

QUESTIONS TO ASK BEFORE SIGNING A POULTRY CONTRACT



Laura Klauke,
Rural Advancement Foundation International — USA

Who We Are

RAFI-USA **Rural Advancement Foundation International —** **USA**

The Rural Advancement Foundation International—USA is a non-profit, non-governmental organization which promotes sustainability, equity, and diversity in agriculture through policy changes, practical assistance, market opportunities, and access to resources. We trace our roots back to the 1930's in our efforts to promote fairness to sharecroppers, and since then have been addressing agricultural issues from the local to the global level. RAFI-USA plays a leadership role in responding to major agricultural trends and creating a movement of farm, environmental, and consumer groups to:

*Promote sustainable agriculture,
Strengthen family farms and rural communities,
Protect the diversity of plants, animals, and people in
agriculture, and
Ensure responsible use of new technologies.*

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Photograph on page 2 taken
by Andrew Pike



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Introduction

In 1995, Mary Clouse, former poultry farmer and then Director of the RAFI-USA Poultry Project, pulled together the publication “Questions to Ask Before You Sign a Poultry Contract.” Over the last 10 years the poultry industry has continued to grow and change so we are revising and updating these questions for 2005. While the questions are related to broiler contracts in general, most of the underlying issues raised are the same for pullet, egg, and turkey operations as well.

Ultimately, you are the only one who can decide whether investing in a poultry operation is the right thing for you and your family. To assess the true risks and benefits of your contract, check a number of different resources in addition to this publication.

Talk with growers with at least ten years experience and with former growers as well.



Spend time helping out on a poultry farm through all the grow-out-stages, from caring for day old chicks to collecting mortality on a farm with six-pound-birds.

Check with local extension and finance agencies.

Take your contract to a lawyer and discuss the legal obligations laid out. The 2002 Farm Bill clearly established the legal right of contract livestock and poultry producers to discuss any terms or details of a contract entered into, changed, renewed, or extended after May 13, 2002; with a legal advisor, lender, an accountant, an executive or manager; a landlord, a family member or a Federal or State agency with responsibility for enforcing a statute designed to protect a party to the contract or administering the Packers and Stockyards Act.

Producers retain their right to share their contract and get advice even if the contract contains a “confidentiality clause.”¹

Several states have also adopted statutes protecting growers’ rights to share their contracts and solicit legal and financial advice. A recent example is Georgia, where House Bill 648 was signed into law in 2004. The Georgia law now makes voidable any poultry contract that the contract grower has not had the opportunity to have reviewed by an attorney or adviser of the contract grower’s choosing (outside the business premises of the processor) for at least three business days prior to signing. The contract is also voidable unless it states that the grower may cancel without penalty up to the third day after signing the contract or until the chicks are placed with the grower, whichever comes first. The law also provides that the contract is voidable if it was not signed by all the parties before chicks are placed with the grower. A voidable contract is valid until it is successfully challenged.²

¹ Farm Security and Rural Investment Act of 2002, Public Law No. 107-171, section 10503 (codified at 7 U.S.C. § 229b), <http://www.gpoaccess.gov/plaws/search.html>

² House Bill 648 is now codified in Chapter 22 of Title 2 of the Official Code of Georgia Annotated, O.C.G.A. § 2-22-1 et. seq., http://www.legis.state.ga.us/legis/2003_04/versions/hb648_HB_648_AP_8.htm

When to Ask Questions?

Make the time and effort to ask questions and understand how the poultry industry works **before** you accrue any debt associated with poultry production.

Typically, contract poultry production requires an investment from several hundred thousand to a million dollars in single-use buildings and equipment. Converting a modern poultry barn to some other use is simply not economically feasible.³



Nothing you can do with the barn besides raising birds for a major poultry company can generate the cash needed to support your debt payments. Once you are responsible for the debt payment, your options, and therefore your bargaining power, are significantly reduced.

Request a copy of your contract up-front.⁴

Be persistent. You are committing your family's financial security for the next 12 to 15 years. Note that a refusal by the company to allow you to see the terms of the contract before you make such a large financial investment may be a

warning sign. Federal regulations under the Packers and Stockyards Act require poultry companies to provide the growers with a true written copy of the contract.⁵

Remember that the written contract defines your legal agreement with the company and each party's responsibilities. **Anything outside that document**, such as:

- promises from company personnel,
- estimated cash flow numbers, or
- comments from bankers or other farmers

is **NOT** part of your formal, legally-enforceable agreement.

Almost all contracts include what is known as an "integration clause." That is, a clause that states the contract is the entire agreement and that all prior agreements are superseded. For example, you may be told that your equipment is "good" for fifteen years, but contracts typically state that you will provide equipment according to the company's specifications. If later the company requires new equipment, even if your existing equipment is still fully functional, you will be unlikely to successfully argue that you were promised your equipment was approved for fif-

teen years.

If you do negotiate any clarifications, promises, or changes in your contract—**get it in writing.**

Although the contract is the key document, under certain circumstances promotional materials, company correspondence and even oral statements may be relevant. So records of such materials should be retained. Likewise, growers should keep good records related to farm performance including settlement sheets, feed and weight tickets, flock reports, etc.⁶

³ James McDonald, et. al., *Contracts, Markets, and Prices: Organizing the Production and Use of Agricultural Commodities*, USDA Economic Research Service, Agricultural Economic Report Number 837 (November, 2004). Economists refer to this problem as "asset specificity." See page 27. The report is available on the internet at <http://www.ers.usda.gov/publications/aer837>

⁴ Copies of a variety of contracts, including poultry, are posted on the Iowa Attorney General's web site: http://www.iowaattorneygeneral.org/working_for_farmers/contracts.html.

⁵ 9 C.F.R. § 201.100.

⁶ For further information, see "Which Flock can beat the Fox?", a short article posted on the Internet at <http://www.flaginc.org/pubs/articles.html>

Debt and Length of Contract

How much collateral are you being required to put up for your poultry loan? Is your home and/or other parts of your farm collateral for your poultry loan? If for some reason you lost your contract or needed to sell your operation, would you be able to hold onto your home and family land?

What is the length of your contract? Is there a written ending date to your contract?

Lengths of contracts vary considerably from “flock-to-flock” contracts, to contracts that continue in effect until terminated, to multiple year contracts; however, many poultry contracts include language purporting to allow the company to terminate the contract for any or no reason by simply providing written notice of intent to terminate.

Most “long term contracts” (3-7 years) also include specific events of default that would allow the company to cancel the contract before the expiration date; e.g., extreme neglect, threats to service personnel, failure to meet certain production standards. Depending on the circumstances, these events may provide the company with the right to

terminate the contract before its expiration date.

Some legal experts have argued that termination without economic justification may be unfair and deceptive under the Packers and Stockyards Act. However, potential poultry growers should be aware that legal challenges of such termination can be difficult to win and drag out over years. Likewise, the Packers and Stockyards Act only provides protections for broiler growers, not pullet and breeder hen growers.

Several states have laws in place that limit the company’s ability to unilaterally terminate the contract. For example, Kansas law states that poultry production contracts may not allow a contractor to unilaterally terminate any poultry production contract with a poultry producer that has complied with the provisions of the poultry production contract.⁷

Is the duration of the contract the time needed for you to pay off your loans or debts? If the contract is terminated due to circumstances beyond your control before your loan is paid off, or is there a provision in the contract or state law that will hold the company responsible for the remainder of your debt?



Two states, Minnesota and Illinois, have statutes that provide for “recapture” of capital investment. In these states, growers are generally entitled to some reimbursement should a contract that required significant capital investments be canceled for reasons other than a material breach by the grower.⁸

⁷ Kan. Stat. § 16-1701(b)(7). <http://www.kslegislature.org/legsrv-statutes/index.do>

⁸ Compare Minn. Stat. § 17.92 with Minn. Rule § 1572.0030, subpt. 1. See also *Breeding Change: Legislative Remedies for Contract Growers*, posted on the Internet at: <http://www.flaginc.org/pubs/articles.html>

Debt and Length of Contract

For contracts signed on or after January 1, 2005, the Agriculture Production Contract Code of Illinois allows farmers to recoup the remaining useful life of the capital investment, taking “into account the producer’s ability to use the capital investments in other business enterprises of the producer and the opportunity to recoup the cost of the capital investment by sale or lease.”⁹

Can the contract be terminated for poor performance or bad management? Who decides and what are the standards? What kind of proof is needed to justify termination? Is there an appeal process and is that process fair and affordable?

What are your options if your contract is terminated for any reason or you are unsatisfied with the poultry growing arrangement?

Though a company will not typically prohibit the sale of an existing farm to a new owner/operator, it is not unusual for the company to require that the facilities that are not tunnel ventilated to upgrade before a contract will be offered to a new owner.

owner. Likewise, it has become increasingly more difficult for growers to switch companies as consolidations, mergers and buy-outs continue to reduce the number of poultry processors. Even if there is more than one poultry company in your area, companies tend to want new housing. Even if you can switch, the new company’s equipment specifications are often different and thus, you can end up having to spend significantly more money.

Can the contract be changed or amended?

A common experience among growers is to have had an original contract that was for a certain number of years (e.g. 10, 7, etc.). However, over time broiler contracts tend to become “flock-to-flock.” This typically happens when the original ending date is passed and the contract is renewed or when a grower agrees to void an existing contract and sign a new contract because it offers some advantage, such as a better pay scale. This shift to a flock-to-flock contract is significant.

Once a contract term has expired - after each flock or about every seven weeks with a flock-to-flock contract - the company can present you with a significantly different contract than the one you had previously.

Though the base payment is almost never reduced, other requirements may be added such as:

- Mandating the use of specific equipment and/or technology
- Shifting a cost previously covered by the company over to the growers’ set of responsibilities
- Limiting the farmers’ legal options should a dispute arise in the future.

The company can fail to renew the contract and stop delivering chicks if the grower refuses to sign the revised contract.

Will the company negotiate with growers as a group? Is there currently a group of growers in your area who bargain collectively with the company? Has the company ever treated the leaders of grower groups differently from other growers?

⁹ Illinois Public Act 93-0522, Section 45, codified at 505 ILCS 17/45.

<http://www.ilga.gov/legislation/publicacts/fulltext.asp?name=093-0522>

Net Income

Does your contract guarantee you a minimum income per flock or year?

Some contracts, especially new house contracts, will have a guaranteed minimum price per pound, but that is not the same as a minimum settlement check. In addition to the price per pound, your pay depends on the number of pounds you raise and the time between flocks.

Does your contract specifically guarantee the number of birds to be placed in your barns or the number of flocks you will receive a year?

Growers have actually been in the awkward position of being told their contracts are not canceled but the company is not planning on putting birds back on their farms.

When pressed, company officials noted there is no promise in the contract that a certain number of flocks be delivered.

If you were to receive one fewer flock per year, how would that affect your cash flow?

Almost no contract currently in use guarantees the grower a set number of flocks per year. Reductions in placement numbers or flocks per year due to market conditions are not unusual. Remember that cash flow projections used for financing purposes are **not** part of your written contract with the company



unless those numbers are specifically noted in your contract.

Does your contract provide any pay adjustments related to inflation and increasing production costs?

Could your costs for fuel or complying with environmental regulations increase significantly without your pay increasing?

How are growers compensated for “Acts of God” (such as flooding or ice storms), disease outbreaks (such as Avian Influenza or Exotic New Castle Disease), and disaster flocks (such as losing a whole house because a breaker fails or a curtain drops)?

Is there any insurance or assistance available in your area to help you manage these risks? ¹⁰

¹⁰ For a discussion of federal disaster assistance for farmers, see *Farmers’ Guide to Disaster Assistance* (Fifth edition 2004), available on the internet at <http://www.flaginc.org/disaster/disaster.htm>. The guide shows that relatively little federal disaster assistance is targeted toward livestock and poultry farmers.

Pay and Performance

On what basis will you be paid; lease by square foot of barn space or a performance-based formula (ranking system)?

Square footage contracts provide the grower with a given pay per square foot of barn space in operation.¹¹ Such contracts are common in pullet production and are norm for some broiler contracts as well. However, most broiler grower pay is calculated using the ranking system. In the ranking system, the performance on one farm is compared to the average performance of all the farms that had chickens caught and processed that same week. Basically, farms that use less than the average amount of feed to put on a pound of meat get a higher price per pound; farms that use more than the average amount of feed per pound of meat produced get a deduction. While the the farm management plays a critical role in performance, so do other factors beyond the farmers' control, especially the health and breed of the chicks provided by the company and

quality of the feed delivered by the company.¹²

If you have a square footage contract, is your pay calculated only when birds are actually in the barns or is it a set rate throughout the year?

If pay is “performance-based” or by the ranking system:

Does the company guarantee a certain quality of inputs? For example, from time to time diseases will crop up in a given pullet flock or hatchery. Will you be compensated for flocks that are delivered with health problems unrelated to conditions on your farm?

Companies typically will not agree to independent testing of feed and chicks. Likewise, performance records for breeder flocks are virtually never shared with growers.

How can you be sure the measures used to determine performance are accurate? For example, you are delivered feed several times during a grow-out period. Does the company comply with

its legal duty to give a printed scale ticket every time feed is delivered (or returned)?¹³

How is the live haul weight verified? Does the company comply with its legal duty to give a printed scale ticket every time?¹⁴

Over the years, several growers have asked permission but never have been allowed to install scales on their driveway or feed bins to verify feed and live haul weights.

¹¹ Many square footage contracts also provide for a performance-based bonus or incentive pay. In such cases, the questions listed for growers paid under the ranking system still apply; however, since the performance-based pay is over and above the square foot pay, the net impact of the issues raised is lower.

¹² Uneven Playing Field, Mary Clouse RAFI-USA

¹³ See *How Much Did Your Feed Really Weigh?*, posted on the Internet at: <http://www.flaginc.org/pubs/poultry.htm>, Chapter 4, Appendix B.

¹⁴ See *How Much Did Your Birds Really Weigh?*, posted on the Internet at: <http://www.flaginc.org/pubs/poultry.htm>, Chapter 4, Appendix B

Pay and Performance

Does the company comply with its legal duty to allow the grower to view the weighing?

Under the P&S Act regulations, all growers have the right to watch their birds being weighed. Some states have also established laws that re-enforce this right. For example Georgia passed legislation in 2004 that states: any contract grower or contract producer or the designee thereof shall have the right to be present at the weighing of poultry produced by such grower or producer, be present at the weighing of feed delivered by the Integrator or processor, and observe the weights and measures used to determine compensation due to such grower or producer under a production contract.¹⁵



¹⁵ Under P&S Act regulations all growers have the right to watch their birds being weighed. 9 C.F.R. §§ 201.82 and 201-108-1.

<http://151.121.3.117/lawsandregs/lawsregs.html>

Get an actual settlement sheet from an existing grower.

Do you understand how pay is calculated?

Do the Math –What is the feed conversion on the top-performing farm? What is the price per pound for that farmer? What is the feed conversion on the bottom-performing farm? What is the price per pound for that farmer? Figure out what your settlement check would be at the top and at the bottom. How much can your check vary? How does the difference in performance compare to the difference in total income?¹⁶

With the ranking system, for every settlement group, approximately half of all growers will receive a price deduction. This is true even if all the growers have done an excellent job raising the company's chickens.

Ask about expenses. How much does the farmer's electricity, water and fuel bill run? Have these costs increased over time?

Based on these figures, what happens to your cash flow if you get one flock less per year or have a poor performing flock or two?

¹⁶ For a more detailed discussion of contract settlement payments, see *Production Contract Pay: "New Math" for Contract Growers*, available on the Internet at <http://www.alfb.org>

Equipment Upgrades

While the contract often does not address the issue of mandatory equipment upgrades or housing updates directly, the issue is clearly of concern for existing growers and those considering getting into the poultry business. A 1999 survey of 1424 contract poultry growers found that 70% of the houses reported “substantial” improvements (\$3,000 or more) in the last five years. Barely half believed the improvements made them better off. And half believed their contract would not be renewed if the recommended improvements were not followed.¹⁷

Does your contract clearly state that, once your barns have been approved by the company for a contract, you will not be forced to update equipment before your existing equipment is fully depreciated or worn out?



While contracts typically fail to provide such guarantees or assurances, most contracts do oblige the grower to provide equipment that meets the company’s specifications, which change periodically. Though companies often offer incentives for certain expensive upgrades, it can take many years to make back the money spent. When faced with an upgrade, ask the company to show you the payback figures on the investment.

Does the contract allow the company to pay growers differently because of equipment, even if growers are producing the same quality of birds at the same level of efficiency, or rank?

¹⁷ A full report on the survey and the results is contained in *Assessing the Impact of Integrator Practices on Contract Poultry Growers*, published by Farmers’ Legal Action Group, September 2001. The report is available at: <http://www.flaginc.org/pubs/poultry.htm>

Dispute Resolution: What Happens if There is a Problem?

No one likes to get into a new business thinking about what will happen if something goes wrong, but problems do arise - even in the best of cases. Knowing your options if a problem arises and how they are for getting a fair resolution to the problem are important things to consider.

Does your contract outline a grievance procedure or a dispute resolution process? Is that process fair and affordable? ¹⁸

What are the rules governing the process? How much can the process cost? How you can appeal if you believe the decision reached is not just?

The most common methods of dispute resolution mentioned in poultry contracts are peer review, mediation and arbitration. Each of these methods has advantages and disadvantages and each contract can spell out different procedures associated with each method.

Peer review usually involves making a complaint against the

company before a panel of other growers. The growers then decide how the dispute will be resolved. This method can be inexpensive and quick, but you may want to consider whether the members of the peer review panel (who are farmers dependent on the company for their own contracts) would feel able to render a fair decision against the company without fear of retaliation. Typically, either party can appeal the decision. Some contracts specify that after peer review, growers can take a complaint to arbitration. If no appeal process is specified, either party can take the complaint to court.

Mediation involves making a complaint before a third-party mediator. Typically, the contract sets out how the mediator is chosen. Like peer review, mediation may offer a less expensive alternative than a court case and the decision is non-binding so either party can typically pursue the matter further.

Arbitration provides for one or more arbitrators to make a final decision concerning the dispute. Typically the contract sets out how

the arbitrator is chosen and /or refers to rules established by a third party such as the American Arbitration Association. Arbitration, especially if it requires multiple arbitrators, can be prohibitively expensive. The costs of arbitration are in addition to any costs for legal representation. Arbitration decisions are typically binding, meaning the decision is final and can not be appealed or reviewed by the courts. ¹⁹

Does the dispute resolution process create a shorter timeline to file a complaint or limit your financial compensation as compared to existing laws?

¹⁸ For a more detailed description of these, read *I'll See You in Court – Or Will I?*, posted on the Internet at: <http://www.flaginc.org/pubs/poultry.htm>, Chapter 4, Appendix B.

¹⁹ Many contract growers and farm groups are seeking federal legislation that would protect the right of farmers to decide whether or not to use arbitration when the problem arises (rather than when they sign the contract.) Contact RAFI-USA for more at <http://www.rafiusa.org/programs/>

Dispute Resolution: What Happens if There is a Problem?

Can USDA or other government agencies help if a problem develops?

The Grain Inspection, Packers and Stockyards Administration (GIPSA) within the USDA is to oversee and enforce the law and regulations associated with the federal Packers and Stockyards Act (P&S Act). The P&S Act makes it unlawful for any livestock or live poultry dealer to “engage in or use any unfair, unjustly discriminatory, or deceptive trade practice or device.”²⁰



However, GIPSA only has full enforcement authority in the livestock industry, which does not include poultry. When violations of the P&S Act are discovered in the livestock industry, GIPSA has the authority to take administrative actions, including holding hearings and assessing civil and criminal penalties.

GIPSA’s enforcement authority in the poultry industry is more limited. If a company fails to pay a grower and a timely complaint is filed, GIPSA can take action to protect the grower’s interests. Otherwise, when complaints of unfair and deceptive practices are made in the poultry industry, GIPSA can only investigate the complaint and issue an order (send a letter to the company asking them) to cease the illegal conduct. In extreme cases, GIPSA can send the complaint to the Justice Department but poultry cases are not likely to be a national priority within the Justice Department.

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In addition, the P&S Act has been interpreted by GIPSA as not applying to breeder hen or pullet operations.²¹

²⁰ 7 U.S.C. § 192(a), <http://151.121.3.117/lawsandregs/lawsregs.html>

²¹ See 7 U.S.C. § 182(8), <http://151.121.3.117/lawsandregs/lawsregs.html>

For More Information Contact:

Rural Advancement Foundation International - USA

(RAFI-USA) The current RAFI –USA Contract Agriculture Reform Program is an expansion of our 15 years of support for contract poultry farmers. In the face of record low commodity prices and ever-increasing market concentration, many U.S. farmers are turning to contracting for economic security. The RAFI-USA Contract Agriculture Reform Program works to insure these contract arrangements between individual farmers and processors are equitable.

Contact RAFI - USA at:

274 Pittsboro Elementary School Road
Pittsboro, North Carolina 27312
919-542-1396

<http://www.rafiusa.org>

Campaign for Contract Agriculture Reform

The Campaign for Contract Agriculture Reform is a national alliance of organizations working to provide a voice for farmers and ranchers involved in contract agriculture, as well as the communities in which they live. The goal of the campaign is to assure that the processor-producer relationship serves as a fair partnership, rather than a dictatorship.

For more information on the Campaign for Contract Agriculture Reform go to:

<http://www.rafiusa.org/programs/CONTRACTAG/CCAR.html>

National Contract Poultry Growers Association (NCPGA)

The National Contract Poultry Growers Association (NCPGA) is an agricultural cooperative of poultry growers improving the industry by promoting the interests of growers. We are a grower-run and governed cooperative association. Our goal is to build long-term stability for the poultry farmer and improve his or her bottom line.

Contact NCPGA at:

910-947-1060, or ncpga@dsslink.net

Farmers' Legal Action Group, Inc. (FLAG)

FLAG is a nonprofit law center dedicated to providing legal services to family farmers and their rural communities in order to help keep family farmers on the land. Since its inception, FLAG has provided an extensive array of legal services to financially distressed farmers and their advocates and attorneys nationwide.

Contact the Farmers' Legal Action Group at:

360 North Robert Street, Ste 500

St. Paul, MN 55101-1109

Phone: 651-223-5400/1-877-860-4349 (MN Only)

Fax: 651-223-5335

Email: lawyers@flaginc.org or webmaster@flaginc.org

<http://www.flaginc.org/>

USDA, Grain, Inspection, Packers and Stockyards Administration (GIPSA)

A major objective of GIPSA's Packers and Stockyards Programs (P&SP) is to maintain fair trade practices in the marketing of livestock. If a poultry grower believes he or she has been treated unfairly or that an integrator or processor is engaging in deceptive practices, they can report the complaint to GIPSA and the Packers and Stockyards Program.

The GIPSA toll-free telephone hotline for reporting violations and abuses in the grain, livestock, meat, and poultry industries is **1-800-998-3447**. Callers will reach a voice mail system that will tape their messages. The Agency will respond as quickly as possible to reports of violations.

For more information on GIPSA or the Packers and Stockyards Program go to the GIPSA home page at: http://151.121.3.117/aboutus/about_us.htm

For an overview of Packer and Stockyards Programs go to:

<http://151.121.3.117/psp/overview.htm>

“Questions to Ask Before Signing a Poultry Contract”
Evaluation Form

We are always interested in hearing from readers. Please fill out the form below and send it to:
RAFI-USA, PO Box 640, Pittsboro, NC 27312

1. How did you use this guide? Check any that apply:

- as general background on poultry contracts and the industry
- as a tool you referenced in the process of making a decision related to entering a poultry (or other) contract
- as a tool you referenced for more information on your rights as a contract poultry grower
- other: _____

2. What information did you find the most helpful or interesting?

3. If you read “Questions to Ask Before Signing a Poultry Contract” because you are considering getting into the contract poultry business or other contract-based agricultural enterprise, has the guide caused you to do anything differently than you were previously planning? (For example, are you going to talk to more farmers or revise your cash flow projections?)

4. After reading “Questions to Ask Before You Signing a Poultry Contract,” do you have additional questions or types of information you wish we had included?

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ Email _____

Organization / Business _____

Thank You!

RAFI-USA
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Pittsboro, NC 27312