

**Testimony(Draft) of Kay Doby, Poultry Grower  
Cameron, North Carolina**

**Before the**

**House Committee on Agriculture  
Subcommittee Livestock, Dairy and Poultry**

**Hearing on**

**Review of the Market Structure of the Livestock Industry  
April 17, 2007**

Chairman Boswell, Ranking Member Hayes, Members of the Subcommittee -

My name is Kay Doby. I am poultry grower from Cameron, North Carolina. Thank you for this opportunity to submit this testimony on behalf of the Campaign for Contract Agriculture Reform.

The Campaign for Contract Agriculture Reform (CCAR) 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. I am the President of the North Carolina Contract Poultry Growers Association as well as a member of the National Contract Poultry Growers Association, both of which are long-standing members of CCAR.

In the past, farm bill debates have focused on issues such as research, credit, conservation, and the structure of commodity price support mechanisms and direct farmer assistance programs. Certainly, those issues will continue to be a central part of the debate for the 2007 farm bill. But the structure of U.S. agriculture is rapidly changing and therefore the focus of the farm bill process should also be broadened to keep pace with the modern realities facing farmers and their communities.

Unfortunately, farmers are rapidly losing their independence. The traditional relationship of independent producers selling their products to independent processors is quickly changing toward an environment in which contractual arrangements between farmers and vertical integrators and processors are commonplace. In addition, agribusiness firms are rapidly consolidating to gain market control. It is critical that the farm bill not only address the structural issues of agriculture to help independent farmers stay independent and viable, but it is also important to acknowledge the rapid shift toward contract production, and to address the unique needs and challenges of contract farmers.

No one knows about this changed structure and the pitfalls of those changes better than poultry growers. In fact, production contracts have been around for poultry since the 1950s, and nearly 100 percent of broilers are now produced under contract.

In previous Farm Bill debates, the voices of poultry growers have not been heard. Because of the contract relationship that growers have with their poultry integrator companies, it is very difficult for poultry growers to speak out about their problems.

In order to get started in the poultry business, a potential grower must take out a loan of about \$250,000 per poultry house in order to build these sole-purpose structures on their farms to meet the terms of the poultry growing contract. The company provides the specifications for the house, but the grower has to pay for them. Often, growers don't even see the details of the contract before they take out the loan and build the houses, but

instead are asked to move forward in making the financial commitment based on a “letter of intent” from the poultry integrator. So when a grower goes into debt to this extent, they must often put their farm and farmhouse up as collateral for the loan. At this point, the grower has very little choice but to sign the contract that is put before them. There are no negotiations. It is a take-it-or-leave-it contract. And it is subject to change at any time, based on the wishes of the poultry company. If you don’t do as they say, they will stop delivering chickens to your farm, and you will not be able to make your loan payments. And as far too many growers have learned the hard way, if you attempt to speak out about your situation, or to work with other growers to raise concerns, you are vulnerable to contract termination or other more subtle methods of retaliation by the poultry integrator.

In 1993, my husband and I built two 500-ft poultry houses at a cost of \$188,000 dollars. The specifications of how to build the houses were provided by the poultry company. The houses were financed through the poultry company with 20 acres of our land put up as collateral. The first contract I signed was for 5 flocks a year for 10 years, the length of the loan. In the beginning, things looked good. The first year we received six flocks, and I was hopeful, because it looked like I’d get my loan paid off before 10 years. Little did I know that after one year into my supposed 10-year contract, the company would bring us another contract to sign, this time for 3 years with no guarantee of the number of flocks.

The next contract was for 2 years with a mandatory arbitration clause added, saying that I could not take the company to court for any reason. Then a few years ago, I was presented with a yet one more version of the contract. That is only “flock to flock.” The grow-out period for one flock is about 8 weeks. Talk about job security!! At that time, we still owed \$60,000 on the houses and we were being told that we might get chickens to raise or we might not. Of course, without chickens in our houses, we would not be able to make the payments and we would lose the land we built the houses on. As a grower, you get the message very quickly. With your livelihood on the line, and the future of your business controlled completely by the company and its decision to give you birds or not, it’s not a surprise the growers are reluctant to speak out about their circumstances. Plain and simple, they fear retaliation.

### **The Ranking System of Payment**

Making matters worse, even when you do have chickens in your barns, growers are ranked against each other for their pay, based on the growers’ success in adding weight to the bird over the growout period of 7 or 8 weeks. This is called your “feed conversion.” The company will group you with maybe 14, or as few as 4, other growers. They will take the average for that week of how much feed it took to grow the average weight bird. Then you will fall somewhere in the ranking system to determine what you will be paid. There will be half the growers making above the 50 percent mark and half of the growers will be in the minus. The companies will use the minuses to say you are a bad grower.

Now keep in mind that the company controls all of the inputs that determine your success in adding weight to the bird. For example, you have no control over the chicks that you receive. Maybe you received chicks that came from very young hens that just started laying, therefore you received little tiny chicks that have a hard time living and if they do live they never get to the weight of the others, but still eat as much. Now don’t forget that your goal is to raise the heaviest bird on the least amount of feed. Maybe you received chicks that had an egg explode during the hatching process and it penetrated the other eggs with bacteria. If that happens, then you have sick little chicks. Yet you are being ranked for pay with growers that have different chicks, and in some cases, even a different breed of chicks with different abilities to convert feed to weight.

The next problem is that you have no control over the feed. What if you get the wrong feed mixture for your age birds? If you get a low calorie feed, the birds are going to eat it and not put on as much weight.

Another factor that is beyond the growers’ control is when the company will pick you your birds to take them to

be processed. It is not uncommon for there to be a several day variation in times that a grower's birds are picked up relative to other growers in their ranking. For example, if my birds are picked up at 58 days and the other grower's birds are picked up at 53, 54, 55 days, it makes a big difference. Your birds have just been sitting there for extra days eating thousands more pounds of feed and just adding to your litter. They have finished growing because the last days of feed are withdrawal, not packed with the calories for weight gain.

And even after your birds are picked up, there are still variations that could affect your pay greatly. Depending on the time they sit on the trucks before they go to processing, some of the birds may die. You aren't paid for a dead bird but you sure are charged for the feed that that bird ate.

The difference to my operation for being at the top of the rank versus the bottom of the rank for one flock thousands of dollars. That's a lot of money, and it puts growers in the position to NOT want rock the boat, because the company can directly influence where you fall on that ranking. There is no way it can be fair to rank growers against one another when they never start out on the same level. There are too many things beyond the grower's control to base his pay on a ranking system, because a ranking system assumes fair competition and that growers are receiving the same inputs.

### **Forced Equipment Upgrades At Growers' Expense**

One other commonly used practice that is economically abusive to growers is the practice of requiring equipment upgrades at the growers expense, to make changes in the houses that were originally built to the companies own specifications.

With a traditional bank loan on a dwelling or land, one normally obtains equity as the loan is paid off. With loans for poultry houses and equipment, little equity is earned because the houses and equipment have limited salvage value. While loans are being paid off, cash flow is typically negative. After loans are paid off, cash flow may be positive, but inadequate to recover earlier losses.

Even with that dismal projection, the grower still works for the day that he will have the loan paid off. But guess what? The grower will never get to that day because the company won't let him. When a grower gets his houses paid for, the company wants the newer updated equipment in the houses or they will cut you off. So here you are with two choices, go back even deeper in debt or just sell your farm and salvage what you can.

The most recent example of this problem is tunnel ventilation. The poultry companies discovered by way of technology that if you put a chicken in a house and keep the temperature at 72 degrees after it feathers out and keep it virtually in the dark 24/7 for 8 weeks, you can raise a bigger bird on less feed. The feed is the company's only expense. Now this would be good if only the companies would share the profits with the growers, but they do not.

This new technology is achieved through what is known as tunnel ventilation. The curtains look white on the outside but they are black on the inside, no light can come through. Companies are now completely walling up one side of the houses. Some are even going so far as to wall up both sides. The only way the birds can get air is inlets in the ceiling that open when the fans come on to suck in air.

Our houses on our farm are what they call conventional houses. We have curtains that light can come through; the curtains come down automatically when it gets too hot. The company wanted us to convert our houses to tunnel ventilation, even though we paid hundreds of thousands of dollars to build our houses to their original specifications, and when we still owed \$80,000 on them. The new upgrades that they wanted us to make would cost an additional \$80,000.

In other words it means that the company wants you to make you to install tunnel ventilation so they can make more money off you. If you don't agree to do so, at your own expense, they threaten to stop given you any more chickens and you will lose your farm. Poultry houses are a single-use structure and at the present time there is nothing else that can generate the revenue to pay for them that poultry can. You are completely vulnerable to the companies' demands.

I personally know growers that have been cut off. Others have given in and borrowed the money to do the upgrades, and are struggling under the additional debt.

While the companies do offer some additional pay to encourage you to shift to tunnel ventilation, I have looked at the figures and you can not make your additional loan payment with the improved pay they offer you. Not only can you not pay your loan, but you also have the additional expense of electricity because you must run fans to bring in fresh air in the summer. Before with conventional houses, you could just open the curtains, which is a much more energy-efficient strategy.

Farm business records show that contract producers who once had acceptable incomes from their poultry operations now put up a few hundred thousand dollars of equity, and borrow several hundreds of thousands more to hire themselves at minimum wage with no benefits and no real rate of return on their equity. Yet, integrators continue to earn 10 – 25 percent rates of return on equity.

Consumers have benefited from vertical integration in both quality and consistency of poultry products with lower prices. Reports show that many poultry integrators have benefited from vertical integration. Contract poultry producers have been left behind with a poverty level of existence.

### **Why Do Growers Sign the Contracts If They're So Bad?**

A question often asked is: "If returns are really so low, why are people lined up to become contract producers?" Although no detailed studies are available, it appears that there are four major reasons why people continue to be interested in becoming contract producers. First, there are few other job opportunities in areas where poultry operations are often located. Second, many potential producers do not understand that cost and return budgets may use unrealistically long depreciation periods. In the past, some producers have been strongly discouraged by integrators from making public their contracts and financial information. And there may be deception in the information presented to potential producers by some integrators in that not all costs are shown, or costs are underestimated. Third, many potential producers may feel that they can be above average, even though the payment system prevents more than half of them from being above average. Fourth, the manner in which most integrators determine pay for individual flocks may result in declining pay as other producers adopt new, more efficient technology. Potential new producers may not recognize this and thus may not account for it in their profitability analyses.

### **Legislative Proposals To Address the Problems**

Hopefully you are asking yourself, how can the companies do that? Because they have a contract that is written solely to benefit them. Because there are no laws that say they cannot do it, and because increasingly, their access to the courts of justice for growers are being barred by mandatory arbitration clauses in their contracts.

The companies are not going to change things unless they are made to do so, by commonsense laws governing fair standards of conducts in contracts, by adequate enforcement by USDA, and by competitive market place that gives growers the ability and right to bargain for fair contract terms. The growers don't want anything that they are not entitled to, but they want things to be fair. And I have a few suggestions in that regard:

1) The Packers and Stockyards Act needs to be updated to give USDA's Grain Inspection, Packers and Stockyards Agency full authority, like the authority they already have in the red meat sector, to crack down on unfair and deceptive trade practices. Right now, their authority is very limited for poultry, and that means that there's no cop on the beat to make sure that poultry growers are not being abused. And even the limited authority that GIPSA has excludes any authority to provide protections for breeder hen and pullet growers. The Packers and Stockyards Act needs to be modernized to give GIPSA full authority to prevent unfair and deceptive trade practices in the poultry sector. And once they have that authority, we need to make sure that GIPSA is doing everything possible to fully enforce the law.

2) Pass legislation to specifically prohibit certain abusive contract clauses. For example, poultry growers, and some hog producers, are being forced to sign mandatory arbitration clauses. Often the company will force you to sign a new version of your old contract, but will add the arbitration clause, and threaten to stop sending you new chicks until you sign. This arbitration clause has the effect of saying that you can't seek justice in court, no matter what the company does to you. Even in the case of illegality, or breach of contract, or fraud, you can't go to court. Instead you have to go into a private arbitration system where you have no rights, and where they ask you to pay thousands of dollars up front just to start the arbitration process. Arbitration should be voluntary for both parties, not something forced on you by the company. Congress passed a law a few years ago to stop car manufacturers from using these abusive arbitration clauses on car dealers. Farmers would like the same protections that Congress has given to car dealers.

3) And what would be really best of all is if companies would be required to bargain in good faith with grower associations, instead of insisting on dealing with each grower individually. This is not a new idea. In fact in some states, like California and Michigan, the state laws have "good faith" bargaining requirements for some agricultural contracts. And it works well there. But the laws had to be there first to make this happen. We should do this at the national level too, by changing the Agricultural Fair Practices Act to require good faith bargaining in contract negotiations.

If large agribusinesses are allowed to control the terms of these take-it-leave-it contracts, and as long that Congress lets them abuse growers, companies will continue to shift the poultry model into other parts of agriculture, as we have already seen in many other commodities like hogs, tobacco, identity-preserved grains, and peanuts.

The problems of contracting and other manifestations of the lack of fair competition in agricultural markets are not confined to poultry. The problems are being seen in many other sectors of agriculture, particularly in the livestock sector. Therefore, over 200 organizations wrote to the House Agriculture Committee on January 18th of this year, in support of 8 legislative initiatives to help restore competition to agricultural markets, to the benefit of producers and consumers alike. A copy of that letter is attached to my written testimony. These legislative proposals include the ones that I have already mentioned, but also include others to address anti-competitive practices in the beef and hog sectors and elsewhere. It is my hope that this Committee will see fit to include a broad competition title in its version of the 2007 farm bill, that will include provisions related to each of the 8 recommendations in the letter.

I would like to thank you for your time and willingness to listen to what's going on with today's poultry growers. The contract producer has been transferred into a mere servant of a corporation. Or, as some have said, contract producers are serfs – with a large mortgage.