

## 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.

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## 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. The 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.

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## 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.

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## 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](http://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.

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