



## 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.

