

Assessing the Impact of Integrator Practices on Contract Poultry Growers

September 2001



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Chapter 1

Introduction

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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.