

Growers Have New Rights Under the 2008 Farm Bill

The Farm Bill was passed into law on May 22, 2008. While the overall Farm Bill is not perfect, we fought for and won the first ever Livestock Title, which has some very important protections for contract growers.

Any contract that is renewed, modified, extended or entered into from now on should contain provisions that allow you to:

Decline to be bound by an arbitration clause in your contract. All contracts with arbitration clauses are now required by law to have a provision that allows you to decline to be bound by the arbitration provision in the contract. This choice will be presented to you when you sign a new, renewed, modified, or extended contract. It will not be offered later when you have a dispute with the company.

Know if the company will require large capital investments over the life of your contract. The first page of a contract will contain an “additional capital investments disclosure statement,” which will state that additional large capital investments may be required of the poultry grower during the term of the poultry growing arrangement.

Settle a dispute with the company in the Federal judicial district where you live rather than where the company is headquartered. This provision is important for growers who now have provisions in their contracts that require them to go to the state or city where the company is headquartered, even if it is across the country from where the grower lives.

Arbitration Clauses

Many growers have fought to retain the right to defend themselves in court against abuses by their poultry integrators or packers. In recent years many companies have forced growers to sign away those rights through mandatory arbitration clauses. Together, we have fought for more than seven years to urge Congress to step in to prohibit poultry and livestock companies from forcing growers to sign mandatory arbitration clauses. Finally, the new Farm Bill requires companies to give contract growers a choice of going to court or using arbitration.

When you receive a new, renewed, modified, or revised contract, **the contract cannot include an arbitration clause unless it also gives the grower an option to opt-out** of that clause. So it is critical that growers read their contract carefully. Unlike the past, you actually have a choice. If you want to reserve your right to defend yourself in court with regard to future disputes with your poultry or livestock company, **you must make that decision in writing when you sign that contract.**

- **Arbitration is much more expensive than going to court** because of the up front fees. The fees to get the process started can cost thousands of dollars. It is also more difficult for a farmer to prove his/her case in arbitration since basic legal processes such as discovery are very limited. It is nearly impossible to appeal adverse decisions by arbitrators. Arbitration is governed by procedures and rules chosen by the company that wrote the contract. You do not have access to a jury of your peers in arbitration as you do

in court.

- Even if you decline the use of arbitration when you sign the contract, you still have the right, after a dispute arises, to use arbitration if you and the company both agree in writing to do so. However, if you accept the arbitration clause when you sign a new, renewed, altered or amended contract, **you will not have the option to go back and chose to go to court after a dispute arises.**
- **The contract should also have a disclosure statement** that says that you have the right to decline the requirement to use arbitration to resolve any controversy that many arise under the contract.
- **It is illegal for the company to say that it won't bring you any more chickens or to terminate your contract because you declined the arbitration clause. Intimidation for declining the arbitration clause is also illegal** so take good notes of what your field representative says to you when you are presented with the option of declining the arbitration clause in a new contract, especially if he or she tries to influence your decision on the arbitration opt out provision in any way.

Flock-to-Flock Contracts

We know that many of you have flock-to-flock contracts, which technically get renewed each time you get a new flock of chickens. The Farm Bill says that the choice to decline to be bound by an arbitration clause should be in any new, **renewed**, altered or amended contract after May 22, 2008. Therefore, you should get a new contract or at least a separate provision allowing you to decline to be bound by the arbitration clause in your contract when you get your next flock of chickens

- **If you don't get a new contract** or a separate sheet on the arbitration clause, you may want to **ask your service person why** you didn't get a new contract or a separate sheet with these new provisions. You can show your serviceperson the language that is in the Farm Bill that is on the next page and point out that it says that this arbitration choice provision applies to any contract that is entered into, amended, altered, modified, renewed, or extended after the date of the enactment of the Farm Bill (May 22, 2008).
- **Please let us know if your new contract does not contain a choice on arbitration.** If the new contract contains any requirements that you keep the contract confidential, you are urged to consult an attorney.

What You Should Do When You Get a New, Renewed, Amended or Altered Contract

- **If you get a new contract with an arbitration clause but without the provision** that gives you the option to decline to be bound by the arbitration clause, **you may want to send a letter to the company** that references that arbitration provision in the Farm Bill and explicitly states that you are opting out of the arbitration provision of the contract.
- If you get a new contract and it has the arbitration choice provision, make sure to read the rest of the contract carefully to make sure that there is not anything else new in there that might not be good provisions for you.

Other New Protections

There are some other protections in the Livestock Title that require USDA to write regulations and are important victories. The Livestock Title also:

- Requires USDA to write regulations on whether a company has provided reasonable notice to a grower on suspension of the delivery of birds, when additional capital investments under a contract is unfair under the Act, and what a reasonable period of time is for a grower to remedy a breach of contract that would lead to termination of the contract.
- Improves oversight of USDA's enforcement of the Packers and Stockyards Act by requiring the Department to provide an annual compliance report detailing the number and length of time spent on investigations of potential violations of the Act

These materials provide a very general overview of the protections for contract poultry growers provided under the 2008 Farm Bill. **For more detailed information and/or any questions, please contact:**

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- An attorney with experience in this area of law
- The Grain Inspection, Packers and Stockyards Administration (GIPSA) is the agency authorized to investigate complaints or violations of the law. You can call GIPSA toll free at 1-800-998-3447 to report a complaint. You may do so anonymously, though if you do not provide your name and contact information, GIPSA will not be able to report back to you on the results of its investigation.