. Code Ann. §§ 10-1-390 through 10-1-407.

³²⁷ Tex. Bus. & Com. Code Ann. §§ 17.41-17.63.

³²⁸ Minn. Stat. § 27.19, subd. 1; Minn. R. 1500.1401, 1572.0045.

³²⁹ Wis. Stat. § 100.02 appears to apply to poultry growing contract arrangements.

³³⁰ Cal. Food and Agric. Code § 54431; Minn. Stat. § 17.696.

in a producer association would likely be a violation of these acts, as well as the federal Agricultural Fair Practices Act.³³¹

3. State Risk Disclosure Laws

In **Minnesota**, agricultural contracts entered or substantively modified after January 1, 2001, must come with a cover sheet to help the grower understand the terms of the contract.³³² The cover sheet must describe the material risks the grower would face if he or she entered into the contract.³³³ For companies using a ranking system, this law would presumably require some explanation of the risks inherent in that system.

B. Grower Concerns About the Quality of Chicks and Other Inputs Supplied by the Company

As noted above, 78 percent of growers in the survey agreed that their pay depends more on the quality of chicks and feed supplied by the company than on the quality of the growers' work. Considering the importance these growers place on the quality of chicks, a key item in the survey is how growers responded to the statement: "Good chicks are delivered to my farm." Growers were split on this item, with 43 percent indicating "always" or "usually," 44 percent indicating "sometimes," and 12 percent saying "rarely" or "never." Sixty-five percent of growers responded that the quality of the feed the company delivers is "always" or "usually" of good quality. However, over a quarter of the growers were much more skeptical about the quality of feed they received from the companies.

1. Contract Provisions

As discussed in Chapter Three of this report, poultry production contracts rarely address issues of chick or feed quality, instead leaving those matters wholly to the company's discretion. However, some broiler growing contracts include provisions that attempt to limit warranties for the quality of inputs not supplied by the company. To the extent this is done, it may suggest that a grower could claim that inputs that *are* supplied by the company are subject to warranty and, if the company-supplied inputs are not of reasonable quality, that such warranty has been breached.

2. P&S Act

The P&S Act and its implementing regulations do not explicitly address the issue of chick and feed quality. P&S Act regulations provide that growers are entitled to receive a written contract that clearly specifies "all terms relating to the payment to be made to the poultry grower."³³⁴ However, there is no requirement that the contract address the quality of inputs to be provided.

³³¹ 7 U.S.C. § 2303.

³³² Minn. Stat. §§ 17.91, subd. 2, 17.942.

³³³ Minn. Stat. § 17.942.

³³⁴ 9 C.F.R. § 201.100(a)(2) (2001).

Some variation in the quality of inputs delivered to poultry growers is unavoidable. However, under the P&S Act, a company may not in any respect subject growers to any “undue or unreasonable preference or advantage” or any “undue or unreasonable prejudice or disadvantage.”³³⁵ Thus, any company practice that resulted in a grower receiving a disproportionate share of lower quality chicks or feed might present a claim that this provision of the P&S Act has been violated.³³⁶ Courts have allowed contract turkey growers to bring claims that companies violated the P&S Act by providing low-quality poults in order to discourage growers from voicing their grievances.³³⁷

As discussed in Chapter Three, some broiler growing contracts seek to address concerns about manipulation of input quality by stating that chicks provided by the company will be distributed “randomly.” Even in situations with no such contract provision, a reasonable argument could be made that “random” distribution is required by the P&S Act, because any other distribution pattern would be “unjustly discriminatory” or would constitute an act of “undue or unreasonable preference or advantage.”³³⁸

3. State Commercial Feed Laws

As discussed at pages 23 to 25 of this chapter, many states have laws regulating the distribution of commercial feed to growers and requiring licensing, registration, or labeling before a company is allowed to manufacture, sell, or distribute commercial feed in the state. Some commercial feed laws also forbid misbranding (false or misleading labeling) and adulteration (adding poisonous or harmful substances). Growers who believe their feed is not what it is represented to be may have a claim based on a violation of such a state commercial feed law. A company with serious problems with its feed would likely take the risk of losing its registration or its license very seriously.

States vary in the consequences they impose for violation of their commercial feed laws. One of the most comprehensive enforcement schemes is in **Texas**, where the state may direct its actions toward the feed itself by imposing an order to stop its sale,

³³⁵ 7 U.S.C. § 192(b).

³³⁶ For example, in *Bunting v. Perdue, Inc.*, a grower complained that he was given the wrong feed mixture and otherwise discriminated against. 611 F. Supp. 682 (E.D.N.C. 1985). However, the court ruled that the poultry company was not covered by the P&S Act. The P&S Act was later amended in 1987 to clearly apply to poultry growing arrangements.

³³⁷ *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), *aff'd* in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998). See also *Pavlik v. Cargill, Inc.*, 9 F.3d 710 (8th Cir. 1993). In each case the judge ruled against the growers on their low-quality poults claim.

³³⁸ 7 U.S.C. § 192(a) and (b).

warn persons not to distribute it, or condemn it.³³⁹ The state may also take legal action against persons who violate the commercial feed law through written warnings, injunctions, and prosecution for misdemeanors.³⁴⁰

Labeling requirements under some state commercial feed laws may help improve the communication between the company and the grower, and the grower's understanding of the feed he or she is being supplied with.³⁴¹ These labeling requirements do not address the quality of the feed so much as its composition, ranging from a simple requirement that the label disclose the weight of the feed to requirements that the label include a guaranteed analysis, including minimum percentages of crude protein, crude fat, and crude fiber.

4. *Fraud*

To the extent that a company makes factual claims about the quality of inputs it supplies growers—whether they are chicks, feed, or medicine—the company may be liable for fraud if the company knew the claims were untrue or did not know whether the claims were true. In one early **Minnesota** case, a company told potential growers that disease was a minor problem and would be detected and controlled by company personnel, though disease was a serious problem in other regions and there had been recent outbreaks in the new growers' area. When the growers' flocks were hit by disease that the company was unable to control, a grower successfully sued the company for fraud.³⁴²

5. *Implied Warranty of Merchantability*

In the relatively few instances where a broiler grower actually buys inputs, such as chicks, feed, or medicine an implied warranty of merchantability may apply pursuant to the state's version of the Uniform Commercial Code.³⁴³ If growers are sold poor quality inputs they may be able to sue the seller for a breach of this implied warranty of merchantability.

In one **Arkansas** case, turkey growers recovered on an implied warranty of merchantability claim for diseased poults.³⁴⁴ The evidence showed that the growers had repeatedly complained about the poult quality, the company knew its flocks were diseased, and the company had improperly vaccinated the poults.

³³⁹ Tex. Agric. Code Ann. §§ 141.121, 141.122.

³⁴⁰ Tex. Agric. Code Ann. §§ 141.123-141.149.

³⁴¹ See, for example, Ala. Code § 2-21-20(3); Md. Code Ann., Agric. § 6-110; Miss. Code Ann. § 74-45-161; Va. Code Ann. § 3.1-828.5; Tex. Agric. Code Ann. § 141.051. See also Del. Code Ann. tit. 3, § 1705, but note that § 1705(b) refers to giving the label to the "purchaser" of feed in bulk, which makes the requirement somewhat less certain for contract growers.

³⁴² *Hollerman v. F.H. Peavey & Co.*, 130 N.W.2d 534 (Minn. 1964).

³⁴³ Uniform Commercial Code, Article 2, § 314.

³⁴⁴ *Renfro v. Swift Eckrich, Inc.*, 53 F.3d 1460 (8th Cir. 1995).

6. Breach of Contract

Even where there has been no sale and the contract is otherwise silent, some courts may be willing to read a minimal commitment of quality into poultry contracts. In one case, a **Georgia** court allowed an egg producer to recover lost profits from the hatchery that supplied the producer with breeder chickens, feed, medication, and sanitation products.³⁴⁵ The court found it enough that the hatchery had entered into a written contract to compensate the producer based on the number of eggs produced and to provide feed. The court reasoned that the quality of feed given to chickens has a “patent correlation” to the number of eggs produced and therefore the poor quality feed provided by the hatchery was a breach of contract that the jury could reasonably find caused the grower’s lost profits.

In a recent **Georgia** case heard in federal court, an egg producer was awarded damages of almost \$17,000 under his claim that the company had breached the contract by supplying chicks infected with cholera.³⁴⁶ The company argued that it had not breached any provision of the contract and therefore could not be liable for a breach of good faith. The court rejected these arguments and upheld the jury’s verdict and award, holding that the jury could have concluded that by providing the cholera-infected chicks the company breached its contractual duty to “advocate the best management” program known to it. The court also held that the jury could have found that the company breached its implied duty of good faith and fair dealing under the contract.³⁴⁷ In the same case, the jury found for the company on the grower’s breach of contract claim for receiving bad or adulterated feed.³⁴⁸

7. Negligence

Negligence could be a claim a grower might raise if a poultry company supplied the grower with unhealthy chicks or poor quality feed as a result of carelessness. Some states may limit or bar recovery if any carelessness on the part of the grower contributed to the problem. For example, one **Georgia** court ruled that an egg producer who had arranged to buy feed in several shipments could not escape paying

³⁴⁵ *Glennville Hatchery, Inc. v. Thompson*, 298 S.E.2d 521 (Ga. App. 1982).

³⁴⁶ *Burger v. Cagle’s Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 2 (N.D. Ga. Oct. 11, 2000) (order denying defendant’s motion for judgment as a matter of law), aff’d without opinion by 260 F.3d 627 (11th Cir. 2001).

³⁴⁷ *Burger v. Cagle’s Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 20-21 (N.D. Ga. Oct. 11, 2000) (order denying defendant’s motion for judgment as a matter of law), aff’d without opinion by 260 F.3d 627 (11th Cir. 2001).

³⁴⁸ *Burger v. Cagle’s Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 2 (N.D. Ga. Oct. 11, 2000) (order denying defendant’s motion for judgment as a matter of law), aff’d without opinion by 260 F.3d 627 (11th Cir. 2001).

for the low-quality feed, because he negligently failed to halt the deliveries once the quality problems were discovered.³⁴⁹

As discussed in Chapter Three, broiler growout contracts generally prohibit growers from using any feed, medicines, or chemicals that are not supplied by the company. Payment under broiler production contracts also is generally not arranged to enable growers to purchase needed inputs, even if that were allowed by the contract. Broiler growers, therefore, are not able to refuse the company's inputs and substitute higher-quality products if they believe the company-supplied inputs are defective. Broiler growers similarly are not able to "substitute" better quality chicks. The **Georgia** case does suggest, however, that courts may expect growers to promptly raise concerns about the quality of inputs with companies.

8. Product Liability

Poultry growers who buy inputs such as feed or even chicks might have a claim against a company that manufactured or sold those inputs if the inputs had a defect that caused injury to the grower or the grower's property. A group of **Texas** turkey growers successfully sued a feed mill for defective feed they purchased from it under a product liability claim.³⁵⁰ Evidence in the case showed that the feed had caused the growers' turkeys to become ill.

9. Disclosure of Risks

In states that require disclosure of risks in agricultural production contracts, an argument could be made that the risk of variable-quality inputs should be disclosed. **Minnesota** appears to be the only state with such a law protecting poultry growers at present.³⁵¹ If the company's failure to disclose the risk of variable quality inputs causes the grower harm, the grower may seek to recover damages. No cases have yet considered this provision.

10. Poultry Improvement Plans

Delivery of diseased chicks may be governed by a company's participation in a poultry improvement plan. As discussed at pages 19 to 20 of this chapter, the National Poultry Improvement Plan is a cooperative program of the federal government, participating state governments, and participating members of the industry aimed at preventing the transmission of disease by breeding flocks, as well as the spread of disease by hatcheries.³⁵² As also noted earlier, some states mandate that companies

³⁴⁹ *Brooks v. Ralston Purina Co.*, 270 S.E.2d 347 (Ga. App. 1980).

³⁵⁰ *McMillen Feeds, Inc. of Texas v. Harlow*, 405 S.W.2d 123 (Tex. App. 1966).

³⁵¹ Minn. Stat. §§ 17.91, subd. 2, 17.942.

³⁵² 9 C.F.R. pt. 145 (2001).

meet Plan requirements,³⁵³ and several leading poultry producing states treat violations of Plan as misdemeanors, including levying fines for violations.³⁵⁴

C. Confusion About Settlement Sheets

It is important for growers to understand their settlement sheets because these sheets explain in detail how a grower's pay was calculated. Unfortunately, the responses to the Broiler Grower Survey show that nearly a third of the growers surveyed do not understand the calculations on their settlement sheets.

The only law reviewed in this chapter that appears to be applicable to growout settlement sheets is a provision of the P&S Act regulations. As discussed earlier in this chapter, P&S Act regulations have detailed requirements for poultry settlement sheets.³⁵⁵ The settlement sheet should set forth calculations using the figures, factors, and methods agreed to in the contract. The settlement sheet must contain all information necessary to calculate the payment due to the poultry grower.³⁵⁶

D. Condemnation Rates High and Explanations Unsatisfactory

Under many poultry growing agreements, the number and weight of condemned whole birds and parts also affect the amount of payment growers receive. The responses to the Broiler Grower Survey show that some growers have concerns about condemnation rates. About two-thirds of the respondents agreed that the condemnation rate on their birds is higher than they expect at least some of the time. Only 44 percent of respondents agree the company "always" or "usually" gives a satisfactory explanation when they ask about condemnation rates. A related issue in the survey concerned the growers' beliefs regarding the handling their birds receive from company employees. Because condemnations may result from injuries birds receive during catching and loading, growers' responses to a question about handling may be related to concerns over condemnation rates. Over a third of growers believed that catching crews only "sometimes" or "rarely" did a good job.

As discussed at pages 7 to 8 of this chapter, P&S Act regulations do address condemnations. If USDA condemnations or grades affect grower pay, the grower has a right to receive an official USDA condemnation or grading certificate, or both, at the time of settlement. The P&S Act regulations also require poultry companies to use reasonable care when loading, transporting, holding, yarding, feeding, watering, weighing, or otherwise handling live poultry.³⁵⁷ If birds suffer excessive deaths and injuries because they

³⁵³ See, for example, Ala. Code § 2-16-4 (only applies to chick sales); N.C. Gen. Stat. § 106-543 (only applies to chick sales); Tex. Agric. Code Ann. § 168.002.

³⁵⁴ See, for example, Ala. Code § 2-16-9; Ga. Code Ann. § 4-7-8; N.C. Gen. Stat. §§ 106-549, 106-549.01.

³⁵⁵ 9 C.F.R. § 201.100(b) (2001).

³⁵⁶ 9 C.F.R. § 201.100(b) (2001).

³⁵⁷ 9 C.F.R. § 201.82(a) (2001).

are handled roughly by the company, a grower may have a claim against the company for violating the P&S Act regulations.³⁵⁸

In two related cases concerning contract turkey production in **Arkansas**, a federal appeals court found that a company's practice of estimating the weight of condemned birds and knowingly miscalculating condemnation deductions would support claims for both P&S Act violations and breach of contract.³⁵⁹ In a case arising in **North Carolina**, a federal district court held that mishandling of birds could also be the basis of a negligence claim, since the P&S Act regulations impose a duty on companies to use reasonable care when handling poultry.³⁶⁰

E. Contract Dispute Resolution Procedures

The terms of a poultry production contract often determine when, where, and by what rules a dispute between a grower and company must be resolved. As discussed in Chapter Three of this report, growout contracts typically include provisions setting out the dispute resolution process that must be used, at least initially, to resolve disputes arising under the contract between the grower and the company. These provisions are often quite detailed and complicated. If the contract provides for binding arbitration, as is true of more than half of the contracts reviewed in Chapter Three, the parties are essentially waiving their rights to have disputes considered by any court.

Responses to the Broiler Grower Survey, discussed in Chapter Two of this report, indicate that many growers (38 percent) are not familiar with the dispute resolution provisions in their contracts. (As discussed in Chapter Three, the comparison of grower statements about their contract terms with the analysis of sample contract language suggests that the number of growers who do not understand their contracts may actually be higher.) Very few growers who responded to the survey (4 percent) have used the dispute resolution procedure provided for in their contract. Those who have not used the contract dispute resolution procedure indicated expense (13 percent), fear of retaliation (33 percent), and no expectation of beneficial outcome (29 percent) as reasons for not initiating the procedure.

1. Contract Provisions

A growout contract may say that a dispute resolution process must take place in a certain location or under certain rules. Many contracts requiring arbitration invoke the rules developed by the American Arbitration Association. Other contracts say simply that any dispute will be subject to arbitration and do not reference specific arbitration

³⁵⁸ *Renfro v. Swift Eckrich, Inc.*, 53 F.3d 1460 (8th Cir. 1995); *Jackson v. Swift-Eckrich, Inc.*, 53 F.3d 1452 (8th Cir. 1995); *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), aff'd in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998).

³⁵⁹ *Renfro v. Swift-Eckrich, Inc.*, 53 F.3d 1460 (8th Cir. 1995); *Jackson v. Swift-Eckrich, Inc.*, 53 F.3d 1452 (8th Cir. 1995).

³⁶⁰ *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), aff'd in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998).

rules. Other arbitration clauses may be more limited and apply only to payment disputes.

Some contracts have very short deadlines for seeking resolution under the dispute resolution provisions included in the contract. In one **Louisiana** case, the contract provided that “either party may demand arbitration in writing within 10 days after the alleged claim was known or reasonably should have been known.”³⁶¹ The grower in that case argued that the use of the word “may” meant that the contract did not mandate filing within 10 days. The court found that the question of whether a grower who did not request arbitration within a 10-day period had waived the right to arbitration was an issue arising under the contract and was therefore subject to arbitration, not decision by a court. A dissenting judge urged that the issue was more than a matter of interpreting a contract and suggested that recognizing a 10-day limitation to bar claims would be unreasonable.

2. Federal Arbitration Act

As discussed at pages 16 to 17 of this chapter, the Federal Arbitration Act (FAA) provides that written agreements to arbitrate disputes that may arise during the course of the contract are valid and enforceable, if the contract involves interstate commerce.³⁶² Because poultry raised under most broiler contracts is likely to cross states lines once processed, broiler grower contracts will generally be considered contracts involving interstate commerce. Arbitration provisions in those contracts, therefore, will most likely be enforceable.

In rare cases, the agreement to arbitrate may be invalid if there is some fundamental problem, such as fraud, mutual mistake, or other grounds that would justify the revocation of any contract.³⁶³ In one **Maryland** case brought by a poultry grower, the poultry company sought a stay of proceedings from the court in an attempt to enforce a contractual arbitration provision.³⁶⁴ In response, the grower alleged that the company had forged his signature on an agreement to grow poultry. The grower argued that as a result of the forgery, the company could not rely on the arbitration clause contained in the agreement. The court agreed to decide the forgery question prior to making a decision on the company’s request for a stay of proceedings pending arbitration. The court explained that issues going to the “making” of a contract are for the court to decide. By claiming forgery, the grower effectively claimed that he never entered into a contract containing an arbitration clause in the first place. The court contrasted this claim with a case where the grower alleges fraudulent inducement to contract. In such cases, the court explained, the grower

³⁶¹ *ConAgra Poultry Co. v. Collingsworth*, 705 So. 2d 1280 (La. App. 1998).

³⁶² 9 U.S.C. § 2.

³⁶³ 9 U.S.C. § 2.

³⁶⁴ *Monk v. Perdue Farms, Inc.*, 12 F. Supp. 2d 508 (Md. 1998).

admits signing the agreement, but argues that it cannot be enforced against him or her. In that case, the dispute over enforceability is for the arbitrator to decide.

3. State Laws

As discussed at pages 27 to 31 of this chapter, state laws may require that parties to agricultural contracts attempt to resolve disputes through ADR, though such laws have not been adopted by the major poultry producing states. State law may also provide procedural rules for arbitration or other forms of ADR.

F. Value of Company-Recommended Improvements and Pressure to Adopt Them

One issue that may affect grower income from broiler operations is whether growers may be required to install new equipment or make improvements to their chicken houses at the company's request. Growers responding to the survey reported that 67 percent of broiler houses have had at least one improvement costing more than \$3,000 in the previous five years. Some 33 percent of survey respondents indicated a belief that company-recommended improvements have not made them better off, while 50 percent indicated that their contracts would not be renewed unless they followed their companies' recommendations about building new houses or making major improvements to their old houses.

1. Fraud

In some cases, false statements by a poultry company regarding improvements, which the company intended for the grower to rely upon, could be the basis for a successful fraud claim, provided the grower relied upon the representations to his or her detriment.

In one **Alabama** poultry case, a poultry company was held liable for fraud related to improvements.³⁶⁵ The company had entered into an agreement with a grower, promising to continue to supply the grower with chickens if he made certain improvements. The improvements were made but the company stopped delivering flocks shortly thereafter. The court found that the company intended to deceive the grower because it knew that it was leaving the grower's area before it entered the agreement requiring improvements. The grower was allowed to recover damages against the company for fraud.

In another **Alabama** case, a group of growers alleged that their company initially told them that tunnel ventilation would not be required but later terminated their contracts when they refused to install tunnel ventilation systems.³⁶⁶ The court found that one of the growers, who had not agreed to go to arbitration on the issue, could maintain an action for fraud in court.

³⁶⁵ *Marshall Durbin Farms, Inc. v. Landers*, 470 So. 2d 1098 (Ala. 1985).

³⁶⁶ *Continental Grain Co., Inc. v. Beasley*, 628 So. 2d 319 (Ala. 1993).

2. Breach of Contract

In a 1980 **North Carolina** case, a grower brought a breach of contract claim against a company, arguing that the company had violated an agreement to supply flocks for six growout houses with a guaranteed net income of \$10,000 per house per year after the grower completed renovations of the houses.³⁶⁷ The court denied the grower's claim because it found that the only binding contract between the parties was a single-flock contract for one house. The court held that the other promises between the parties were not a binding a contract because they had not agreed on the specifics, including the number of birds the grower would have, the times for flock delivery or pickup, or the payment the grower would receive.

As discussed in Chapter Three, many poultry companies reserve the right to require improvements in their written contracts. Some broiler contracts do not explicitly use the terms "equipment" or "improvements" when addressing the growers' commitment to make improvements at the company's request. Instead some contracts state that growers are obligated to provide "proper housing" as determined by the company. Since many broiler contracts are for only one flock, poultry companies may also require that growers adopt new standards for equipment and make improvements by making it a condition of obtaining a new contract for a future flock.

At the same time, many growers are wary of making an open-ended commitment to make costly improvements. Some growers have alleged that they were given oral promises that costly improvements would not be required, but later the company required improvements. In one **Georgia** case, an egg producer had a written contract with a clause stating that, "This agreement, and the attached schedule, are separate from any other agreement made or to be made between the parties and represent the complete agreement."³⁶⁸ The court, however, ruled that an oral agreement was enforceable that no improvements to the chicken house would be required until the producer had recouped his investment and made a profit. The court stated that the language quoted above clearly recognized the possibility of other, separate agreements between the parties. Had that language not been in the contract, the court would likely have reached a different result.

3. Breach of Implied Promise of Good Faith

At least one state, **Minnesota**, imposes an implied promise of good faith and fair dealing upon poultry companies who enter contracts with growers.³⁶⁹ An implied promise of good faith for poultry growing contracts has been recognized in **North Carolina** and **Georgia** in federal court opinions, rather than in statutes.³⁷⁰ If a company

³⁶⁷ *Gregory v. Perdue, Inc.*, 267 S.E.2d 584 (N.C. App. 1980).

³⁶⁸ *Glennville Hatchery, Inc. v. Thompson*, 298 S.E.2d 512 (Ga. App. 1982).

³⁶⁹ Minn. Stat. §§ 17.94, 336.1-201(9).

³⁷⁰ See *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), aff'd in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998); *Burger v.*

made representations regarding the investment that would be needed to enter into and continue a poultry growing arrangement but then later required the grower to make additional investments, it is possible that the grower could claim that the company breached its promise of good faith and fair dealing. No cases raising such a claim were uncovered in the research for this report.

4. Recapture of Capital Investment

As discussed at page 34 of this chapter, **Minnesota** law related to recapture of capital investment prohibits a poultry company from terminating or canceling a written contract that requires a grower to make a capital investment of \$100,000 or more in buildings or equipment with a useful life of five years or more unless certain conditions are met.³⁷¹ Minnesota's recapture rule does not apply, however, if the term of the contract simply runs out, or expires, and the company chooses not to renew it.³⁷²

G. Prompt and Accurate Weighing of Chicks

In most poultry growing arrangements, the weight of birds when delivered to the plant for processing is a key factor in determining the amount the grower will be paid. Birds can lose a significant amount of weight if there is a lengthy delay in weighing them after they are picked up from the grower's operation. Such weight loss would reduce grower pay under most broiler growing agreements. Responses to the Broiler Grower Survey suggest that there are delays in the weighing of birds (only 50 percent of growers indicated that birds are at least "usually" weighed promptly). Almost half of the growers (42 percent) answered "other" when asked whether their birds are weighed promptly. One possible explanation for this relatively high percentage of "other" responses is that growers do not know what to believe about whether their birds are weighed promptly.

The poultry industry has seen a number of successful lawsuits brought by poultry growers alleging that inaccurate or delayed weighing by poultry companies resulted in incorrect payments in violation of the P&S Act. These cases are discussed below. Oftentimes, growers alleging inaccurate weighing bring claims under the P&S Act in combination with state law claims such as fraud and breach of contract.

1. P&S Act

As discussed at pages 3 to 5 of this chapter, there are extensive regulations under the P&S Act that set out proper weighing procedures,³⁷³ care of scales,³⁷⁴ and the

Cagle's Farms, Inc., No. 4:98-CV-0246-HLM, slip op. at 20-21 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001).

³⁷¹ Minn. Stat. § 17.92.

³⁷² Minn. R. 1572.0030, subpt. 1.

³⁷³ 9 C.F.R. § 201.108-1 (2001).

³⁷⁴ 9 C.F.R. § 201.72 (2001).

information that must be included on scale tickets.³⁷⁵ The P&S Act regulations require that poultry companies use reasonable care and promptness with respect to weighing birds to prevent shrinkage, injury, death or other avoidable loss.³⁷⁶ Live poultry obtained under a poultry growing arrangement must be transported promptly after being loaded.³⁷⁷ The gross weight for grower-payment purposes must be determined immediately upon arrival at the processing plant, holding yard, or other scale normally used for such purposes.³⁷⁸

Poultry growers may complain to their regional GIPSA office about weighing problems. They also may file suit in federal district court.³⁷⁹ If the claim is successful, the company would be liable for the full amount of damages proven to have been suffered by the grower as a result of the violation.

In the context of contract broiler production, a claim based on delayed or inaccurate weighing is essentially a claim that the grower was paid less than he or she was entitled to under the contract. While the P&S Act is clear with regard to *complete* nonpayment, it is not as clear whether the statutory trust provisions of the P&S Act (discussed at pages 10 to 12 of this chapter) can also be used for a partial nonpayment claim.³⁸⁰

In a **North Carolina** case from 1996, turkey growers recovered \$5,000 from their company for its admitted violation of P&S Act weighing regulations.³⁸¹

In an **Arkansas** case, turkey growers sued a company for failure to use proper weighing practices, including failure to comply with P&S Act weighing regulations, failure to record the identification numbers of the trucks birds were weighed in, mishandling of birds that increased condemnations, and overestimating the weight of condemned birds.³⁸² The growers were awarded \$50,000 for their claims based on violation of P&S Act regulations.

³⁷⁵ 9 C.F.R. § 201.49(b) (2001).

³⁷⁶ 9 C.F.R. § 201.82(a) (2001).

³⁷⁷ 9 C.F.R. § 201.82(b) (2001).

³⁷⁸ 9 C.F.R. § 201.82(b) (2001).

³⁷⁹ 7 U.S.C. § 209(b)(2). Although administrative enforcement can be used by poultry growers to ensure prompt payment, allegations of general P&S Act violations and claims for damages can only be heard by a federal court. See *Jackson v. Swift-Eckrich, Inc.*, 53 F.3d 1452, 1457 (8th Cir. 1995).

³⁸⁰ 7 U.S.C. § 197(b) (trust is for the benefit of “unpaid” growers, to continue until “full payment” is received). See also 7 U.S.C. § 197(d) (establishing deadlines for payment and filing of claims against the trust only in circumstances where “a payment instrument has not been received” or where the payment instrument is dishonored).

³⁸¹ *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998).

³⁸² *Jackson v. Swift-Eckrich, Inc.*, 53 F.3d 1452 (8th Cir. 1995).

Misweighing claims were so successful against one company that a bankruptcy court in **Arkansas** rejected a proposed settlement of a grower's claim against that company for \$50,000, holding that settling for so little was a potential waste of the estate's asset.³⁸³ Another **Arkansas** turkey grower's misweighing claim under the P&S Act was unpersuasive to the jury—along with his other claims against the company, including breach of contract and fraud—but the court of appeals decision does not shed any light on why the claim failed.³⁸⁴

2. Fraud

The poultry industry has seen a number of successful lawsuits brought by poultry growers alleging that poultry companies fraudulently reported inaccurate weights, which resulted in incorrect payments. Some of these claims are still being litigated, years after the alleged misweighing took place.³⁸⁵ If growers are successful with a fraud claim, this may also support the award of punitive damages.³⁸⁶

In an **Alabama** case, broiler growers sued their company for breach of contract and fraud, claiming that the company had purposefully misweighed birds over an eight-year period in order to reduce payment to growers.³⁸⁷ The jury awarded the growers almost \$4.4 million in compensatory damages and more than \$9 million in punitive damages. The federal appeals court that reviewed the case held that company employees' manipulation of trucks and scales to create artificially low gross weights and high tare weights supported the fraud verdict.

In one **Arkansas** case, a federal appeals court held that turkey growers who had been awarded damages on their fraud claims related to weighing and payment were entitled to seek punitive damages against their company because of the company's "reckless disregard" for accurate weighing.³⁸⁸ The court found that the company had engaged in activities that "could not possibly yield accurate measurements"—including failing to maintain tare weight tickets—and therefore the growers' settlement sheets were necessarily "fraught with errors."³⁸⁹

In another **Arkansas** case, mentioned in the P&S Act discussion above, turkey growers were awarded damages for a company's failure to use proper weighing

³⁸³ *In re Burgess*, 188 B.R. 404 (E.D. Ark. 1995) (upholding debtors' objection to proposed Compromise and Settlement Agreement with Swift Eckrich, Inc.).

³⁸⁴ *Pavlik v. Cargill, Inc.*, 9 F.3d 710 (8th Cir. 1993).

³⁸⁵ See *Adams v. Wolf*, 2001 Ark. App. LEXIS 336 (Ark. App. 2001).

³⁸⁶ See, for example, *Braswell v. ConAgra, Inc.*, 936 F.2d 1169 (11th Cir. 1991); *Renfro v. Swift Eckrich, Inc.*, 53 F.3d 1460 (8th Cir. 1995).

³⁸⁷ *Braswell v. ConAgra, Inc.*, 936 F.2d 1169 (11th Cir. 1991).

³⁸⁸ *Renfro v. Swift Eckrich, Inc.*, 53 F.3d 1460 (8th Cir. 1995).

³⁸⁹ *Renfro v. Swift Eckrich, Inc.*, 53 F.3d 1460, 1465-66 (8th Cir. 1995).

practices.³⁹⁰ The growers were awarded \$40,000 for their fraud and breach of contract claims.

In May 2001, an **Arkansas** appeals court issued a decision allowing turkey growers to pursue a fraud claim against their company for delayed weighing, misweighing, and improper condemnations.³⁹¹ Although the events occurred outside the limitations period—allegedly beginning in the 1980s and continuing into the mid-1990s—the court held that the growers had presented a factual question of whether the company had fraudulently concealed its misweighing procedures and whether the growers could reasonably have recognized the false weights sooner than they had. The court remanded the case to the trial court for further proceedings, but nothing further was known about the case when this report was written.

3. *Breach of Contract*

If a poultry company's contract with the grower sets out the methods the company will use to weigh the birds or even if the contract simply states that payment will be based on the weight of birds, a grower might have a claim breach of contract if the company failed to use those methods or failed to accurately determine bird weight.

In the **Alabama** case discussed above in the fraud section, the broiler growers' \$13 million plus award was based both on fraud and on breach of contract by the company through purposefully misweighing birds and paying growers based on the false weights.³⁹² The company had admitted that it breached the growout contracts by calculating grower pay based on false weights, but it disputed the length of time that the misweighing had occurred. The jury ultimately agreed with the growers and found that the misweighing had occurred over an eight-year period.

As discussed in previous sections, **Arkansas** turkey growers were awarded damages for a company's failure to use proper weighing practices.³⁹³ The growers were awarded \$40,000 for their fraud and breach of contract claims.

In another **Arkansas** case, a federal appeals court upheld a jury verdict for turkey growers on their breach of contract claims, rejecting the company's arguments that the growers continued to grow for the company and therefore waived their claims.³⁹⁴ The court held that the growers had shown that they were unaware of the delayed weighing and the company's other mishandling practices and, therefore, the growers could not have knowingly abandoned their contractual rights to be paid based on the actual weight of the birds delivered.

³⁹⁰ *Jackson v. Swift-Eckrich, Inc.*, 53 F.3d 1452 (8th Cir. 1995).

³⁹¹ *Adams v. Wolf*, 2001 Ark. App. LEXIS 336 (Ark. App. 2001).

³⁹² *Braswell v. ConAgra, Inc.*, 936 F.2d 1169 (11th Cir. 1991).

³⁹³ *Jackson v. Swift-Eckrich, Inc.*, 53 F.3d 1452 (8th Cir. 1995).

³⁹⁴ *Renfro v. Swift Eckrich, Inc.*, 53 F.3d 1460 (8th Cir. 1995).

Furthermore, at least one court has held that lack of good faith with respect to weighing birds may be a breach of contract. In a **North Carolina** case, a federal district court held that even compliance with all express terms of a turkey contract would not bar a breach of contract claim if the growers could show that the company had violated the implied obligation of good faith in performing the agreement.³⁹⁵

4. Negligence

Poultry growers might bring a lawsuit charging a poultry company with negligence if the company, or one of its employees, was careless or negligent in keeping scales in good repair, keeping accurate records, or weighing birds promptly. In a **North Carolina** case involving such a claim, the court held that the P&S Act regulation requiring companies to use “care and promptness” in weighing and handling live poultry established a duty that would support a negligence claim.³⁹⁶ The grower in that case was ultimately unsuccessful in his negligence claim.

5. State Unfair and Deceptive Trade Practices Acts

Misweighing of poultry that leads to underpayment of growers could be a violation of a state unfair and deceptive trade practices act. In one **North Carolina** case, the grower recovered under the state unfair and deceptive trade practices act for damages resulting from the company’s failure to follow P&S Act weighing regulations.³⁹⁷

H. Prompt and Accurate Weighing of Feed

In most poultry growing arrangements, accurate feed weight measurement is a critical factor in determining a grower’s payment. While grower responses to the Broiler Grower Survey indicate fewer concerns about feed weighing than bird weighing, a notable percentage (19 percent) of growers believed that they were at least sometimes charged for more feed than delivered. Nearly a third of the growers seem to not know what to believe about whether they are charged for more feed than is delivered.

1. P&S Act

As discussed at pages 5 to 7 of this chapter, new P&S Act regulations that took effect on May 5, 2000, require companies to weigh feed whenever the weight of feed is a factor in determining payment for a poultry grower under a poultry growing arrangement.³⁹⁸ When feed weight is a factor in calculating payment owed to the grower the payment must be based on the actual weight of the feed as shown on a

³⁹⁵ *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), aff’d in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998).

³⁹⁶ *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), aff’d in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998).

³⁹⁷ *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998).

³⁹⁸ 65 Fed. Reg. 17,758 (2000) (codified at 9 C.F.R. pt. 201).

scale ticket.³⁹⁹ Many of the feed weighing rules are the same as or similar to those for weighing live poultry.

Few reported cases involve allegations regarding feed weight. It may be that the new P&S Act regulations will lead to increased litigation. In one **Arkansas** case the grower alleged, among other things, that he was shorted on feed deliveries, but the jury ruled for the company.⁴⁰⁰

2. Commercial Feed Laws

As discussed at pages 23 to 25 of this chapter, a number of states have laws regulating the distribution of commercial feed to growers and requiring that the label, delivery slip, or invoice state the net weight (or other quantity term) of the feed, or of each commercial feed or feed ingredient that is part of the mixture.

States vary in the consequences they impose for violation of their commercial feed laws. Under the laws of several states, companies that violate the labeling requirements may be prosecuted.⁴⁰¹ Most states with such provisions treat violations as misdemeanors or explicitly state that prosecution of minor violations is not required.⁴⁰²

In general, states do not provide remedies for growers who have been harmed by violations of commercial feed laws. However, claims may nonetheless be available if the state recognizes a statutory violation as negligence per se or if the violation is the basis for another claim, such as fraud.

I. Compliance with Environmental Regulations

As discussed earlier, the potential for water pollution from poultry operations is receiving increasing attention from federal and state environmental regulatory agencies and legislatures. In the Broiler Grower Survey, 78 percent of growers responding agreed that the company provides no assistance with proper disposal of litter or dead birds. The analysis of contracts found in Chapter Three of this report shows an even greater concentration of responsibility on growers, with none of the contracts studied providing for company assistance with disposal.

1. Federal Regulations Under the Clean Water Act

The Clean Water Act addresses water pollution from concentrated animal feeding operations (CAFOs).⁴⁰³ Regulations issued under the Clean Water Act currently

³⁹⁹ 9 C.F.R. § 201.55(a) (2001).

⁴⁰⁰ *Pavlik v. Cargill, Inc.*, 9 F.3d 710 (8th Cir. 1993).

⁴⁰¹ For example, Del. Code Ann. tit. 3, § 1712; Md. Code Ann., Agric. § 6-115(a); Miss. Code Ann. § 75-45-185; Tex. Agric. Code Ann. § 141.143; Va. Code Ann. § 3.1-828.13(B).

⁴⁰² See, for example, Del. Code Ann. tit. 3, § 1712(b); Md. Code Ann., Agric. § 6-115(b); Miss. Code Ann. § 75-45-183; Va. Code Ann. § 3.1-828.13(C).

⁴⁰³ 33 U.S.C. § 1362(14).

prohibit CAFOs from discharging potential pollutants, such as animal wastes, into waters of the United States except in a 25-year, 24-hour storm event.⁴⁰⁴ As mentioned earlier, these regulations do not apply to most broiler operations currently, but would apply if proposed changes are adopted.⁴⁰⁵

In the only Clean Water Act case related to poultry that research for this report uncovered, a poultry company proposed to settle a complaint against it for alleged Clean Water Act violations at its **Maryland** poultry processing plant by agreeing, among other things, to pay for personnel and equipment to help contract growers prepare and implement written, site-specific nutrient management plans.⁴⁰⁶

2. State Environmental Laws

As discussed at pages 35 to 38 of this chapter many of the leading poultry producing states are beginning to enact statutes and regulations that establish what is required and who is responsible for the proper disposal of poultry litter and dead birds when poultry is raised by independent contractors. The states take a variety of approaches to the subject. Requirements concerning dead bird disposal generally apply to poultry *owners*, but may also apply to those who “care for” poultry grown under contract; requirements concerning litter disposal are more often tracked to the owner or operator of the poultry operation.⁴⁰⁷ Each state’s statutory and regulatory scheme must be studied to determine whether a company and grower could agree between themselves through contract which party would be responsible for waste disposal. In some states, it is possible that the state would initiate enforcement actions against both parties regardless of the contractual provisions. In such states, the contract between the parties would therefore not limit the state’s enforcement options, but might give one party a claim for breach of contract and indemnification against the other.

As discussed earlier, **Virginia** recently adopted rules for a poultry management program.⁴⁰⁸ The primary burden of these rules falls upon the grower, but the law does require poultry companies to file a plan with the state explaining how it will assist growers, including providing technical assistance, education programs, advertising support, facilitating efforts to transport poultry waste, and research.⁴⁰⁹

⁴⁰⁴ 40 C.F.R. pt. 122, Appendix B (2001). For CAFO non-discharge regulations generally, see 40 C.F.R. pt. 412 (2001).

⁴⁰⁵ 66 Fed. Reg. 2974 (2001).

⁴⁰⁶ *United States v. Hudson Foods, Inc.*, 63 Fed. Reg. 29,753 (1998) (proposed consent decree subject to public comment and court approval). No further record of the case was found.

⁴⁰⁷ See, for example, Va. Code Ann. § 62.1-44.17:1.1; Ga. Code Ann. § 4-5-3(a); Ky. Rev. Stat. Ann. § 257.160; Md. Code Ann., Agric. § 3-109.

⁴⁰⁸ 17 Va. Regs. Reg. 398 (Oct. 23, 2000) (codified at 9 Va. Admin. Code §§ 25-630-10 through 25-630-60). The program was required by Va. Code Ann. § 62.1-44.17:1.1.

⁴⁰⁹ Va. Code Ann. § 62.1-44.17:1.1(G).

Georgia law requires “any person who owns or is caring for” poultry that has died to dispose of it within 12 hours after death or discovery of the carcass.⁴¹⁰ Under most growout arrangements, poultry companies would fall within the reach of this law, because they own the birds. The regulations quarantine the land of people who grow poultry for themselves or others, unless they use a method of disposal of dead poultry carcasses approved by the Commissioner of Agriculture.⁴¹¹ This rule would appear to create a greater incentive for growers to comply than for companies.

Kentucky law also imposes poultry carcass disposal requirements on the bird owner.⁴¹² **Alabama** imposes the burden for poultry waste and carcass disposal on growers and provides for a quarantine of operations not having adequate disposal facilities.⁴¹³

As discussed earlier, **Maryland** is phasing in new requirements for agricultural nutrient management plans.⁴¹⁴ The state uses Poultry Processor Discharge Permits to require poultry companies to ensure that their contract growers have nutrient management plans.⁴¹⁵ The permits require companies to assist growers with the use and disposition of excess manure and prohibit companies from placing additional chickens at a grower’s farm if water quality violations have occurred and are not corrected.⁴¹⁶

Maryland law also requires that contract chicken feed contain enzymes to reduce phosphorus in poultry waste.⁴¹⁷ It is possible that a grower who faces liability for environmental violations related to excess phosphorus could have a claim against a company or other supplier if the required enzymes were not added.

As discussed earlier, **Delaware’s** environmental regulation of poultry operations primarily affects growers.⁴¹⁸ However, the major poultry companies operating in Delaware have also committed themselves to assist growers with nutrient

⁴¹⁰ Ga. Code Ann. § 4-5-5.

⁴¹¹ Ga. Comp. R. & Regs. 40-16-2-06(1).

⁴¹² Ky. Rev. Stat. Ann. § 257.160.

⁴¹³ Ala. Code §§ 2-16-41, 2-16-42.

⁴¹⁴ Md. Code Ann., Agric. §§ 8-801 through 8-807.

⁴¹⁵ “MDE Announces Final Determination in Poultry Industry Integrator Permit,” Maryland Dep’t of the Environment News Release 039-01 (July 18, 2001), available at www.mde.state.md.us/press/nr_mde-010718.html.

⁴¹⁶ See www.mde.state.md.us/wma/poultry/intelang.PDF, part IV.E.6.f, pages 5-6.

⁴¹⁷ Md. Code Ann., Agric. § 6-107.1.

⁴¹⁸ Del. Code Ann. tit. 3, §§ 2201-2290.

management, litter and manure disposal, and obtaining certification under the state nutrient management program.⁴¹⁹

Research for this report uncovered no cases considering liability for litter or carcass disposal under state environmental laws.

3. Nuisance

Large poultry growing operations may have an effect upon neighboring property owners. Neighbors may complain of smells, fears of damage to water quality, and a general lowering in their quality of life. These neighbors might bring a lawsuit claiming that the poultry operation is a nuisance. As discussed above, one issue that may be addressed in nuisance lawsuits is whether the poultry company can be held liable for a nuisance caused by a contract grower's facility.

One fairly recent case seem to suggest how courts in **Alabama** will consider the allocation of environmental costs under production contracts, including those in the poultry industry. In the case, a company and farmer had entered into a contract for the farmer to raise hogs owned by the company.⁴²⁰ This contract was similar in many respects to those used in the poultry industry, including describing the farmer as an "independent contractor." Neighbors filed a lawsuit against the farmer and the company, complaining that odor and wastes associated with the hog operation were causing a nuisance on their property. The company said that it should not be liable, because the farmer was an independent contractor. The Alabama Supreme Court held that the legal relationship between the farmer and the company was determined by the facts rather than the words used in the contract to describe their relationship. Based on the facts in this case, the state Supreme Court concluded it was reasonable for the jury to find that the farmer was acting as the company's agent and therefore the company could be liable for damages.

J. Risk Disclosures and Projections of Expected Returns

The responses to the Broiler Grower Survey suggest many growers perceive that they are not receiving the level of income under their contracts that they were led to expect by the company and that more work is required than expected.

One difficulty for growers in bringing a claim related to the income that they were led to expect from the business is that most broiler growing contracts include a "merger clause." As discussed above, a merger clause states that the signed contract includes all of the terms of the contract the parties have agreed to. If the contract includes the entire agreement, then anything not written in the contract is considered not an essential part of the

⁴¹⁹ Del. Dep't of Natural Resources and Environmental Control News, Jan. 12, 2001, p. 4. The newsletter can be found on the Internet at www.dnrec.state.de.us/dnrec2000/admin/news/01-12/0112news.htm.

⁴²⁰ *Tyson Foods, Inc. v. Stevens*, 783 So. 2d 804 (Ala. 2000).

agreement. Thus, income projections in promotional brochures are generally not considered part of the contract.

Another difficulty for a grower related to income projections may arise if the grower by contract agreed to follow the company's management suggestions, but then failed to do so; in such a case, the grower may have to prove that the failure to follow the company's suggestions was not the cause of the lower income.

1. P&S Act

The P&S Act regulations provide that companies are barred from knowingly making or circulating any false or misleading reports, records, or misrepresentations concerning the market conditions or the prices for live poultry.⁴²¹ If the company's representations to the grower regarding expectations of income from the broiler contract involved false or misleading statements about broiler market or broiler contract market conditions or prices of live poultry, such representations may violate the P&S Act regulations. Also, if a company provided a grower with deceptive information regarding expectation of income under the broiler contract there may be a basis for raising a claim that the company violated the provisions of the P&S Act that prohibit companies from engaging in any deceptive trade practice.⁴²²

2. Fraud

One type of fraud claim that may be brought in situations involving unrealistic profit projections is fraudulent inducement to contract. The gist of this claim would be that the company used information it knew was inaccurate or untrue—or that it had no evidence to believe was accurate—for the purpose of persuading a grower to sign a contract, and the grower relied on that information to make the decision to sign. In a **Minnesota** case dating back to the 1960s, a grower was able to recover for fraud at least partly on the basis of highly optimistic statements about projected profits in a recruiting brochure, where the court found that the company's assurances of profit, taken together, constituted a misrepresentation of fact. While such claims may be harder to raise now, any representation of fact by a company—for example, that other growers had earned a certain amount—to induce a grower to sign a contract or incur costs could still support a fraud claim if the statement was within the company's area of expertise and was false.⁴²³

3. Risk Disclosure

Minnesota's new risk disclosure law, discussed at pages 39 to 40 of this chapter, requires that agricultural contracts come with a cover sheet to help the grower understand the risks under the contract.⁴²⁴ The cover sheet must describe the material

⁴²¹ 9 C.F.R. § 201.53 (2001).

⁴²² 7 U.S.C. § 192(a).

⁴²³ *Hollerman v. F.H. Peavey & Co.*, 130 N.W.2d 534 (Minn. 1964).

⁴²⁴ Minn. Stat. §§ 17.91, subd. 2, 17.942.

risks the grower would face if he or she entered into the contract.⁴²⁵ An argument could be made that if the company provides growers with information about projected income from the contract, the risk that income may be lower than projected—due, for example, to higher than projected grower expenses, bird mortality rates, or condemnation rates—would be a material risk that must be disclosed under the statute. If such risks are included in the contract cover sheet growers may be more aware of the dangers of relying on the income projection representations made by the company at the time the contract is signed.

K. Timing and Frequency of Flocks

The timing and frequency of flock deliveries to growers has a significant impact on the level of income growers can make from their operations. The Broiler Grower Survey responses indicate that the majority of growers responding believed that they were “rarely” or “never” left without flocks long enough to hurt them financially. However, over a third of growers responding believe that they are at least “sometimes” left without birds long enough to hurt them financially.

1. Breach of Implied Promise of Good Faith

At least one state, **Minnesota**, imposes an implied promise of good faith and fair dealing upon poultry companies who enter contracts with growers.⁴²⁶ If a company made representations to a grower regarding the timing and frequency of flocks, and later the grower is hurt financially by unreasonable delays in the delivery of new flocks, the grower might be able to bring a claim that the company breached its promise of good faith and fair dealing under this state law. An implied promise of good faith has been endorsed for poultry growing contracts in **North Carolina** and **Georgia** in federal court opinions, rather than in statutes.⁴²⁷

2. Breach of Contract

According to the broiler grower contract analysis discussed in Chapter Three of this report, most broiler growing arrangements grant the company sole power to make decisions relating to the timing, size, type, and frequency of flocks. Some contracts make it clear that there is no commitment from the company to deliver more than one flock. If, however, a poultry growing contract did contain commitments on these subjects, and a company failed to meet those commitments, a grower would likely have a claim for breach of contract.

⁴²⁵ Minn. Stat. § 17.942.

⁴²⁶ Minn. Stat. §§ 17.94, 336.1-201(9).

⁴²⁷ *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), *aff'd* in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998); *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 20-21 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), *aff'd* without opinion by 260 F.3d 627 (11th Cir. 2001).

One surprising (and rather old) **Arkansas** breach of contract case involves a one-year contract between a cooperative and a grower.⁴²⁸ In the contract, the cooperative reserved the right to terminate the contract in the event conditions in the industry changed. Ordinarily, this type of clause might be interpreted as granting the cooperative almost unlimited discretion to terminate the contract as long as it could argue that changes in the industry had occurred. However, the court in this case—in a one-page opinion—found that the cooperative had breached the contract when it failed to provide the grower with another flock and terminated a contract. This was true despite evidence presented by the cooperative that there had been changes in the industry and despite the absence of any commitment in the contract that the cooperative would provide a certain number of flocks.

3. Disclosure of Risks

If state law requires disclosure of risks in agricultural production contracts, an argument could be made that the risk of delays between flocks should be disclosed. **Minnesota** appears to be the only state with such a law at present.⁴²⁹

IV. Court Decisions in Poultry Cases Addressing Issues Not Identified As Concerns in the Broiler Grower Survey

Courts have also issued decisions in poultry-related cases that address issues important to broiler growers that were not addressed by the Broiler Grower Survey. Following is a discussion of some of these cases.

A. Broken Promises of Long-Term Contracts

Courts have considered whether companies' oral promises of a long-term relationship between the company and the grower can be enforced when the company refuses to be bound by these promises. Cases addressing this issue have been brought under several theories including fraud, promissory estoppel, and breach of contract.

1. Fraud

One type of fraud claim that may be brought in cases where a promised long-term relationship is not realized is fraudulent inducement to contract. As discussed earlier, fraudulent inducement to contract means making false statements in order to persuade someone to sign a contract. If the company, or one of its employees, made a promise, such as stating that the contract would continue "as long as things went well," when it knew that it was likely that the contract would not be continued, and the prospective grower relied on that information to make the decision to become a grower, it might be a fraudulent inducement to contract.

A court's decision in a fraudulent inducement case tends to turn on whether the grower can establish that the company had no intention of meeting its pre-contract

⁴²⁸ *Farmers Cooperative Assn., Inc. v. Phillips*, 422 S.W.2d 418 (Ark. 1968).

⁴²⁹ Minn. Stat. §§ 17.91, subd. 2, 17.942.

promises and intended to deceive the grower by those promises into signing the contract. In cases where there is no evidence that the company intended to deceive the grower at the time it entered into the contract, the grower generally will not recover for fraudulent inducement against the company.⁴³⁰ This was true in one **Alabama** case even though a company representative had allegedly told the growers that the written contract was only a “working contract” and that it did not affect the oral promise.⁴³¹ In another **Alabama** case, however, egg producers were able to recover \$30,000 in damages for fraud and breach of contract for a company’s violation of an agreement to continue placing birds with the producers if they made certain improvements and had a record that was at least average.⁴³² Evidence in that case showed that the company intended to pull out of the growers’ area all along.

2. *Promissory Estoppel*

If, as is usually the case, a company’s representations about a long-term relationship are not included in the written contract, they may present a claim of promissory estoppel. As discussed earlier, however, promissory estoppel is a very difficult claim to win in most poultry growing situations because courts will first look to the terms of the written contract between the parties, and these contracts often either expressly allow the company to terminate the relationship or contain a provision—the merger or “entirety” clause discussed earlier—that nullifies any agreements outside the written contract itself. In one representative case from **Arkansas** involving egg producers, the producers sued the company under a promissory estoppel claim, arguing that the company’s termination of the relationship broke a promise to continue with the producers and allow them to pay their egg production facilities debts.⁴³³ The court rejected the producers’ claim, holding that the plain terms of the contract allowed the company to terminate the relationship and the contract’s entirety clause prevented the producers from arguing that any outside agreements had been made.

3. *Breach of Contract*

The circumstances under which growers will be successful in breach of contract claims related to non-renewal of contracts appear to be limited. In general, growout contracts give companies a great deal of leeway, not only in terminating contracts, but also in timing and frequency of flock placement. If the contract states when and how the contract may be terminated or how many flocks will be placed with the grower,

⁴³⁰ See, for example, *Starling v. Valmac Industries, Inc.*, 589 F.2d 382 (8th Cir. 1979); *Shelton v. Valmac Industries, Inc.*, 539 F. Supp. 328 (W.D. Ark. 1982).

⁴³¹ *Hinkle v. Cargill, Inc.*, 613 So. 2d 1216 (Ala. 1992).

⁴³² *Marshall Durbin Farms, Inc. v. Landers*, 470 So. 2d 1098 (Ala. 1985).

⁴³³ *Cogburn v. ConAgra Poultry Co.*, 1997 Ark. App. LEXIS 174 (Ark. App. 1997).

and the company follows those steps, the grower is unlikely to succeed on a breach of contract claim if the company stops delivering birds.⁴³⁴

In an **Arkansas** court decision issued more than 30 years ago, the court allowed a grower to recover lost profits when the company canceled his contract, despite the fact that the company had expressly reserved the right to cancel in the contract and had not committed itself to deliver a certain number of flocks.⁴³⁵ More recent case law may make it difficult to succeed in such circumstances in the future.

The first requirement for a successful breach of contract claim is an enforceable contract. If a grower takes steps—such as building chicken houses—in expectation of receiving a contract but without a signed contract in place, the grower will generally not have a claim for breach of contract if the company decides not to enter into a contract with the grower.⁴³⁶ Courts vary in how strict they are in requiring all terms to be agreed to before finding that a contract has been entered into. In one **Alabama** case, the court found that the parties had entered into a contract because the company had provided a written memo saying that if the growers made certain improvements and their rank was at least average, the company would provide birds one batch at a time.⁴³⁷ In cases where no contract has been entered into but the grower has made substantial expenditures based on the company's direction and in an expectation of a contract, the grower may have more success with a promissory estoppel claim, discussed above.

One important requirement of an enforceable contract may be that it be in writing. The "Statute of Frauds" requires contracts to be in writing in certain circumstances. One of these circumstances is if the promises in the contract cannot be completed in one year. In an **Alabama** case, the court held that a company's alleged oral promise to continue to deal with growers until they had paid off their debts was not enforceable because it could not be completed in one year and there was no written agreement.⁴³⁸ The court held that the oral promise was not enforceable in court, and the grower could not recover for breach of contract.

In an earlier **Georgia** case, however, a court allowed enforcement of an oral agreement that no improvements to a chicken house would be required until the egg producer had recouped his investment and made a profit.⁴³⁹ The court held that language in the written contract between the parties clearly recognized that the

⁴³⁵ *Farmers Cooperative Assn., Inc. v. Phillips*, 422 S.W.2d 418 (Ark. 1968).

⁴³⁶ *Gregory v. Perdue, Inc.*, 267 S.E.2d 584 (N.C. App. 1980).

⁴³⁷ *Marshall Durbin Farms, Inc. v. Landers*, 470 So. 2d 1098 (Ala. 1985).

⁴³⁸ *Hinkle v. Cargill, Inc.*, 613 So. 2d 1216 (Ala. 1992).

⁴³⁹ *Glennville Hatchery, Inc. v. Thompson*, 298 S.E.2d 512 (Ga. App. 1982).

producer and company might have other agreements related to the egg production relationship and therefore evidence of the oral agreement was accepted.

B. Retaliation for Organizing or Complaining

Courts have also addressed growers' attempts to obtain relief for harm caused by poultry company actions that the growers alleged were in retaliation for the growers' membership in a grower association or for complaining about company practices.

1. Agricultural Fair Practices Act

Growers whose growing arrangements are terminated or whose payment or treatment is altered as a result of attempting to organize with other growers likely have a claim under the federal Agricultural Fair Practices Act (AFPA). As discussed at pages 12 to 15 of this chapter, the AFPA prohibits handlers from knowingly taking a variety of actions against individual producers because of their decision to join or not to join an association of producers.⁴⁴⁰ It is important to keep in mind, however, that a poultry company, grower, or grower association is not required to deal with a particular party under the AFPA, so long as the reason for the decision not to do so does not violate the specific provisions of that Act.

In one **Florida** case, the company's failure to come up with a legitimate explanation for terminating a relationship with a grower that had endured nearly 20 years was deemed evidence of an unlawful motivation under the AFPA.⁴⁴¹ The court concluded that terminating a poultry growing contract without apparent economic justification might be evidence of discrimination or knowing refusal to deal with someone due to membership in a grower association.

In a recent **Georgia** case, an egg producer was awarded damages and attorney fees for a company's violations of the AFPA.⁴⁴² The producer had presented evidence that the company and its employees expressed disapproval of an association and treated producers "whom it suspected were involved in the association" differently.⁴⁴³ The company had attempted to obtain information about the association's activities and attempted to identify producers who attended an association meeting. There was also evidence that the company attempted to intimidate producers who joined or were interested in the association, that the company refused to allow an association

⁴⁴⁰ 7 U.S.C. § 2303.

⁴⁴¹ *Baldree v. Cargill, Inc.*, 758 F. Supp. 704 (M.D. Fla. 1990), aff'd without opinion by 925 F.2d 1474 (11th Cir. 1991).

⁴⁴² *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001); *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM (N.D. Ga. Oct. 11, 2000) (order awarding attorneys' fees and expenses).

⁴⁴³ *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 11 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001).

representative to attend a meeting between the producer and the company, that the plaintiff-producer received a short flock after he began to organize the association, and that the plaintiff-producer was ultimately terminated.

The company argued that the producer's termination was based on poor production and poor facilities. The court held that the jury could reasonably have rejected this justification, noting that the producer had presented evidence contradicting the company's allegations along with evidence that the company had failed to follow its normal procedures when terminating the producer's contract, had failed to document alleged problems at the producer's farm, and had not terminated other producers with similar problems. Given this evidence, along with the evidence demonstrating the company's resistance to the association, the court held that the jury could reasonably have disbelieved the company's justification and concluded that the producer was terminated due to his membership in an association.⁴⁴⁴

The jury awarded the producer \$250,000 in lost equity and \$80,500 in lost profits for his AFPA claims.⁴⁴⁵ The court also awarded the grower more than \$190,000 in attorney fees and expenses.⁴⁴⁶ In the attorney fee decision, the court stated that this is the first case in which an individual producer was awarded damages under the AFPA.⁴⁴⁷ The awards were affirmed without opinion in May 2001 by the Eleventh Circuit Court of Appeals.⁴⁴⁸

2. *Packers & Stockyards Act*

Because the right to join or not join a producer association is protected by law, one could make a strong argument that an attempt to punish a grower for the exercise of that right is an unfair and deceptive trade practice forbidden under the P&S Act. However, the grower must provide enough evidence to convince a jury or judge that he or she was retaliated against in order to have a successful P&S Act claim.

In one **Arkansas** case, a turkey grower alleged that he was retaliated against by his company in a number of ways, including short-counting and under-weighting birds, shorting feed deliveries, culling birds without good cause, and giving him low quality

⁴⁴⁴ *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 14-15 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001).

⁴⁴⁵ *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 2 (N.D. Ga. Oct. 11, 2000) (order denying defendant's motion for judgment as a matter of law), aff'd without opinion by 260 F.3d 627 (11th Cir. 2001).

⁴⁴⁶ *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 20 (N.D. Ga. Oct. 11, 2000) (order awarding attorneys' fees and expenses).

⁴⁴⁷ *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 18 (N.D. Ga. Oct. 11, 2000) (order awarding attorneys' fees and expenses). The court also noted that there have been no published cases awarding attorney fees under the AFPA. Slip. op. at 3.

⁴⁴⁸ 260 F.3d 627 (11th Cir. 2001).

poults as a means of retaliation for his complaints and attempts to associate with other growers.⁴⁴⁹ The grower was allowed to bring the retaliation claims under the P&S Act, but he was unable to convince the jury of these claims.

As this case shows, being allowed to bring a claim under the P&S Act is just the first hurdle for growers who believe that they are being retaliated against for their complaints or organizing activities. In another case, brought in **North Carolina**, the court determined that providing low-quality inputs in order to discourage growers from voicing their grievances about a company could be a violation of the P&S Act, as could terminating the contract as a form of retaliation.⁴⁵⁰ The appellate court noted, however, that there is no legal authority for a finding that termination of a grower's contract without economic justification is a P&S Act violation as a matter of law.⁴⁵¹ Instead, growers must go to trial and attempt to persuade a jury that the actions they allege—such as being provided inferior poults—in fact occurred and were in fact unfair. Evidence that the company lacked a legitimate economic reason for its behavior is one piece of the puzzle, but it would not necessarily be considered conclusive.

3. *Racketeer Influenced and Corrupt Organizations Act*

One **Florida** case in which a grower claimed that the company had terminated his contract because of his membership in a producer association involved claims under the federal Racketeer Influenced and Corrupt Organizations Act (RICO).⁴⁵² The grower successfully secured a preliminary injunction against the company, but because the case involved several different legal theories, it is hard to tell which was responsible for the ruling in the grower's favor.

In general, to prove a RICO violation there must be proof that there has been a "pattern of racketeering activity."⁴⁵³ In an **Arkansas** case, a grower's RICO claim was denied as a matter of law because the court found that he had failed to prove that the company's alleged violations were related and continuing.⁴⁵⁴

4. *State Unfair and Deceptive Trade Practices Acts*

Retaliation in a business relationship may also be a violation of state unfair and deceptive trade practices acts. In one case, growers were able to bring a claim under

⁴⁴⁹ *Pavlik v. Cargill, Inc.*, 9 F.3d 710 (8th Cir. 1993).

⁴⁵⁰ *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), *aff'd* in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998).

⁴⁵¹ *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998).

⁴⁵² *Baldree v. Cargill, Inc.*, 758 F. Supp. 704 (M.D. Fla. 1990), *aff'd* without opinion by 925 F.2d 1474 (11th Cir. 1991). RICO can be found at 18 U.S.C. §§ 1961-1968.

⁴⁵³ 18 U.S.C. § 1962. See also, *Pavlik v. Cargill, Inc.*, 9 F.3d 710, 715 (8th Cir. 1993) (stating that to prove RICO claim, the activities complained of must be related and continuing).

⁴⁵⁴ *Pavlik v. Cargill, Inc.*, 9 F.3d 710 (8th Cir. 1993).

the **North Carolina** act based on allegations of unjust termination that they also claimed were violations of the P&S Act.⁴⁵⁵

V. Recommendations for Voluntary Measures and Public Policy Reforms to Address Concerns Identified in the Broiler Grower Survey

A. Description of Proposed Legislation Affecting Grower Relations with Poultry Processors

Any discussion of public policy reforms affecting broiler growers' relationships with their poultry processing companies must include a discussion of three proposed pieces of legislation that have received much attention and debate over the last year. This proposed legislation includes: (1) the model Producer Protection Act endorsed by 17 state Attorneys General, (2) proposed amendments to the federal Packers and Stockyards Act, and (3) a bill providing for creation of a federal unfair and deceptive trade practices act for agricultural contracts and making amendments to the federal Agricultural Fair Practices Act. It is important to discuss these proposed pieces of legislation here because they address in part many of the grower concerns identified in the Broiler Grower Survey. Additional reforms would be needed to fully address grower concerns.

Following is a brief description of this proposed legislation.

1. Model Producer Protection Act

The model Producer Protection Act, found in Appendix 4-A of this report, was developed by the Iowa Attorney General's Office and has been endorsed by 17 state Attorneys General. Over the last year there has been much public debate over the provisions of this model Act.⁴⁵⁶ Some or all of the provisions in this model Act have been considered by many state legislatures including Georgia, Indiana, Illinois, Iowa, Kansas, Kentucky, Mississippi, Nebraska, and North Carolina. Much of this model Act has been included in bills introduced in Congress.⁴⁵⁷ At the time of printing there was also an effort by a coalition of organizations to include the model Act's provisions in the 2002 Farm Bill.

The model Producer Protection Act applies both to production contracts of the type that dominate the broiler industry and to marketing contracts. Key provisions of the model Act include:

⁴⁵⁵ *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197 (E.D.N.C. 1996), aff'd in relevant part sub nom. *Philson v. Goldsboro Milling Co.*, 1998 U.S. App. LEXIS 24630 (4th Cir. 1998).

⁴⁵⁶ See, for example, Michael Boehlje, et al., "The Producer Protection Act – will it protect producers?" *Agricultural Law Update*, Vol. 18, No. 2 (Jan. 2001) and Neil E. Harl, et al., "The Producer Protection Act – will it protect producers? A rejoinder," *Agricultural Law Update*, Vol. 18, No. 3 (Feb. 2001).

⁴⁵⁷ See, for example, S. 20, 107th Cong., 1st Sess. (2001).

Good Faith: Incorporates the obligation of parties to the contract to deal in good faith.⁴⁵⁸

Contract Readability and Risk Disclosure: Requires that contracts be in plain language and include a cover page that contains an index of major contract provisions and discloses material risks faced by a producer who enters the contract. The cover page must also disclose: (a) the producer's right to review and cancel contract within three days of signing, (b) the duration of the contract, (b) methods for contract termination, (c) standards for renegotiation, (d) responsibility for environmental damage, (e) all factors used in determining producer payment, (f) responsibility for obtaining and complying with all government permits, and (g) any contract term which the Act's administering official determines appropriate.⁴⁵⁹

Three-day Review and Cancellation: Provides contract producers with a contract review period that allows for cancellation up to three business days after execution of the contract.⁴⁶⁰

Confidentiality Provisions Void: Makes void and unenforceable any oral or written contract provision that requires the terms of the contract to be held confidential.⁴⁶¹

Producer Lien to Secure Payment Under Contract: Provides contract producers with a first-priority lien on the agricultural commodity (including poultry) they produced, the proceeds from the sale of that commodity, or the property of the contractor to ensure payments to producers due under the contract.⁴⁶² In the case of poultry, to preserve the lien the producer must file a lien statement providing specified information with the Secretary of State within 45 days of the date the poultry first arrives at the producer's facility.⁴⁶³

Producer Capital Investment Recapture: Provides that a contractor may not terminate, cancel, or fail to renew a production contract until specified notice provisions are satisfied and compensation for damages is made, if all of the production contracts between the producer and the contractor taken together require the producer to make capital investments of \$100,000 or more.⁴⁶⁴

⁴⁵⁸ Model Producer Protection Act, § 3.

⁴⁵⁹ Model Producer Protection Act, § 4.

⁴⁶⁰ Model Producer Protection Act, § 5.

⁴⁶¹ Model Producer Protection Act, § 6.

⁴⁶² Model Producer Protection Act, § 7.

⁴⁶³ Model Producer Protection Act, § 7(c).

⁴⁶⁴ Model Producer Protection Act, § 8.

If this provision is violated, the contractor must pay the producer the value of the remaining useful life of the structures, machinery, or equipment involved.⁴⁶⁵ Exceptions to this rule are made for situations where the producer has voluntarily abandoned the contractual relationship or been convicted of fraud or theft committed against the contractor.⁴⁶⁶

Notice to the producer and an opportunity to remedy are required if termination, cancellation, or failure to renew the contract is because of the producer's breach.⁴⁶⁷

Specified Unfair Trade Practices Prohibited: Prohibits a contractor from taking unfair actions including: (a) knowingly taking retaliatory action for a producer's exercise of or attempt to exercise a producer right; (b) providing false information to a producer; (c) refusing to give a producer information or data used to determine compensation under the production contract; (d) refusing to allow a producer to observe weighing and weights and measures used to determine compensation; (e) using the performance of any other producer to determine compensation of a producer or as basis for termination [prohibits compensation based on the ranking system prevalent in broiler contracts]; (f) requiring producers to make additional capital investments in connection with or to retain a production contract if the investments are beyond the requirements for such contract, unless the cost of the investment is offset by compensation or modifications to the contract that the producer agrees to in writing; and (g) executing a contract in violation of other provisions of the model Act or requiring a producer to waive rights under those provisions.⁴⁶⁸

Use of Other State's Laws in Contract Dispute Prohibited: Makes void and unenforceable any contract provision requiring application of another state's law to resolve a dispute.⁴⁶⁹

Mediation of Contract Disputes: Requires that all agricultural contracts provide for attempted resolution of contract disputes through mediation before the dispute can be heard by a court.⁴⁷⁰

Penalties and Enforcement Provisions: Establishes both civil and criminal penalties for violations of the model Act and authorizes the state Attorney

⁴⁶⁵ Model Producer Protection Act, § 8(e).

⁴⁶⁶ Model Producer Protection Act, § 8(d).

⁴⁶⁷ Model Producer Protection Act, § 8(c).

⁴⁶⁸ Model Producer Protection Act, § 9.

⁴⁶⁹ Model Producer Protection Act, § 11.

⁴⁷⁰ Model Producer Protection Act, § 12.

General and producers to bring cases in court for violations.⁴⁷¹ Authorizes reasonable attorney fees for producers who prevail in enforcement actions.

2. Proposed Packers and Stockyards Act Amendment

An amendment to the federal Packers and Stockyards Act has been introduced in Congress that would affect enforcement of the Act as to live poultry dealers, including processing companies that contract with broiler growers.⁴⁷² This bill would give the Secretary of Agriculture the authority to bring the same type of administrative enforcement actions against live poultry dealers that the Secretary can now bring against meat packers for violations of the Act's provisions. This authority includes filing administrative complaints against a live poultry dealer for violations of any provision of the P&S Act, requiring them to attend a hearing on the complaint, and seeking enforcement of administrative orders through action in court.

3. Proposed Federal Unfair and Deceptive Trade Practices Act for Agricultural Contracts

Another bill introduced in Congress would resemble the Packers and Stockyards Act, but serve as a federal unfair and deceptive trade practices act for all agricultural production and marketing contracts.⁴⁷³ In addition to the basic P&S Act prohibitions on unfair and deceptive practices and giving undue advantage or disadvantage to particular individuals, this bill would prohibit contractors from making any false or misleading statement in connection with a transaction involving any production contract and would prohibit retaliation against whistle-blowers.⁴⁷⁴ The bill would require contractors to maintain records for a period of not less than five years.⁴⁷⁵ The bill would also grant the Secretary of Agriculture enforcement authority over violations, including the power to assess civil penalties of up to \$100,000 for each violation.⁴⁷⁶

4. Proposed Agricultural Fair Practices Act Amendment

Amendments to the federal Agricultural Fair Practices Act (AFPA) have also been introduced in Congress, which may affect poultry processor and broiler grower relations.⁴⁷⁷ These proposed amendments are intended to provide a greater balance of power between processors and producers in negotiating production and marketing

⁴⁷¹ Model Producer Protection Act, § 13.

⁴⁷² H.R. 231, 107th Cong., 1st Sess. (2001); S. 1076, § 8, 107th Cong., 1st Sess. (2001).

⁴⁷³ S. 20, Title I, Subtitle B, 107th Cong., 1st Sess. (2001).

⁴⁷⁴ S. 20, Title I, § 111(a)(3), (4), 107th Cong., 1st Sess. (2001).

⁴⁷⁵ S. 20, Title I, § 111(b)(5), 107th Cong., 1st Sess. (2001).

⁴⁷⁶ S. 20, Title I, § 111(b), 107th Cong., 1st Sess. (2001). In § 114, the bill also includes dedicated funding for enforcement staff.

⁴⁷⁷ S. 20, Title I, Subtitle D, 107th Cong., 1st Sess. (2001); S. 3243, Title II, 106th Cong., 2nd Sess. (2000).

contracts in agriculture. As it relates to broiler grower and poultry processing company relations, the proposed amendments provide:

Good Faith Bargaining: Processors and accredited grower associations have a mutual obligation to bargain in good faith. They must meet at reasonable times and for reasonable periods for the purpose of negotiation of price, terms of sale, compensation for products produced or services rendered under contracts, or other provisions relating to products marketed or services rendered by the accredited association's members. The proposed amendments make it unlawful for a processor to fail to bargain in good faith with an accredited association.

Agriculture Secretary Authorized to Issue Accreditation: Provides procedures for grower associations to petition the Secretary of Agriculture for accreditation for purposes of bargaining with designated processors or handlers. The procedures provide standards for when an association may be accredited and allow processors an opportunity to respond to the association petition. There is provision for both informal proceedings and formal hearings on the accreditation petitions. Notice of an accreditation order is required. Procedures including an administrative hearing are provided for situations where the Secretary believes that an association should lose its accredited status.

Administrative and Judicial Enforcement: The Secretary of Agriculture may investigate complaints of violations of the provisions and bring administrative enforcement actions. The proposed amendments to the AFPA also provide authority for individuals to seek relief from a violation of the provisions or to prevent a future violation.

B. Context in Which Policy Decisions Must Be Made.

In making decisions regarding which policy reforms should be implemented to address the grower concerns identified in the Broiler Grower Survey, policy makers will hear much debate reflecting the disparate interests of growers and companies. The relationship between growers and processing companies is one of mutual dependence and benefit: growers rely on the company to provide the birds necessary to produce income from their poultry facilities and companies benefit from lower productions costs and capital investment associated with contract production as opposed to direct ownership and operation of all production facilities. Broiler growers' investment in facilities is roughly equal to the companies' investment in the rest of the production and processing complex. Contract growers likely provide lower labor costs than company employees through higher productivity as a result of growers' perceived greater control over their work and the avoidance of employee fringe benefit expenses. For this contract system of broiler production to survive, the grower-company relationship must work to the mutual benefit of both parties.

Even recognizing that the grower-company relationship is one of mutual dependence and benefit, policy makers must keep in mind that there is a significant imbalance of power between the processing companies and individual growers, with the power weighted

heavily in the companies' favor. Where the loss of an individual grower is a minor problem to the company, losing a contract with the company is likely a disaster for the grower. In this imbalance of power the companies' interest in keeping costs of producing broilers low competes against the growers' interest in obtaining sufficient returns to maintain financially viable operations.

It is within this context that policy reforms must be considered. Such reforms should ensure a more equal balance of power within the grower-company relationship, but cannot be so costly to the companies that they will have economic incentives to terminate their relationships with contract broiler growers and move into direct ownership and operation of all broiler production facilities.

C. Recommendations for Policy Reforms to Address Concerns Identified in Broiler Grower Survey

This section includes recommendations for policy reforms to address grower concerns that have not yet been resolved by the state and federal laws discussed above. Because the best policy reforms often come from voluntary changes in the relationship between the parties involved, in addition to providing recommendations for reform through law, this section will also discuss measures that companies and growers could undertake to improve their relations.

1. Encourage collective bargaining between growers and processing companies.

One goal of any public or private policy reform should be to reduce the imbalance of power between broiler growers and processing companies. Reducing the imbalance in power—which now heavily favors companies over growers—will likely improve the growers' overall perception of their relationship with the companies. If done effectively, it could also provide a mechanism for growers to address all of the 10 concerns identified through the Broiler Grower Survey.

Voluntary Measures: One way to reduce the power imbalance would be for companies to meet, discuss, and bargain with growers as a group rather than individuals to address key aspects of the growers' relationship with the company.

Companies could implement a policy by which they regularly invite growers as a group in to discuss key aspects of their relationship, including contract terms, issues related to inputs such as chicks and feed, recommended equipment changes or improvements, and other factors related to the calculation of growers' payments under the contract. To effectively change the balance of power at these meetings companies would have to demonstrate a marked willingness to consider and adjust policy based on recommendations made by growers. To ensure that growers have the opportunity to participate in setting the confines of the core aspect of their relationship with the company—the growout contract—such meetings and bargaining sessions would have to take place before new contracts are drafted. Companies could also notify growers of a method by

which they as a group could request and obtain meetings with company officials to discuss and attempt to resolve issues as they arise.

Public Policy Reforms: Another way to move toward reducing the imbalance of power between broiler growers and processing companies is by implementing laws that require companies to participate in collective bargaining efforts made by growers. The proposed amendment to the Agricultural Fair Practices Act, for example, specifies that failure to offer to accredited associations the same terms made available to individual growers would be a violation of good faith bargaining requirements.⁴⁷⁸ An advantage of implementing such policy through law is that it assures that all companies are required to participate on the same footing. It also ensures that all growers are given the opportunity to organize to collectively bargain. Such assurance cannot be obtained through voluntary measures alone. Enactment of the amendments to the Agricultural Fair Practices Act, discussed above, would make huge strides in reducing the imbalance of power between the companies and the growers. Those amendments also provide protections for companies to ensure that they are not required to bargain with associations that do not represent a significant number of the companies' growers.

2. Ensure that growers are given complete and understandable information about key aspects of their growout arrangements.

One of the best ways to help reduce the imbalance of bargaining power between companies and growers is to equalize their access to information about key aspects of their business relationship. Improving growers' access to information about such things as feed volume, content, and quality; vigor and age of breeder flocks from which chicks are drawn; methods and standards for condemnations; and methods for calculation of grower pay would address in part several of the grower concerns identified in the Broiler Grower Survey. There are many policy reform measures that may be taken to meet this goal of equalizing access to key information.

Voluntary Measures: Companies and growers could develop a program to better document feed quality and quantity. Some elements of such a program could include: (a) establishing standards for quality and sampling and analyzing the feed quality for each delivery to growers; (b) giving growers a copy of the feed analysis upon delivery; (c) giving growers copies of feed weight documentation upon delivery; (d) establishing a method whereby the volume of feed can be checked through measurement of the bins immediately upon delivery to growers' facilities; and (e) establishing a procedure for refereeing disputes between growers and companies over the quality of feed, which might include sharing the of the cost of an additional quality analysis.

⁴⁷⁸ S. 20, Title I, § 5(b), 107th Cong., 1st Sess. (2001).

Programs to improve growers' access to information about other factors that affect the level of grower pay could also be developed. These information programs might include such things as: (a) providing growers with information about the historical performance of birds drawn from each of the various breeder flocks and identifying at time of delivery the flock from which the chicks were drawn; (b) adjusting growers' performance rating used in calculation of pay to account for different historical performance standards of chicks from the various breeder flocks; (c) developing methods to ensure that chicks from the various breeder flocks are distributed randomly and providing growers with information to demonstrate this; (d) providing growers with a document that sets out the standards and methods for making condemnation decisions at the processing plant, which growers may use if they choose to view their birds being processed; (e) conducting educational sessions for growers in which all of the factors used in the settlement sheet to calculate pay are explained in detail; and (f) establishing procedures for growers to use to review with the company the figures on specific settlement sheets that they do not understand or believe may be incorrect.

The Packers and Stockyards Act and its implementing regulations provide specific protections for growers with regard to feed weighing, prompt weighing of birds upon arrival at a plant or holding station, contents of settlement sheets, and access to the statutory trust to ensure payment. By having companies give growers a written statement of their rights upon signing a contract and at regular intervals throughout the contract relationship, growers' access to information about their legal rights in their growout relationship will be significantly improved.

Public Policy Reforms: Some important public policy reforms currently being debated also would assist in meeting the goal of equalizing the companies' and growers' access to information about key aspects of their business relationship. Enactment of provisions of the model Producer Protection Act that require growout contracts to be in plain language understandable to growers and to disclose in a cover sheet the material risks associated with the contract would not only help growers understand the often technical provisions of the contract, but would also ensure that they are better able to evaluate their risks before signing. In cases where grower pay is affected by (a) the quality of feed, chicks, and medications supplied by the company; (b) condemnations that may result from handling of the birds by company employees or agents; and (c) other factors outside the growers' control, a discussion of these circumstances should be included in the statement of material risks. It is not obvious from the model Act's requirements for disclosure of risks that such a disclosure would be required. Thus, some amendment to the model Act may be necessary to cover this issue.

Enactment of the proposed federal unfair and deceptive trade practices act for agricultural contracts—the provision of Senate Bill 20 that prohibits companies from giving out misleading information—also furthers the goal of equalizing

access to information by ensuring that companies make only accurate information available.⁴⁷⁹ By giving growers a legal remedy against a company that provides false or misleading information, this provision could greatly improve companies' incentives to ensure that their employees and agents are providing accurate information to growers. Currently, many growers who rely on false or misleading information from company employees are often unable to even present evidence of misinformation to a court, due to the operation of entirety clauses in the contracts.

3. Ensure effective enforcement of laws currently on the books.

Information presented in this chapter demonstrates that there are many laws currently on the books that at least in part address grower concerns identified in the Broiler Grower Survey. One of the best ways to make these current laws more effective in resolving growers' concerns is to ensure that there are effective methods to enforce those provisions. Strong enforcement methods are important, not only because they authorize direct actions to enforce the laws' provisions, but also because they provide a strong incentive for parties covered by the law to self-regulate by ensuring their own compliance in order to avoid the costs and penalties associated with enforcement actions.

As discussed above, the federal Packers and Stockyards Act and its implementing regulations address many of the concerns identified in the Broiler Grower Survey. However, GIPSA—the agency in charge of administering those provisions—does not have the full panoply of enforcement authorities available to it to address violations of the Act in the poultry sector that it has to address such violations in the red meat sector. Enactment of the proposed amendments to the Packers and Stockyards Act described above will provide the agency with the same kind of enforcement powers in the poultry industry and the red meat industry.⁴⁸⁰

The Packers and Stockyards Act authorizes those who are injured by a violation of the Act to bring lawsuits to collect damages. However, because of the high cost of litigation, an individual grower injured by a company's violation of the Act is not likely to be able to maintain a lawsuit against the vast resources of the company. Amending the Act to allow growers to collect attorney fees from the company if the grower succeeds in proving a violation in court would further strengthen the grower protections included in the Act.

4. Reform the use of the ranking system to determine grower pay.

The first two grower concerns identified in the Broiler Grower Survey are related. A substantial percentage of growers said that they believe that the ranking system—whereby one grower's production performance is ranked against that of other

⁴⁷⁹ S. 20, Title I, § 111(a)(3), 107th Cong., 1st Sess. (2001).

⁴⁸⁰ H.R. 231, 107th Cong., 1st Sess. (2001); S. 1076, § 8, 107th Cong., 1st Sess. (2001).

growers—does not provide a good incentive for them to work hard. Over three-quarters of the growers also believe that their pay depends more on the quality of inputs supplied by the company than on the quality of the grower's work.

There are several policy reforms that might be implemented to give growers more of an incentive and to ensure them that their pay is not being unfairly lowered by factors outside their control.

Voluntary Measures: Growout contracts could be rewritten to adopt a method for calculating grower pay that is not based on ranking growers against each other. Such a method could be more closely tied to the services the grower is providing. It could set a minimum base payment that is guaranteed to growers. One such method, already used in some contracts, might be to pay growers based on the square footage of the broiler houses that the grower provides. To this base guaranteed payment could be added premiums that reflect other services the grower provides, including labor. Other premiums might be at a fixed rate, such as one paid to all growers for each bird delivered to the plant, with the level of such payment adjusted according to market conditions.

Even companies maintaining a ranking system for calculating pay can take actions that will help ensure that growers do not feel disadvantaged by this system. One such action would be to ensure that company employees who also grow broilers for the company—particularly those that have a role in delivering inputs to growers—are not ranked against non-employee growers. This should help reduce grower concerns that there might be favoritism or the ability to manipulate which grower receives the better quality inputs. Another such action would be to incorporate provisions in the contract that set out methods used to ensure that inputs such as feed and chicks are delivered to growers in the ranking group randomly.

Public Policy Reform: Growers' concerns about the ranking system method of determining their pay could also be addressed through enactment of a statute that prohibits the use of the performance of one grower to determine the pay of another grower. The model Producer Protection Act, discussed above, includes such a provision.⁴⁸¹ Enactment of this provision on a federal level, rather than at the state level, would ensure that all broiler companies are required to eliminate this method for calculating pay at the same time and would ensure that companies and growers in one state are not pitted against those in another. The model Act's provisions do not address what type of payment calculation method might replace the ranking system. This would be left to companies and growers to negotiate.

⁴⁸¹ Model Producer Protection Act, § 9.

GIPSA could also issue regulations under the Packers and Stockyards Act to address the growers' concern that their level of pay is dependent more on the quality of inputs supplied by the company than their own efforts. Such regulations could establish that a pattern or practice by the company, or any of its agents, of delivering inferior chicks, feed, or other inputs to any particular grower constitutes unjust discrimination and subjects a grower to an unfair disadvantage in violation of the Act. GIPSA regulations could require random distribution of chicks and feed to growers, describing how randomness will be assessed by the agency.

5. Make the statutory trust securing grower payment available to address disputes over inaccurate payment calculations.

The Broiler Grower Survey identified grower concerns about the accuracy of feed weights and the accuracy and promptness of weighing birds upon delivery to a plant for processing. As discussed above, under the Packers and Stockyards Act GIPSA has authority to ensure that growers receive payment by requiring the companies to hold the birds, proceeds from the sale of the birds, and other company assets in trust until growers are paid.

Public Policy Reform: Because misweighing or delays in weighing will often lead to a company failing to make full payment for the birds produced by a grower, GIPSA could adopt regulations explicitly making the statutory trust procedures available to growers who allege that they were underpaid due to misweighing or delayed weighing.

6. Increase grower awareness of dispute resolution processes and reform those processes to address grower concerns.

The Broiler Grower Survey revealed a lack of awareness among growers about contract provisions relating to dispute resolution, and a reluctance among those growers who were aware of them to use the mediation, peer review, and arbitration mechanisms provided for.

Policy reforms could be implemented to improve growers' knowledge of and satisfaction with dispute resolution methods under production contracts.

Voluntary Measures: One means to address grower confusion about dispute resolution would be for those companies that require some form of mediation, peer review, or arbitration to clearly and prominently set out in the contract the rules that would be followed when resolving disputes and, if necessary, to make available to growers the rules of any ADR organization, such as the American Arbitration Association, whose rules would be used.

Contract provisions requiring growers to use ADR in case of dispute with the company should also set forth reasonable deadlines for starting the ADR process. A reasonable time after the dispute arises must be allowed in order to have a meaningful resolution process, so that the grower has time to gather information

and make a decision about whether to seek legal advice. This time also allows for the company and grower to engage in informal negotiations and discussions without the pressure of needing to immediately commence a formal ADR process.

Public Policy Reform: Federal statutory changes could be enacted that would permit growout contracts to require resolution of contract disputes through binding arbitration only if the parties agree to pursue arbitration after the dispute arises or if the arbitration provision itself was the subject of collective bargaining between the company and growers.

7. Reduce growers' risk with respect to company-mandated capital improvements.

The Broiler Grower Survey revealed grower concerns about the expense and effectiveness of improvements required by the companies. The survey revealed that some growers feel that they must agree to implement improvements or risk losing their contracts.

Voluntary Measures: Companies should make certain that all contracts spell out an agreement with respect to improvement requirements. The contract provisions could, for example, ensure that the equitable costs of required improvements will be covered through increased compensation and set out any limitations on the dollar-value or experimental nature of improvements that may be required. Resistance to company-required improvements may be minimized among growers if companies are contractually obligated to share in the costs of those improvements.

A growout contract could also establish a process for resolving disputes relating to the reasonableness of required improvements. The process should recognize the right of representatives of grower associations, as well as individual growers, to negotiate with the company. If the company makes a distinction in company and grower obligations between replacement of items lost through normal wear and tear and upgrades in the quality or sophistication of equipment, this should be clearly stated.

Public Policy Reform: The model Producer Protection Act, discussed above, includes a provision that addresses growers' expressed concerns about company-mandated improvements.⁴⁸² This Act would impose a duty on companies to compensate growers for the value of the remaining useful life of buildings, machinery, equipment, and other capital investment items if a company terminates or fails to renew a production contract without good cause. Companies' interests are also reflected in the model Act through provisions addressing a grower's breach or abandonment of the contract or fraud or theft against the company.

⁴⁸² Model Producer Protection Act, § 8.

Appendix 4-A

Producer Protection Act

September 2000

Section 1. Definitions

Section 2. Production Contracts Governed by this Act

Section 3. Implied Obligation of Good Faith

Section 4. Disclosure of Risks and Readability

Section 5. Contract Producer's Three Day Right to Review

Section 6. Confidentiality Provisions Prohibited

Section 7. Production Contract Lien

Section 8. Production Contracts Involving Investment Requirements

Section 9. Unfair Practices

Section 10. Waivers Unenforceable

Section 11. Choice of Law

Section 12. Mediation

Section 13. Enforcement

Section 14. Rulemaking

Section 15. Applicability of Act

Section 1. Definitions. As used in this Act, unless the context otherwise requires:

- a. "Active contractor" means a person who owns a commodity that is produced by a contract producer at the contract producer's contract operation according to a production contract.
- b. "Agricultural Contract" means a marketing contract or a production contract.
- c. "Animal feeding operation" means a lot, corral, building, or other area in which livestock is confined and fed. An animal feeding operation does not include a livestock market.
- d. "Capital investment" means an investment in one of the following:
 - (1) A structure, such as a building or manure storage structure.
 - (2) Machinery or equipment associated with producing a commodity which has a useful life in excess of one year.
- e. "Commodity" means livestock, raw milk, or a crop.
- f. "Confinement feeding operation" means an animal feeding operation in which livestock is confined to areas which are totally roofed.
- g. "Contract crop field" means farmland located in this state where a crop is produced according to a production contract by a contract producer who owns or leases the farmland.
- h. "Contract livestock facility" means an animal feeding operation located in this state in which livestock or raw milk is produced according to a production contract by a contract producer who holds a legal interest in the animal feeding operation. "Contract livestock facility" includes a confinement feeding operation, an open feedlot, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed.
- i. "Contract operation" means a contract livestock facility or a contract crop field.
- j. "Contract producer" means a producer who holds a legal interest in a contract operation and who produces a commodity under a production contract.
- k. "Contractor" means a person who is an active contractor or a passive contractor.
- l. "Crop" means a plant used for food, animal feed, fiber, oil, pharmaceuticals, nutraceuticals, or seed, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, tobacco, wheat, and grasses used for forage or silage.
- m. "Farmland" means agricultural land that is suitable for use in farming. [State may want to reference another statutory definition.]

- n. "Investment requirement" means a provision in a contract which require [sic] the contract producer to make capital investments associated with producing a commodity subject to a production contract. The provisions may be included as part of one or more oral or written agreements or contracts, and may be included as part of a production contract.
- o. "Livestock" means beef cattle, dairy cattle, poultry, sheep, or swine.
- p. "Marketing contract" means an oral or written agreement between a processor and a producer for the purchase of commodities grown or raised by the producer in this state. A marketing contract is executed when it is signed or orally agreed to by each party or by a person authorized to act on the party's behalf.
- q. "Open feedlot" means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover is maintained during the period that livestock is confined in the operation.
- r. "Passive contractor" means a person who furnishes management services to a contract producer, and who does not own a commodity that is produced by the contract producer at the contract producer's contract operation according to a production contract.
- s. "Processor" means a person engaged in the business of manufacturing goods from commodities, including by slaughtering or processing livestock, processing raw milk, or processing crops. [Exemption for small processors?] [sic]
- t. "Produce" means to do any of the following:
- (1) Provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, then "produce" includes milking the dairy cattle and storing raw milk.
 - (2) Provide for planting, raising, harvesting, and storing a crop. "Produce" includes preparing the soil for planting and nurturing the crop by the application of fertilizers or soil conditioners as defined in [state inserts reference to fertilizer statute] or pesticides as defined in [state inserts reference to pesticide statute].
- u. "Producer" means a person who produces a commodity, including but not limited to, a contract producer. "Producer" does not include a commercial fertilizer or pesticide applicator, a feed supplier, or a veterinarian, when acting in such capacity.
- v. "Production contract" means an oral or written agreement that provides for the production of a commodity or the provision of management services relating to the production of a commodity by a contract producer. A production contract is executed when it is signed or orally agreed to by each party to the contract or by a person authorized to act on the party's behalf.

Section 2. Production Contracts Governed by this Act. This Act applies to production contracts that relate to the production of a commodity owned by an active contractor and produced by a contract producer at the contract producer's contract operation, if one of the following applies:

- a. Contract with Active Contractor. The production contract is executed by an active contractor and a contract producer for the production of the commodity.
- b. Contract with Active Contractor and Passive Contractor. The production contract is executed by an active contractor and a passive contractor for the provision of management services to the contract producer in the production of the commodity.
- c. Contract with Passive Contractor. The production contract is executed by a passive contractor and a contract producer, if all of the following apply:
 - (1) The contract provides for management services furnished by the passive contractor to the contract producer in the production of the commodity.
 - (2) The passive contractor has a contractual relationship with the active contractor involving the production of the commodity.

Section 3. Implied Obligation of Good Faith. An agricultural contract imposes an obligation of good faith, as defined in section 1-201 of the Uniform Commercial Code, on all parties with respect to the performance and enforcement of the agricultural contract.

Section 4. Disclosure of Risks and Readability.

- a. Disclosure Statement. An agricultural contract must be accompanied by a clear written disclosure statement setting forth the nature of the material risks faced by the producer if the producer enters into the contract. The statement must meet the readability requirements of subsection (b). The statement may be in the form of a written statement or checklist and may be developed in cooperation with producers or producer organizations. The statement shall disclose the following:
 - (1) in the case of production contracts, the producer's right to review as provided in section 5.
 - (2) contract duration;
 - (3) contract termination;
 - (4) renegotiation standards;
 - (5) responsibility for environmental damage;
 - (6) factors to be used in determining payment;
 - (7) responsibility for obtaining and complying with local, state, federal permits;

(8) any other contract term which the [commissioner/secretary/attorney general] determines is appropriate for disclosure.

b. Readability of Contracts.

(1) Definition. As used in this subsection, "*legible type*" means a typeface at least as large as ten-point modern type, one-point leaded.

(2) *Cover Sheet Requirements.*

(a) Mandatory Cover Page. An agricultural contract entered into, amended, or renewed after the effective date of this Act must contain as the first page, or first page of text if it is preceded by a title page or pages, a cover sheet as provided in this section.

(b) Requirements. The cover sheet or sheets must comply with paragraph 3 and must contain the following [sic] all of the following:

- i. A brief statement that the document is a legal contract between the parties.
- ii. The statement "READ YOUR CONTRACT CAREFULLY. This cover sheet provides only a brief summary of your contract. This is not the contract and only the terms of the actual contract are legally binding. The contract itself sets forth, in detail, the rights and obligations of both you and the contractor or processor. IT IS THEREFORE IMPORTANT THAT YOU READ YOUR CONTRACT CAREFULLY."
- iii. The written disclosure of risks required by subsection (a).
- iv. A statement detailing, in plain language, the producer's right to review the contract as described in section 5.
- v. An index of the major provisions of the contract and the pages on which they are found, including all of the following:
 - (i) The names of all parties to the contract.
 - (ii) The definition sections of the contract.
 - (iii) The provisions governing termination, cancellation, renewal, and amendment of the contract by either party.
 - (iv) The duties or obligations of each party.
 - (v) Any provisions subject to change in the contract.

(3) *Contract Format and Plain Language.* An agricultural contract must be in legible type, appropriately divided and captioned by its various sections, and written in clear and coherent language using words and grammar that are understandable by a person of

average intelligence, education, and experience within the industry. This paragraph does not apply to the following terms in an agricultural contract:

- (a) **Legally Required.** Particular words, phrases, provisions, or forms of agreement specifically required, recommended, or endorsed by a state or federal statute, rule or regulation.
- (b) **Customarily Used Terms.** Technical terms used to describe the services or property which are the subject of the contract, if the terms are customarily used by producers in the ordinary course of business in connection with the services or property being described.

c. Review by [Commissioner/Secretary/Attorney General]

(1) *Process of Review.* A contractor or processor may submit an agricultural contract to the [commissioner/secretary/attorney general] for review as to whether it complies with this section. After reviewing the contract, the [commissioner, secretary/attorney general] shall do one of the following:

- (a) Certify that the contract complies with this section.
- (b) Decline to certify that the contract complies with this section and note objections.
- (c) Decline to review the contract because the contract's compliance with this section is subject to pending litigation.
- (d) Decline to review the contract because the contract is not subject to this section.

(2) *Factors in Determining Readability.* In determining whether an agricultural contract or cover sheet is readable within the meaning of subsection b, the [commissioner/secretary/attorney general] shall consider at least the following factors:

- (a) The simplicity of the sentence structure.
- (b) The extent to which commonly used and understood words are employed.
- (c) The extent to which esoteric legal terms are avoided.
- (d) The extent to which references to other sections or provisions of the contract are minimized.
- (e) The Flesch scale analysis readability score as outlined in [state inserts reference].
- (f) The extent to which clear definitions are used in the text of the contract.
- (g) Additional factors relevant to the readability or understandability of the contract.

(3) *Process Not Reviewable.* Actions of the [commissioner/secretary/attorney general] under this subsection are not subject to judicial review.

(4) *Limited Effect of Certification.* A contract certified under this subsection is deemed to comply with subsections (a) and (b). Certification of a contract under this subsection does not constitute an approval of the contract's legality or legal effect. If the [commissioner/secretary/attorney general] certifies a contract or fails to respond within 30 days of receipt of the contract, then the contractor or processor will have complied with this subsections (a) and (b) and the remedies stated in paragraph (6) and section 12 [sic; likely should be 13] are not available.

(5) *Review Not Required.* Failure to submit a contract to the [commissioner/secretary/attorney general] for review under this subsection does not show a lack of good faith or raise a presumption that the contract violates this section.

(6) *Reformation by Court.*

(a) Change Terms. In addition to the remedies provided in section 12 [sic; likely should be 13], a court reviewing an agricultural contract may change the terms of the contract or limit a provision to avoid an unfair result if the court finds all of the following:

- i. A material provision of the contract violates subsection (a) or (b).
- ii. The violation caused the producer to be substantially confused about any of the rights, obligations, or remedies of the contract.
- iii. The violation has caused or is likely to cause financial detriment to the producer.

(b) Avoid Unjust Enrichment. If the court reforms or limits a provision of an agricultural contract, the court shall also make orders necessary to avoid unjust enrichment. Bringing a claim for relief under this paragraph does not entitle a producer to withhold performance of an otherwise valid contractual obligation. No relief may be granted under this paragraph unless the claim is brought before the obligations of the contract have been fully performed.

(7) *Limits on Remedies.*

(a) Penalties. In a proceeding in which civil penalties are claimed from a party for a violation of this section, it is a defense to the claim that the party made a good faith and reasonable effort to comply.

(b) Attorneys' Fees. Notwithstanding section 12 [sic; likely should be 13], a party who has made a good faith and reasonable effort to comply with this section may not be assessed attorney's fees or costs of investigation in an action for violating this section.

(8) *Limits on Producer Actions.* Violation of this section is not a defense to a claim arising from a producer's breach of an agricultural contract. A producer may recover actual

damages caused by a violation of this section only if the violation caused the producer to not understand the rights, obligations, or remedies of the contract.

(9) *Statute of Limitations.* A claim that an agricultural contract violates this section must be raised within 6 years of the date the contract is executed by the producer.

Section 5. Contract Producer's Three Day Right to Review. A contract producer may cancel a production contract by mailing a written cancellation notice to the contractor within three business days after the contract is executed, or before a later cancellation deadline if a later deadline is specified in the contract. The contract producer's right to cancel, the method by which the contract producer may cancel, and the deadline for canceling the production contract shall be clearly disclosed in every production contract.

Section 6. Confidentiality Provisions Prohibited.

a. Prohibition. A contractor or processor shall not on or after the effective date of this Act, enforce a provision in an agricultural contract if the provision provides that information contained in the agricultural contract is confidential.

b. Confidentiality Provisions Void. A provision which is part of an agricultural contract is void if the provision states that information contained in the agricultural contract is confidential. The confidentiality provision is void whether the confidentiality provision is express or implied; oral or written; required or conditional; contained in the agricultural contract, another agricultural contract, or in a related document, policy, or agreement. This section does not affect other provisions of an agricultural contract or a related document, policy, or agreement which can be given effect without the voided provision. This section does not require a party to an agricultural contract to divulge information in the agricultural contract to another person.

Section 7. Production Contract Lien.

a. Applicability of Section. A lien established under this section depends upon the execution of a production contract that provides for producing a commodity owned by a contractor by a contract producer at the contract producer's contract operation.

b. Establishment of Lien - Priority. A contract producer who is a party to a production contract shall have a lien as provided in this section. The amount of the lien shall be the amount owed to the contract producer pursuant to the terms of the production contract, which may be enforced as provided in subsection (d).

(1)(a) *Livestock and Raw Milk.* If the production contract is for the production of livestock or raw milk, all of the following shall apply:

i. Livestock. For livestock, the lien shall apply to all of the following:

(i) If the livestock is not sold or slaughtered by the contractor, the lien shall be on the livestock.

(ii) If the livestock is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this subparagraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

(iii) If the livestock is slaughtered by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 9-102 of the Uniform Commercial Code.

ii. Raw Milk. For raw milk, the lien shall apply to all of the following:

(i) Milk Not Sold. If the raw milk is not sold or processed by the contractor, the lien shall be on the raw milk.

(ii) Milk is Sold. If the raw milk is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this subparagraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

(iii) Milk Processed. If the raw milk is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 9-102 of the Uniform Commercial Code.

(b) *Duration of Lien.* The lien on livestock or raw milk is created at the time the livestock arrives at the contract livestock facility and continues for one year after the livestock is no longer under the authority of the contract producer. For the purposes of this section, livestock is no longer under the authority of the contract producer when the livestock leaves the contract livestock facility.

(2)(a) *Crops.* If the production contract is for the production of crops, all of the following shall apply:

i. Crop Not Sold. If the crop is not sold or processed by the contractor, the lien shall be on the crop.

ii. Crop Sold. If the crop is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this subparagraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

iii. Crop Processed. If the crop is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 9-102 of the Uniform Commercial Code

(b) *Duration of Lien.* The lien on a crop is created at the time the crop is planted and continues for one year after the crop is no longer under the authority of the contract producer. For purposes of this section, a crop is no longer under the authority of the

contract producer when the crop or a warehouse receipt issued by a warehouse operator licensed under [state inserts statutory reference] for grain from the crop is no longer under the custody or control of the contract producer.

c. Preserving the Lien -- Filing Requirements.

(1) *Filing Lien Statement.* In order to preserve a lien created pursuant to this section, a contract producer must file in the office of the Secretary of State a lien statement on a form prescribed by the secretary of state. If the lien arises out of producing livestock or raw milk, the contract producer must file the lien within 45 days after the day that the livestock first arrives at the contract livestock facility. If the lien arises out of producing a crop, the contract producer must file the lien within 45 days after the day that the crop is first planted. The Secretary of State shall charge a fee of not more than \$10.00 for filing the statement. The Secretary of State may adopt rules pursuant to [state's administrative procedure law] for the electronic filing of the statements.

(2) *Contents of Lien Statement.* The statement must include all of the following:

- (a) An estimate of the amount owed pursuant to the production contract.
- (b) The date when the livestock arrives at the contract livestock facility or the date when the crop was planted.
- (c) The estimated duration of the period when the commodity will be under the authority of the contract producer.
- (d) The name of the party to the production contract whose commodity is produced pursuant to the production contract.
- (e) The description of the location of the contract operation, by county and township.
- (f) The printed name and signature of the person filing the form.

(3) *Priority of Lien.* Except as provided in [state may insert reference to veterinarian's lien], a lien created under this section until preserved and a lien preserved under this section are superior to and shall have priority over a conflicting lien or security interest in the commodity, including a lien or security interest that was perfected prior to the creation of the lien under this section.

d. Enforcement. Before a commodity leaves the authority of the contract producer as provided in subsection (b), the contract producer may foreclose a lien created in that subsection in the manner provided for the foreclosure of secured transactions in sections 9-504, 9-506, and 9-507 of the Uniform Commercial Code. After the commodity is no longer under the authority of the contract producer, the contract producer may enforce the lien in the manner provided in article 9, part 5 of the Uniform Commercial Code.

Section 8. Production Contracts Involving Investment Requirements.

a. Applicability. This section only applies to a production contract executed by a contract producer and a contractor, if the contract producer must make capital investments of \$100,000 or more according to investment requirements provided in all production contracts in which the contract producer and the contractor are parties. The value of the capital investments shall be deemed to be the total dollar amount spent by the contract producer in satisfying the investment requirements, if that amount is ascertainable.

b. Restrictions on Contract Termination. Except as provided in subsection (d), a contractor shall not terminate, cancel, or fail to renew a production contract until the contractor has done the following:

(1) *Notice.* The contractor has provided the contract producer written notice of the intention to terminate, cancel, or not renew at least 90 days before the effective date of the termination, cancellation, or nonrenewal.

(2) *Damages.* The contract producer has been reimbursed for damages incurred due to the termination, cancellation, or failure to renew. Damages shall be based on the value of the remaining useful life of the structures, machinery or equipment involved.

c. Breach of Investment Requirements. Except as provided in subsection (d), if a contract producer materially breaches a production contract, including the investment requirements of a production contract, a contractor may not terminate, cancel, or fail to renew the production contract until the following have occurred:

(1) *Notice.* The contractor has provided a written notice of termination, cancellation, or nonrenewal at least 45 days before the effective date of such termination, cancellation, or nonrenewal. The notice must provide a list of complaints alleging causes for the breach.

(2) *Failure to Remedy.* The contract producer fails to remedy each cause of the breach as alleged in the list of complaints provided in the notice within 30 days following receipt of the notice. An effort by a contract producer to remedy a cause of an alleged breach shall not be construed as an admission of a breach in a civil cause of action.

d. Exceptions. A contractor may terminate, cancel, or fail to renew a production contract without notice or remedy as required in subsections (b) and (c) if the basis for the termination, cancellation, or nonrenewal is any of the following:

(1) *Abandonment.* A voluntary abandonment of the contractual relationship by the contract producer. A complete failure of a contract producer's performance under a production contract shall be deemed to be abandonment.

(2) *Fraud Conviction.* The conviction of a contract producer of an offense of fraud or theft committed against the contractor.

e. Penalty. If a contractor terminates, cancels, or fails to renew a production contract other than provided in this section, the contractor shall pay the contract producer the value of the remaining useful life of the structures, machinery, or equipment involved.

Section 9. Unfair Practices.

a. Definitions. As used in this section:

(1) "*Contract input*" means a commodity or an organic or synthetic substance or compound that is used to produce a commodity including but not limited to any or the following:

- (a) Livestock or plants.
- (b) Agricultural seeds. [State may want to reference additional definition.]
- (c) Semen or eggs for breeding livestock.
- (d) A fertilizer or pesticide. [State may want to reference additional definitions.]

(2) "*Producer right*" means one of the following legal rights and protections:

- (a) Right to Join Association. The right of a producer to join or belong to, or to refrain from joining or belonging to, an association of producers.
- (b) Right to Contract. The right of a producer to enter into a membership agreement or marketing contract with an association of producers, a processor, or another producer and the right of the producer to exercise contractual rights under such a membership agreement or marketing contract.
- (c) Right to be a Whistleblower. The right of a producer to lawfully provide statements or information (including to the United States Secretary of Agriculture or to a law enforcement agency) regarding alleged improper actions or violations of law by a contractor or processor. This right does not include the right to make statements or provide information if the statements or information are determined to be libelous or slanderous.
- (d) Right to Use Contract Producer Lien. The right of a producer to file, continue, terminate, or enforce a lien under section 7.
- (e) Right to Review Production Contracts. The right of a contract producer to utilize protections to review production contracts under section 5.
- (f) Right to Disclose Contractual Terms. The right of a producer to disclose the terms of agricultural contracts under section 6.
- (g) Right to Exercise Other Protections. The right of a producer to enforce other protections afforded by this Act or other laws or regulations.

b. Unfair Practices. It shall be unlawful for any contractor or processor knowingly to engage or permit any employee or agent to engage in the following practices in connection with agricultural contracts:

(1) *Retaliation.* To take actions to coerce, intimidate, disadvantage, retaliate against, or discriminate against any producer because the producer exercises, or attempts to exercise, any producer right, including actions affecting the following:

- (a) The execution, termination, extension, or renewal of an agricultural contract.
- (b) The treatment of a producer, which may include providing discriminatory or preferential terms in an agricultural contract or interpreting terms of an existing agricultural contract in a discriminatory or preferential manner. The terms may relate to the price paid for a commodity; the quality or the quantity of a commodity demanded; or financing, including investment requirements.
- (c) The grant of a reward or imposition of a penalty, including the denial of a reward. The reward or penalty may be in any form, including but not limited to, financial rewards or penalties. Financial rewards or penalties may relate to loans, bonuses, or inducements.
- (d) Alter the quality, quantity, or delivery times of contract inputs provided to the producer.

(2) *False Information.* To provide false information to the producer, which may include false information relating to any of the following.

(a) A producer with whom the producer associates or an association of producers or an agricultural organization with which the producer is affiliated, including but not limited to any of the following:

- i. The character of the producer.
- ii. The condition of the finances or the management of the association of producers or agricultural organization

(b) Producer rights provided by this Act or other provisions of law.

(3) *Compensation Information.* To refuse to provide to a contract producer upon request the statistical information and data used to determine compensation paid to the contract producer under a production contract, including, but not limited to, feed conversion rates, feed analyses, origination and breeder history

(4) *Observation of Weighing.* To refuse to allow a contract producer or the contract producer's designated representative to observe, by actual observation at the time of weighing, the weights and measures used to determine the contract producer's compensation under a production contract.

(5) *"Tournament" Compensation.* To use the performance of any other contract producer to determine the compensation of a contract producer under a production contract or as the basis of the termination, cancellation, or renewal of a production contract.

(6) *Additional Capital Investments.* To require a contract producer to make new or additional capital investments in connection with, or to retain, continue, or renew, a production contract which are beyond the investment requirements of such production contract. It shall not be a violation of this section if such new or additional capital investments are partially paid for by the contractor, or offset by other compensation or modifications to contract terms, in a manner the contract producer agrees to in writing as constituting acceptable and satisfactory consideration for the new capital investment.

(7) *Disclosure of Risks and Readability.* To execute an agricultural contract in violation of the disclosure of risks and readability requirements of section 4.

(8) *Confidentiality Provisions.* To execute an agricultural contract which includes a confidentiality provision in violation of section 6.

(9) *Mediation Provisions.* To execute an agricultural contract without a mediation provision as required under section 13. [sic; should be 12]

(10) *Waivers.* To execute an agricultural contract which includes a waiver of any producer right or any obligation of a contractor or processor established under this Act.

(11) *Choice of Law.* To execute an agricultural contract requiring the application of the law of another state in lieu of this Act.

Section 10. Waivers Unenforceable. Any provision of an agricultural contract which waives a producer right or an obligation of a contractor or processor established by this Act is void and unenforceable. This section does not affect other provisions of an agricultural contract, including an agricultural contract or related document, policy, or agreement which can be given effect without the voided provision.

Section 11. Choice of Law. Any condition, stipulation, or provision requiring the application of the law of another state in lieu of this Act is void and unenforceable.

Section 12. Mediation. An agricultural contract must contain language providing for resolution of disputes concerning the contract by mediation. If there is a dispute involving an agricultural contract, either party may make a written request to the [state inserts name of mediation service] for mediation services as specified in the contract, to facilitate resolution of the dispute. [The parties must receive a release from the [mediation service] before the dispute can be heard by a court.]

Section 13. Penalties and Enforcement.

a. Civil Penalties. A contractor or processor committing an unfair practice under section 9 shall be subject to a civil penalty of up to [???].

b. Criminal Penalties. A contractor or processor committing an unfair practice under section 9 shall be guilty of a simple misdemeanor and shall be fined [????].

c. Private Cause of Action. A producer who suffers damages because of a contractor's or processor's violation of this Act may obtain appropriate legal and equitable relief, including damages, as a suit in common law pursuant to [state's name] rules of civil procedure.

(1) *Attorneys Fees.* In such a civil action against the contractor or processor, the court shall award the producer who is the prevailing party reasonable attorney fees and other litigation expenses.

(2) *Injunctive Relief.* In order to obtain injunctive relief, the producer is not required to post a bond, prove the absence of an adequate remedy at law, or show the existence of special circumstances, unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is appropriate under principles of equity, including but not limited to issuing a temporary or permanent restraining order.

d. Enforcement by Attorney General. The Attorney General's office is the agency primarily responsible for enforcing this Act. In enforcing the provisions of this Act, the Attorney General may do all of the following:

(1) *Injunctions.* Apply to the district court for an injunction to do any of the following:

(a) Restrain a contractor or processor from engaging in conduct or practices in violation of this Act.

(b) Require a contractor or processor to comply with a provision of this Act.

(2) *Subpoenas.* Apply to district court for the issuance of a subpoena to obtain an agricultural contract for purposes of enforcing this chapter.

(3) *Penalties.* Bring an action in district court to enforce penalties provided in subsections (a) and (b).

Section 14. Rulemaking. The [commissioner/secretary/attorney general] may adopt rules under [the state's administrative procedures law] to implement this Act.

Section 15. Applicability of Act.

a. General Rule. Except as provided in subsection (b), this Act applies to agricultural contracts in force on or after the date of the enactment of this Act, regardless of the date the agricultural contract is executed.

b. Exceptions. Section 4 (relating to disclosure of risks and readability), section 5 (relating to contract producer's three day right to review), section 8 (relating to production contracts involving investment requirements), section 9(b)(5) (relating to the use of "tournament compensation"), section 11 (relating to choice of law), and section 12 (relating to mediation)

shall apply to agricultural contracts executed or substantively amended after the date of the enactment of this Act.

Appendix 4-B Grower Education Materials



Legal Information for Broiler Growers

What's My Contract Got to Do With It?

Your contract sets the framework for your relationship with the company

Many poultry growers became growers because they wanted to be their own boss. However, while it is true that poultry growers are generally not considered employees of the company, your independence as a grower is limited by the requirements included in your growout contract. In addition to requiring you to provide the housing, equipment, and labor needed to raise the flock, the typical broiler production contract also requires you to take direction from the company during the growout period, allow company employees access to your property, and may even allow the company to take over your operation if they believe that you are not taking proper care of the flock. The contract will typically also set out things that you must not do, such as use any feed or medications not provided by the company or have any other fowl on your property.

Your contract will also determine critical issues such as how your pay will be determined and, typically, how any disputes between you and the company must be resolved.

Generally speaking, only what is written in the contract is legally binding

In general, you will be unable to enforce any oral promises made by company employees that are not also included in your written contract. This is because poultry growing contracts typically include clauses—called “merger” or “entirety” clauses—providing that the entire agreement between you and the company is in the written contract and anything not written in the contract is not part of the agreement.

You should read your contract carefully before you sign it to see if it contains an entirety clause. If it does, you should confirm that any important agreements and oral promises made by a company representative have been written into the contract. If a company employee will not put a promise in writing, this is a sign that the promise should not be counted on too much.

Can the contract be changed?

You and the company may agree to change your contract after you first sign it. If you do, make sure that you write the change down and you both sign it. Try to make sure that the person signing on behalf of the company really has the authority to make the change.

In many cases, a company will try to include a provision in the contract that gives it the right to change the payment schedule without having to get your agreement. Look for such a provision in your contract and, if you find one, make sure that you understand when and how the company can make these changes.

It is critical that you decide whether the contract is too risky before you sign it and before you borrow or invest large sums of money in reliance on receiving an acceptable contract. Do not assume that you will be able to change the contract if you discover a problem later. You will almost always be bound by the contract provisions unless you can persuade the company to change them.

Changing an existing contract or even asking for changes in a new contract can be difficult when you need flocks in order to make your mortgage payments or other obligations. Therefore, before taking on any significant new financial obligations, including beginning a growout arrangement for the first time, it is important to get a copy of the contract you will be signing and carefully review it to ensure that it says what you expect it to.

The company may not want to let you see the contract before it has inspected your chicken houses. However, the best time for you to weigh the pros and cons of the contract you are being offered is before you have borrowed large sums of money, mortgaged your farm and home, and built chicken houses. You will want to be able to walk away from the deal if the company will not agree to contract provisions that are acceptable to you.

How can I make sure I understand my contract?

The first step in understanding your contract is to read it carefully and make sure that you know how the contract addresses the following issues, which the federal Packers and Stockyards Act requires each poultry growing contract to set out:

1. If payment is based on ranking, what factors will be used when ranking growers?
2. How will feed efficiency conversion ratios be calculated?
3. Will you be liable for condemnations, including condemnations resulting from plant errors, or will the company?
4. How will condemnations of whole birds and parts be converted to live weight?
5. What per unit charges, if any, will you face for feed and other inputs furnished by the company?

It is also important for you to understand other specific terms that are included in the contract. Knowing what these terms are may help you to know what to look for. The following list describes clauses typically included in poultry growing contracts. Keep in mind that what your contract leaves out may be as important as what it says.

Definitions. Many contracts define certain terms used in the contract. These are helpful if a term could be interpreted in more than one way.

Length of the contract. Every contract should state how long it lasts. Many broiler growing contracts last for only one seven-week flock. Some companies have contracts with longer terms or that last for an indefinite period.

Timing/frequency/number of flocks. For contracts continuing for more than one flock, an important issue will be the frequency with which the company will place flocks in your houses. Most contracts state that you will be given birds when they are available. Unless your contract guarantees a minimum number of flocks per year, the number of flocks you will receive in a year is completely up to the company. A delay between flocks can have a significant effect on your bottom line.

Payment terms. The contract should show how your pay will be determined. Often the contract will make an attached payment schedule part of the contract. The most common payment method for broilers is to rank growers against others in their area who received birds at the same time. Other contracts provide for payment based on the square footage of the grower's houses. However payment is determined, every step in the calculation should be clearly described in the contract.

If your contract continues beyond one flock, check whether the contract provides for an adjustment in pay if your costs go up. Some contracts include a provision for annual adjustments.

Duties of the company. Many broiler contracts begin with a clause that sets out what the company must do to keep its end of the bargain. Typically, the company will promise to provide chicks, feed, medicine, veterinary care, and supervision. Some contracts state that chicks will be distributed randomly.

Duties of the grower. As discussed earlier, the contract will also set out your duties as the grower. Typically, this will include providing and maintaining housing and equipment, as well as providing labor and utilities. The contract may say you must meet company specifications for housing or equipment. It may say that you must be present when the birds are delivered and picked up. Generally, you must also agree not to raise any other birds on your land.

Title to birds. Your contract probably states that the company retains title to the birds at all times. Many contracts provide that you will be considered in violation of the contract if you attempt to give your creditors a lien on the birds.

Access to facility. Many poultry growing contracts state that you must allow company representatives into your chicken houses at all times. Such contracts generally also provide that the company can remove the birds or take over your operation if, according to the company, the birds are in danger or not being properly cared for. It will be important to know whether this determination is completely up to the company or if the contract provides some standards that must be used.

Natural disaster or mechanical failure. Many contracts do not address what happens if you are hit by a natural disaster or mechanical failure. If your contract says nothing about the risk of natural disaster or mechanical failure, it likely falls on you. A few contracts provide that the company will pay for your labor even if the birds are lost.

Disposal of litter and dead birds. If birds die under your care, not only will you lose the income you would have made from raising them, you may also bear the expense

of disposing of them. Many contracts do not state who is responsible for disposing of litter and dead birds. Some contracts make compliance with all federal, state, and local environmental laws your responsibility as the grower.

Mandatory improvements. The company may make certain improvements a condition of getting a new contract. Many contracts do not address the issue of improvements. Contracts that do address improvements use a variety of approaches. Some contracts state that you must “cooperate” with suggestions for improvements, but do not explain what is meant by cooperate. Other contracts state that you must comply with reasonable requirements. Some contracts give pay incentives to growers who adopt certain improvements. A few contracts state that the company will pay for, or share the costs of, improvements.

Assignment. Many contracts state that the company may freely assign the contracts. This means that the company could merge or be sold, and your contract would be transferred to the new owners. Many contracts also state that you as grower must get the company’s permission before you may assign your interests.

Entirety clause. As discussed earlier, most poultry growing contracts include an “entirety clause,” which states that the written contract is the entire agreement between the parties. This means that any other important agreements between you and the company should be included in the contract or clearly and specifically referenced in the contract.

Right to Associate. Some contracts acknowledge your right to associate and bargain collectively with other growers and farmers without being retaliated against. You have this right under the federal Agricultural Fair Practices Act.

Ending the contract. If the contract is for more than one flock, it should state how it can be terminated and what notice is required before termination. You and the company should each have a way to terminate the contract. Many poultry contracts provide that they may be terminated for any reason. Other contracts say that they may only be terminated for good cause.

Alternative Dispute Resolution (ADR). Most contracts set out how any disagreements between you and the company must be handled. Many use one or more forms of Alternative Dispute Resolution. These include mediation, peer review, and arbitration. In some cases, if you agree to use ADR to resolve a contract dispute, you are giving up your right to go to court.





Legal Information for Broiler Growers

Promises, Promises– How Much Money Will You Really Make?

Many growers say they have made less money from broiler growing than they expected, based on the information they received from the company when they were starting out. Some wonder if there is a legal claim based on income projections. Their first legal issue to explore is whether the company broke a promise to pay you a certain amount. The second is whether the company made false statements in order to get you to sign a contract.

What is an income projection?

An income projection is an estimate of how much money you may make, taking into account both your income and expenses. Income projections are generally more like educated guesses than they are promises to pay a certain amount. Companies that use the ranking system rarely promise to pay growers a certain amount.

Some contracts include a sample calculation. You need to read the sample calculation carefully to see if it is meant to show how much you will be paid. Often it is not meant as an income projection but is meant only to show how your pay will be calculated. An income projection might also set out your possible gross income, rather than your net income. This kind of projection is incomplete, because it does not discuss your costs.

Is an income projection part of my contract?

A company representative might give you an estimate about how much you could expect to make as a grower. You may be given a brochure produced by the company that includes income projections. In most cases, these are not part of your contract. If your contract includes a provision stating that the written contract terms are the only agreement between you and the company, then income projections are part of the contract only if they are written in the contract or made part of the contract by reference.

The company may not want to let you see the contract before it has inspected your chicken houses. However, the best time for you to assess your probable income under the contract is before you have borrowed large sums of money, mortgaged your farm and home, and built chicken houses. You may want to be able to walk away from the deal if the company will not agree to contract provisions that clearly address your concerns about income.

Why is it so hard to predict how much money I will make?

The most important step you can take to predict how signing a contract might affect you financially is to make sure that you have considered all the risks. If you are considering signing a broiler contract, you are probably giving some thought to your own work habits

and ambition to get a sense of where you might end up in a ranking system. But the ranking system is just one risk that could affect your profits. Other risks that you take as a grower include: rising living and operating costs, variations in input quality, delays between flocks, chick mortality, mandatory improvements, natural disasters, equipment failures, and changes in governmental requirements for disposal of litter and dead birds. These and other income risks related to your contract must be carefully considered before you can predict how the contract will affect you financially.

Your company's income projections may not take any of these risks into account, but you should. You can ask company employees or other growers what costs growers in your area have faced in the past few years.

Can the company change the payment schedule?

In many contracts, the company reserves the right to change the payment schedule "unilaterally," that is, without having to get your agreement.

Does the Packers & Stockyards Act say anything about income projections?

Regulations under the federal Packers & Stockyards Act (P&S Act) say that poultry companies may not knowingly make or spread any false or misleading reports, records, or representations concerning the market conditions or the prices for live poultry. These regulations are focused on preventing the spread of false information about the past and the present, rather than the future. Of course, a projection about the future could be based on a false report of the past and present circumstances.

The terms of the P&S Act are so general that it can be difficult to know when it applies. Until someone brings a lawsuit asking a court to interpret this regulation under the Act, or unless USDA issues new regulations addressing poultry income projections, we will not know if the P&S Act sets any meaningful limit on income projections.

Could I make any other legal claims about misleading income projections?

You might have a legal claim, such as fraud or misrepresentation, if you could show that a company deliberately provided you with deceptive information about the income you could expect. These claims might arise if the company gave you projections based on facts or figures about the past or present that it knew were untrue at the time. As with many legal theories, it is difficult to predict whether these claims would be successful.





Legal Information for Broiler Growers

Who Is #1 and Do We Really Need the Ranking System Anyway?

In the ranking or “tournament” system, your pay is based on the per pound costs of production at your operation compared to the costs of production for other growers whose flocks are taken during the same period.

Many growers say that their rank depends more upon factors they cannot control—chicks, feed, and other inputs—than upon their work. If your growout contract provides that you will be paid under a ranking system, you should do whatever you can to get quality commitments from the company with respect to other factors that could affect your pay.

The payment schedule is often a separate document attached to your contract. If payment will be made under a ranking system, the payment schedule must explain how it works.

Is the ranking system illegal under the Packers and Stockyards Act?

The federal Packers and Stockyards Act (P&S Act) makes it unlawful for any live poultry dealer to “engage in or use any unfair, unjustly discriminatory, or deceptive trade practice or device” with respect to live poultry. The question for poultry growers is whether the ranking system is itself an unfair trade practice forbidden by the P&S Act.

The question is hard to answer looking only at the general language of the P&S Act. USDA has more detailed regulations describing what poultry companies may and may not do under the P&S Act. These regulations give examples of the kinds of trade practices USDA believes are illegal under the P&S Act. The regulations do not prohibit the ranking system.

Your contract must explain how the ranking system will affect your pay

Under the P&S Act regulations, poultry companies must supply growers with a written copy of the contract. The contract must clearly explain the factors relating to your payment. These factors include:

- Who is liable for condemnations,
- The formula or method used to convert condemnations to live weight,
- The per unit charges, if any, for feed and other inputs,
- The method for figuring feed conversion ratios, and
- The factors to be used when grouping or ranking growers.

Having the rules by which the tournament will be run set out in your contract may help you consider your potential risks before you sign a contract.

Establishing rules related to ranking may be a sign that USDA believes that some type of ranking is allowed by the P&S Act. However, the rules do not directly state that USDA believes the ranking system as currently practiced in the poultry industry is allowed under the P&S Act. Furthermore, while USDA has a great deal of say in explaining the Act, it is possible that a court would disagree.

Your settlement sheet must show how your rank affected your pay

If your company uses the ranking system, the P&S Act says it must give you a copy of the ranking sheet with the actual figures upon which the ranking is based at the time of settlement. The ranking sheet must show your precise rank for that period, but it does not have to show the names of the other growers. The ranking sheet should help you to see whether the company followed the rules in the contract when it calculated your payment.

Do the company's income projections take the ranking system into account?

If you are considering signing a poultry growing contract, a representative of the company may have already shown you charts and graphs of the kind of income you could expect. You may want to ask what level of performance the numbers are based on. Someone who is consistently ranked at the top? An average grower? Below average? Knowing that your own hard work will not always be the only factor, is it realistic to expect that you will always be at the top of the ranking? Keep in mind that unless the income projections are part of the contract, or are somehow made part of the contract, the company has not made any binding promises to you about your income.

Specific problems with the ranking system

While some growers object to the ranking system on principle, others say that the ranking system might be all right if some specific problems were fixed.

Inclusion of company employees in the pool

Many growers criticize the practice of ranking non-employee growers against company employees. When this happens, the same people who decide who gets the first and last chicks off the truck—which may be the most and least healthy chicks—are competing against other growers. The problem is similar if family members of employees are included in the ranking pool.

Some contracts state that employees and their immediate family members will not be included in the ranking pool. Without this kind of provision, it seems likely that employees would be treated the same as other growers for ranking purposes.

Differences in input quality

Poultry growers have also complained about large and repeated differences in the quality of inputs. You may feel that you get worse chicks or feed than other growers if you and your service person don't get along.

In general, companies do not make any promises about the quality of chicks and feed you will receive.

Some contracts seek to prevent complaints about chick quality by stating that chicks provided by the company will be distributed “randomly.” Even if your contract has no such provision, you could argue that “random” distribution is required by the P&S Act because any other pattern would give some growers an unfair advantage.

Contract termination for below average rankings

If you receive a below average ranking, a smaller check may not be the only thing you have to worry about. Some growers have lost their contracts because they did not maintain a certain ranking. Does your contract say anything about what happens if you have several below-average rankings?

Some companies have special programs to provide extra supervision and training to growers who consistently rank below average. You may feel that you would not like this sort of close attention, but the alternative may be losing your contract.

Does the P&S Act address specific problems within the ranking system?

Currently, nothing in the P&S Act or its implementing regulations addresses specific problems within the ranking system, beyond the general prohibition on “unfair trade practices.” The P&S Act also makes it illegal for poultry companies to give certain people or places an “undue or unreasonable preference or advantage.”

The terms of the P&S Act are so general that it can be difficult to know when it applies. Until someone brings a lawsuit to interpret the Act, or until USDA passes new regulations for the ranking system, we will not know for certain whether the Act addresses problems in the ranking system in any meaningful way.

Could a grower make any other legal claims about the ranking system?

If your payment was not determined according to the rules set forth in the contract, you may have a legal claim under the P&S Act. Depending upon what happened, you could make other claims about your company’s use of the ranking system, including fraud, negligence, breach of warranty, and breach of contract. As with any untested legal theory, it is impossible to predict whether these claims would be successful.

Do all companies use the ranking system?

The vast majority of broiler contracts use the ranking system. Some companies, particularly those in the Midwest, may use contracts where the growers’ pay is based on the square footage of their barns. Some contracts combine square footage payment with bonuses based on the ranking system.

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Legal Information for Broiler Growers

Who Decides on the Proper Equipment? Mandatory Improvements for Poultry Operations

Required improvements may affect your bottom line

Paying for unplanned improvements can have a major impact on the cash flow of your operation. It is therefore very important to understand whether your contract gives the company the power to require new investments. Even if the contract itself does not allow it, the company's ability to require improvements is also tied to the short-term nature of any single-flock contract. That is, the company can simply require that the improvements be made before any additional contracts will be offered.

What if my service representative promises me I won't have to make any improvements?

Do not rely on oral promises if you have a written contract. In general, any promises your company makes about improvements should be written into the contract if you want to be able to enforce them.

What kind of improvements might I have to make?

Some contracts list detailed expectations of growers relating to the adoption of new improvements. This includes financial responsibility on the part of the grower for maintenance, upkeep, and improvements to buildings and equipment. Improvements required in the past by some companies have included tunnel ventilation, new fans and waterers, curtain minders, and alarm systems.

What if my contract doesn't say anything about improvements?

Many contracts do not say anything about improvements. The contract may require proper buildings and equipment, without defining what is meant by "proper." As mentioned earlier, the company may also make improvements a condition of your next contract.

Can I refuse to follow the company's suggestions?

Some contracts include a clause in which the grower promises to "cooperate" with the company in adopting and installing recommended management practices and equipment. It is hard to know exactly what is meant by "cooperate." Does it mean "obey" or "work with?" The answer to this question is important, because if you promised to obey the company, then you must follow its suggestions. If you promised to work with the company, you may have more room to explain why you see things differently. Without a clear explanation of "cooperate," you risk violating your contract if you do not make a recommended improvement.

Other contracts use language requiring the grower to make every reasonable effort to comply with reasonable suggestions and requirements of the company. The repeated use of the word “reasonable” could give you some flexibility. If you believed an improvement suggestion was unreasonable, you could explain to the company why you felt that way. If you and the company continued to disagree, you could pursue alternative dispute resolution or a lawsuit to have an arbitrator or judge decide if the company’s suggestion was reasonable. Most contracts do not include the word “reasonable,” which may mean that you are committing yourself to comply with all company suggestions, even unreasonable ones.

Who pays for all of these improvements?

In most cases, you will be expected to pay for improvements. Some companies use a higher pay scale for growers who adopt certain improvements.

In a small number of contracts, the company pays for mandatory improvements, including equipment installation costs. If the contract is terminated, you may have to reimburse the company for the undepreciated cost of equipment purchased by the company.

What can I do before signing a contract to avoid future problems related to improvements?

There is no sure way to avoid conflicts about improvements with the company. Even if your contract is silent on the issue of improvements, the company would probably be free to require you to make improvements before giving you a new contract.

You or your grower association might want to negotiate before signing a contract to ensure that it addresses improvements, hopefully in a way that is favorable to you. You could seek, for example, a commitment from the company to pay for any required improvements. If the company will not pick up the entire cost, perhaps it would agree to be responsible for a certain percentage. You could also seek a higher payment scale if you adopt a certain improvement. Keep in mind that any commitment you get from a company may be subject to re-negotiation every time the contract is up for renewal.





Legal Information for Broiler Growers

How Much Did Your Birds *Really* Weigh?

In most poultry growing arrangements, the weight of birds at the end of the growout period is compared with the weight of feed consumed, and then is used to figure out the payment due to growers. Many growers complain of improper activities when it comes to weighing the birds. You should know what the law says about weighing broilers.

What does the Packers & Stockyards Act require when it comes to weighing birds?

USDA has established extensive regulations under the Packers & Stockyards Act (P&S Act) that set out the rules for weighing poultry. These rules set out proper weighing procedures, care of scales, information that must be included on scale tickets, and information that must be disclosed in contracts and settlement sheets. These requirements are discussed in further detail below. Contract and settlement sheet requirements are discussed in separate information pieces.

Reasonable care and promptness

The company must weigh your birds promptly. The company must move your birds promptly after they are loaded. It must weigh your birds as soon as they arrive at the processing plant, holding yard, or other scale. The company must use reasonable care when weighing live poultry to prevent waste of feed, shrinkage, injury, death, or other avoidable loss.

Reasonable care and promptness is also required with respect to loading, transporting, holding, yarding, feeding, watering, or otherwise handling live birds to prevent avoidable loss.

Maintenance and operation of scales

The scales your company uses to weigh your birds must be installed, maintained, and operated to insure accurate weights. There are detailed regulations for the proper operation of scales on which poultry is to be weighed for purposes of settlement. They include:

1. The scales must be inspected about every six months.
2. The company must report on tests and inspections to USDA.
3. If a scale fails a test, it may not be used again until it passes one.
4. All vehicle scales must be long enough and have enough capacity to weigh the truck and trailer together at one time. A trailer may be weighed by itself, as long as the gross weight and tare weight are both of the trailer alone.

5. The company must hire qualified people to operate the scales.
6. The company must give copies of the federal regulations for weighing live poultry to the scale operators, and require them to comply with the regulations.

Do I have the right to watch my birds being weighed?

Yes, you have the right to watch your birds being weighed. In fact, anyone with a legitimate interest in a load of poultry is entitled to observe the process of balancing the scale between loads, the weighing process, and the process of recording the actual weight. If you ask the company employee using the scale to check the zero balance of the scale or reweigh a load of poultry, he or she must do it. USDA employees may also ask the company to reweigh birds.

Is it legal for the company to hand write scale tickets?

The weight on a scale ticket should not be written by hand. All scales used to weigh live poultry for the purpose of settlement must be attached to a printer, which must be used to print weight values on a scale ticket or other document. Your payment must be based on the actual weight of your birds, as shown on the scale ticket.

What information must be included on a scale ticket?

The scale ticket must show certain information. That information includes:

1. The name of the agency performing the weighing service,
2. The name of the company,
3. The name and address of the grower,
4. The name or initials of the person who weighed the poultry (state law may require a signature),
5. The location of the scale,
6. The gross weight, tare weight, and net weight,
7. The date and time when the gross weight and tare weight were measured, and
8. The number of poultry weighed.

If the poultry is weighed on a vehicle scale, the scale ticket must also show:

1. The weather conditions,
2. Whether the driver was on the truck at the time of weighing, and
3. The license number of the truck or the truck number.

Are there other requirements for scale tickets?

There should be at least two copies of the scale ticket. Scale tickets should be serially numbered, and they should be used in order. You should be given one copy of the scale ticket, and the other one should be kept by the company.

What can I do if I think my company is underweighing my birds?

If you believe your company may have violated the P&S Act or the regulations, you can complain to USDA by calling their violations hotline at 1-800-998-3447.

You could also file a lawsuit, if your contract does not require you to use ADR first. The poultry industry has seen a number of successful lawsuits brought by growers complaining they were underpaid because their birds were underweighed.

Are there other legal claims I could make about underweighing?

Growers have also had some success with underweighing claims based on state law, including fraud, breach of contract, and violation of state unfair and deceptive trade practices acts. There have probably been more cases related to misweighing than any other problem in the poultry industry. Reviewing these cases with an attorney may help give you a sense of how strong your claim is. You may want to contact FLAG—www.flaginc.org or 651-223-5400—for a summary of important cases related to this issue.

Keep in mind that under your contract, you may have to try Alternative Dispute Resolution (ADR) before, or even instead of, going to court. Another information sheet in this series discusses ADR.





Legal Information for Broiler Growers

How Much Did Your Feed *Really* Weigh?

Many growers complain that it is impossible for them to know how much feed their company delivers to them. The weight of the feed is important, because under most broiler growing arrangements, your pay will be based in part on how much feed your birds consumed.

Does the Packers & Stockyards Act address feed weighing practices?

The federal Packers & Stockyards Act (P&S Act) makes it unlawful for any live poultry dealer to “engage in or use any unfair, unjustly discriminatory, or deceptive trade practice or device” with respect to live poultry. USDA enforces the P&S Act by passing regulations with more detailed language that sets forth what poultry companies may and may not do under the Act.

New regulations for feed weighing practices in the poultry industry took effect on May 5, 2000. The regulations are modeled after the rules for weighing birds. Under the regulations, your company must weigh the feed it delivers to you if the weight of feed consumed is a factor in determining your payment.

Maintenance and operation of scales

All scales used by poultry companies to weigh feed for the purposes of payment and settlement must be installed, maintained, and operated to insure accurate weights. There are detailed regulations for the proper operation of scales on which feed is to be weighed for purposes of settlement. They include:

1. The scales must be inspected about every six months.
2. The company must report on tests and inspections to USDA.
3. If a scale fails a test, it may not be used again until it passes one.
4. All vehicle scales must be long enough and have enough capacity to weigh the truck and trailer together at one time. A trailer may be weighed by itself, as long as the gross weight and tare weight are both of the trailer alone.
5. The company must employ qualified people to operate the scales used to weigh feed.
6. The company must require scale operators to comply with federal regulations for weighing feed for payment purposes.

Is it legal for the company to hand write scale tickets?

The weight on a scale ticket should not be written by hand. All scales used to weigh feed for payment purposes must be attached to a printer, which must be used to print weight values on a scale ticket or other document. Your payment must be based on the actual weight of feed, as shown on the scale ticket.

What information must be included on a scale ticket?

The feed scale ticket must show certain information. That information includes:

1. The name of the agency performing the weighing service,
2. The name and address of the grower,
3. The name or initials of the person who weighed the poultry (state law may require a signature),
4. The location of the scale,
5. The gross weight, tare weight, and net weight,
6. The date and time when the gross weight and tare weight were measured,
7. The identification of each lot of feed assigned to the grower, by vehicle trailer or compartment number and seal numbers, if applicable,
8. Whether the driver was on the truck at the time of weighing, and
9. The license number and other identification numbers on the truck and trailer weighed.

Are there other requirements for scale tickets?

There should be at least two copies of the scale ticket. Scale tickets should be serially numbered, and they should be used in order. You should be given one copy of the scale ticket, and the other one should be kept by the company.

Returned feed

Any feed that is picked up from or returned by a poultry grower must be weighed whenever the weight of feed is a factor in determining payment. If the feed is not weighed, its weight must be reasonably determined using a method that is mutually acceptable to the company and you. The company must document and account for the picked up or returned feed.

Are there any other laws governing feed deliveries by the company?

Many states have laws respecting the manufacture, sale, or distribution of commercial feed. Some of these laws require labels or packing slips which announce the net weight of the feed or feeds delivered. You may want to find out whether your state has laws that apply when a company provides commercial feed to contract growers.

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Legal Information for Broiler Growers

I'll See You in Court-Or Will I?

The last thing on many growers' minds when they sign a contract to raise broilers for a poultry company is: what happens if something goes wrong? But if a disagreement arises between a grower and a company, the terms of the contract can control the process that must be used to resolve the disagreement. Broiler production contracts often include provisions that specifically address how disagreements related to the growout arrangement must be handled, and they approach it in a variety of ways.

To the extent that a contract provides that disagreements will be resolved through a formal system other than the courts, this process is referred to as Alternative Dispute Resolution, or "ADR." Clauses calling for resolution of disputes through ADR have become very common in poultry growing contracts.

Be sure you know the dispute resolution approach used in your contract: both what is available and what may be required to allow you to pursue a dispute.

What is Alternative Dispute Resolution (ADR)?

Alternative Dispute Resolution (ADR) is an alternative to the traditional model of suing to have a dispute resolved by a judge or jury. ADR includes several types of processes that do not involve either state or federal courts, but instead use other neutral parties to help the two sides reach an agreement or to make a binding decision for them. The most common forms of ADR in the poultry industry are mediation, peer review, and arbitration.

In **mediation**, a neutral mediator tries to help the parties to resolve their disagreement. Depending on the situation, a mediator may be an "expert" or may simply be someone whom both sides accept as fair. If your broiler growout contract provides for mediation of a dispute, it will likely also set out how the mediator will be selected. A mediator may persuade the parties to come to an agreement, but has no power to impose a solution on them. If mediation is unsuccessful, the contract will generally set out what other ADR processes, such as arbitration, may be required. If no further ADR process is required, you and the company are likely free to take the dispute to court.

In **peer review**, a small group of people decide how to resolve a dispute. When peer review is called for in a broiler growout contract, the contract generally states who will be in the group. Typically the group will be made up of experienced growers, but in some cases it will also include company employees. Depending on the particular contract, you and the company may or may not be bound by the peer review committee's decision. If the decision is not binding, the contract may require that objections to the peer review committee's decision go to arbitration, or you may be free to take the dispute to court.

In **arbitration**, one or more arbitrators make a final decision on how to resolve a dispute. If your contract provides for arbitration, it may also set out how the arbitrator(s) will be selected and what formal rules, if any, they will use when considering the dispute. It is very likely that neither you nor the company will be able to appeal to anyone, including a court, if you are unhappy with the arbitration decision.

Why do I need to understand contract provisions related to ADR?

Poultry companies have given a great deal of thought to what to do when disputes arise under production contracts. Because ADR provisions in a contract may determine whether you will be able to resolve disagreements in a way that is fast, relatively inexpensive, and fair, they can greatly affect the level of risk involved.

It is also important to make sure that you understand the provisions of your contract. Even contracts that use the same type of ADR process often have different rules. For example, some contracts require growers to serve on a peer review committee if asked by the company, while other contracts expressly provide that growers will not be required to serve on a peer review committee.

Understanding the dispute resolution provisions of your contract is also critical because they may include **deadlines** for you to seek a resolution of disagreements with the company. Some growout contracts that require ADR have very short deadlines for starting the ADR process, generally much shorter than would apply if you were considering taking a claim to court. If the contract does not list a deadline for seeking ADR, you should still try to act as quickly as you reasonably can to get your materials and arguments together.

Note that if your dispute is related to receiving prompt and full payment, any contract deadlines for seeking ADR are separate from the deadlines for making a complaint to USDA. Your written complaint must reach USDA and the company within 30 days of the final date the live poultry dealer should have paid you.

You should also determine if the contract states that the ADR process must take place in a certain **location** or under certain **rules**. Will you have to travel to the company's home state or another location? If the process is arbitration, will the rules (and fees) of the American Arbitration Association apply? If the contract does not answer these questions, do you know how they will be answered?

Can I skip ADR and go right to court?

If your contract does not require ADR and no law requires the use of ADR in the circumstances, you are free to take any dispute right to court. On the other hand, if the contract says that disputes **must** be resolved using ADR, then it may be that neither party can go to court, at least not right away.

Depending on the language used in the contract, whether you can go to court may also depend on the type of dispute. Does the clause in your contract say that "any dispute" will be subject to ADR? Or does the contract use more limited language, such as "any dispute having to do with the payment to be made to the grower"? The first example would

include many more potential disputes than the second. If you had a clause saying that “any dispute about the payment due” would go to arbitration and you had a complaint about the quality of chicks provided, you could argue that the dispute over chick quality did not fall within the arbitration clause, and you could try to go to court.

Whether you can go to court will also depend upon the type of ADR required by your contract.

Mediation itself is never binding, unless the parties reach an agreement and enter a new contract. If you do not reach an agreement in mediation, you are free to go to court, unless the contract provides for some other form of ADR after mediation.

It is not clear whether a **peer review** process can be used to prevent you from going to court, even if the contract says it is a final decision. Because the decision-makers in the peer review process have a personal stake in their own relationship with the company, their ability to be impartial may be in doubt. Many contracts provide for arbitration if you are unhappy with the peer review decision.

If you filed a lawsuit in court after signing a contract with an **arbitration** clause, the company would probably be able to get the judge to stop the court proceedings and refer the dispute to arbitration. In very rare cases, you might be able to persuade a court not to enforce the arbitration clause, but you would need to show that there were serious problems with the contract in the first place, such as fraud, duress, or a mutual mistake that you and the company made.

Can an arbitration award be appealed?

Once a dispute has been submitted to arbitration, it is extremely difficult to get the arbitrator’s decision overturned by a judge. However, an award could be set aside if the arbitrator engaged in misconduct. Examples of misconduct would be accepting money in return for deciding a certain way or refusing to hear relevant evidence. A judge could also correct an obvious factual mistake. However, a decision that is unfair or even incorrect under the law will not necessarily be overturned.

If the contract requires arbitration of all disputes, modifying or removing the arbitration clause in a new contract is likely the only way to preserve the right to have disputes considered by a court.

How can my right to go to court be taken away?

By signing a poultry production contract with an arbitration clause, you are agreeing to give up—or “waive”—the right to have your day in court. Because you voluntarily sign the contract, you are considered to have voluntarily agreed to all of the terms of the contract—including the arbitration clause. Therefore, the argument goes, nothing has been taken from you. If you do not want an arbitration clause in the contract, the law puts the burden on you to negotiate with the company to take that clause out.

Although in reality an individual grower may have little or no power to negotiate the terms of a growout contract and try to have an unwanted arbitration clause removed, signing the contract will still be considered voluntary acceptance of the arbitration requirement. As long as there is a written agreement between the parties, even if it is just one sentence in a much larger contract, the law will likely enforce your agreement to use arbitration to address any conflicts that arise.

If preserving the right to take disputes to court is important to enough growers who are contracting with a particular company, the growers might want to consider whether it would be worthwhile to approach the company as a group about the issue.

What are some advantages and disadvantages of ADR?

ADR processes are increasingly being used to resolve disputes, particularly disputes arising under commercial contracts such as broiler growing contracts. Proponents of ADR argue that disputes can be resolved more quickly and at less cost through ADR than through the courts. They also suggest that the less confrontational nature of ADR processes can lead to an improved relationship between the parties once the dispute is resolved. While these advantages may be realized in many cases, ADR is not always advantageous.

As mentioned earlier, contract provisions requiring that disputes be resolved through ADR often also impose deadlines on the disputing party that significantly reduce the time available to consider options before having to bring the claim. Failure to meet those deadlines may mean that any opportunity to have the dispute resolved is lost. Depending on the circumstances, some forms of ADR, particularly arbitration, may also be as expensive or more expensive than going to court. Bringing a dispute to arbitration generally means having to pay filing fees and pay the arbitrator(s) for the time spent hearing and deciding the case. Because companies are generally represented by attorneys in arbitration, growers often also find that they face the expense of legal representation if they are to have the best chance of a successful outcome.

If you arbitrate a dispute, you also may not be able to get access to information that is crucial to proving your case. In a lawsuit, specific rules govern the kinds of information and records that one side must make available to the other side. These “discovery” rules generally do not apply in arbitration.

Possibly the greatest disadvantage of arbitration is the essentially complete loss of the right to seek review of an arbitration award. Depending on your contract and the arbitration rules involved, you may or may not have a say in who your arbitrator will be. And unless that arbitrator is flagrantly biased or totally incompetent you will probably be stuck with their decision, even if they are wrong about the law behind your dispute.

If losing your right to go to court is a disadvantage of arbitration, being able to go to court after using other forms of ADR may undermine the advantages mentioned above. If you ultimately face either having to bring a claim or defend against a claim in court to get the dispute resolved, many of the time-saving and cost-saving benefits of ADR are lost.

Can ADR address widespread problems?

You probably have heard of “class action lawsuits” in which many people are able bring claims against a person, company, or agency because they all suffered similar harm or have similar disputes. A class action lawsuit often allows a group of people to put together more evidence, as well as allowing them to share legal costs. Group claims are generally less available in ADR processes, unless specifically provided for by statute, such as in contract bargaining by unions or other associations. ADR processes provided in growout contracts will likely only be available for individual claims. Some contracts requiring arbitration of disputes even specify that arbitration may only involve one grower at a time.

A further limitation on ADR as a tool to address widespread problems is that ADR decisions generally have no impact on later disputes involving the same issues. If one grower has a successful arbitration, this does not help growers who go to arbitration in the future on the same issue. In contrast, a successful lawsuit could set a legal rule, or “precedent,” that growers could build upon in future lawsuits.

What laws govern the use of ADR?

The Federal Arbitration Act sets out general rules and procedures for arbitration in commercial settings involving interstate commerce, which includes most poultry production contracts. Many states also have arbitration acts that may apply to growout contracts. These statutes may become important if there is a problem with the arbitration process, but your primary concern will be the rules that you will be required to follow in the arbitration itself. Depending on the language of the arbitration clause in your contract, you may be agreeing to follow the rules of the American Arbitration Association, the National Grain and Feed Association, or some other organization. Or the rules may not be specified at all. If your growout contract requires you to arbitrate your disputes with the company, it is a good idea to get a copy of the arbitration rules as soon as a dispute arises, so you will know what would be required of you (including any fees) if you wanted to pursue arbitration.

