



September 26, 2022

S. Brett Offutt
Packers and Stockyards Division, Fair Trade Practices Program
Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Ave. SW,
Washington, DC 20250-0201

RE: Docket Number: AMS-FTPP-22-0046
Advance Notice of Proposed Rulemaking
Poultry Growing Tournament Systems: Fairness and Related Concerns
RIN: 0581-AE18, *Fed. Reg.* 34814-34819 (June 8, 2022)

Dear Mr. Offutt:

On behalf of the members of the National Family Farm Coalition, we thank you for the opportunity to offer comments on the proposed rule “Poultry Growing Tournament Systems: Fairness and Related Concerns” (Docket Number: AMS-FTPP-22-0046).

National Family Farm Coalition (NFFC) is an alliance of grassroots farmer- and advocate-led groups across 42 states, representing the rights and interests of independent family farmers, ranchers, and fishermen in Washington, DC. Today NFFC’s 31 state, national, and regional farm and rural organizations are bound by a common belief that communities have the right to determine how their food is grown and harvested; that everyone in the food system should receive fair prices or wages; that all producers have equitable access to credit, land, seeds, water, markets, and other resources; and, that our food and agriculture policy must support sustainable farming, ranching, and fishing practices. NFFC is a member of the Campaign for Contract Agriculture Reform (CCAR) and NFFC supports CCAR’s comments on the “Poultry Growing Tournament Systems: Fairness and Related Concerns” proposed rule. The Rural Advancement Foundation International – USA (RAFI-USA) is also a core member group of the National Family Farm Coalition, and we fully endorse and support RAFI-USA’s comments and framework for reforming the tournament system to address unchecked corporate power in the poultry sector and support poultry grower livelihoods.

Addressing predatory and exploitative practices in the poultry tournament system

For three decades NFFC and our members have advocated for the rights and livelihoods of poultry growers, and the fair and effective implementation of the Packers and Stockyards Act (PSA). Since the 1990s the tournament system has proliferated throughout the poultry sector, leaving most poultry growers with few options to access markets other than through exploitative and extractive contractual relationships with corporate poultry companies under the legally dubious framing of ‘independent contractors.’ As detailed by RAFI-USA, the lack of fair contracting and market access options for

growers stem from a number of factors, including first and foremost, efforts by corporate poultry companies to maintain regional monopsony control through anti-competitive practices, contractual non-compete clauses, and barriers for growers to switch companies (in the limited number of contexts where that is even an option due to lack of competition) through requiring expensive infrastructure upgrades to receive a contract. Furthermore, poultry companies effectively minimize their costs of live poultry production through cost shifting and deception. Poultry companies do this by:

- Inducing growers (and their lenders) to put up all the capital and land to build the facilities to raise the company's chickens for them, without providing any commitments for a reasonable return on that investment;
- Forcing growers to make periodic modifications to their facilities and equipment, at their own expense, as a way to research the efficiency of different facility configurations, without having to pay for that research;
- Creating false expectations to induce growers to commit to providing the labor to raise the company's chickens for them, without providing any commitment to minimum pay or income predictability.
- Controlling all the inputs used by the grower to raise the chickens (chicks, feed, medicine), without acknowledging to growers that those inputs will be of variable quality relative to the inputs provided to other growers.
- Creating the false expectation that a grower's managerial skills are the main factors determining the performance of their flock, when research has shown that the quality of the inputs provided to the grower by the poultry company are the dominant factor in determining feed conversion performance.
- Ranking growers against each other for compensation based on the performance of their flocks, which allows the poultry company to insulate themselves from the risk of input quality variability, and to opaquely shift that risk to the growers.
- Writing contracts in a manner that allows the companies to provide fewer flocks to growers based on market conditions, without compensating the growers for the downtime, thereby insulating themselves from market conditions such as oversupply.
- Aggressively discouraging growers from communicating with each other about their operations and their contract relationships with their poultry companies, or from communicating with their legislators or federal regulators about these factors. This often takes the form of intimidation and retaliation against growers who do so.
- Maintaining detailed data about all aspects of the poultry production process and sharing that data with their competitors through confidential data collection firms.

In this context the tournament system at its core is deceptive because it creates the expectation that a grower's payment for a flock is largely dependent on their own actions and managerial skills relative to other growers against whom they are being ranked. In reality, a grower's feed conversion performance for an individual flock is based primarily on the quality of inputs provided by the live poultry dealer, such as chicks and feed, and the timing of chick pick-up by the live poultry dealer at the end of the growout period, relative to other growers in the ranking. With this perspective the tournament system is not dysfunctional, it is designed to limit poultry grower autonomy and ability to make informed and strategic business decisions, shift risk from poultry companies to growers, pit farmers against each other, and maximize corporate profits. This system thus is extractive of farmer livelihoods by design. And the significant negative impacts of the tournament system for grower livelihoods and the competitiveness of the sector over the past 30 years are stark, with a devastating decline in the number of family-scale poultry operators, well-documented instances of economic exploitation and racial discrimination,



mounting farm debt, and significant consolidation of the sector.¹ Contract agriculture can only be fair and equitable if both parties to that contract have relatively equal power and leverage to defend their rights and interest through the process of negotiating contract terms, and the system of production that growers participate in through those contracts. Poultry growers hope for, and deserve a system that gives them a fair and transparent base pay that allow them to cover their costs of production and livelihoods, and live in dignity. Contract poultry production through the tournament system is not functioning this way, and may fundamentally be unable to deliver fair prices to growers through its current mechanisms of valuation, compensation, vertical integration, and corporate control. The challenge for the sector is that it is very difficult to imagine any type of bonus payment system within the tournament system that would fairly and transparently reward growers without merely replicating the deceptions, unfair cost shifting, and retaliation threats that are inherent in the current tournament system, if the bonuses are still based on inputs and decisions that are controlled of the poultry company, and based on a system of pitting farmers against each other. The role of public policy, the PSA in this context, is help balance the asymmetries of power between corporate actors and family-scale farmers and operators, to prevent exploitation and abuse. Given the systemic and recurring nature of exploitation and abuse of growers in the tournament system over the past 30 years, only fundamental and extensive reform (including strong oversight, enforcement, and accountability) of this system can justify not prohibiting the tournament system through public policy action.

For far too many years, poultry growers and farmer advocates have spoken out against the tournament system in an effort to reform the industry, and have been retaliated against by corporate actors, too often leading to the marginalization and/or demise of poultry growers' business and livelihoods. In this context the stakes for poultry growers in our network to weigh-in on these transparency issues are very high, and USDA must listen to those grower voices that face the most risk in speaking out against predatory and inequitable practices by powerful corporations and business actors in the sector. In this context we urge USDA to acknowledge and prioritize the survey work of poultry growers conducted by RAFI-USA and referenced in RAFI-USA's extensive and in-depth comments. We implore USDA to quickly finalize, implement, and enforce strong rules for PSA – delivering on long-overdue promises to protect the rights of poultry growers, improve competition and transparency, and firmly address exploitative practices in the poultry industry, must be of the highest priority for USDA and the Biden-Harris administration.

In summary, and in support of RAFI-USA's comments on "Poultry Growing Tournament Systems: Fairness and Related Concerns," NFFC offers the following comments on poultry contracting and the tournament system that are urgently needed through enforced policy action as a *minimum starting point* for reforming the poultry sector:

¹ <https://www.whitehouse.gov/briefing-room/blog/2021/09/08/addressing-concentration-in-the-meat-processing-industry-to-lower-food-prices-for-american-families/>

- Growers should be given a guaranteed minimum price per pound for the chickens they raise, or through square footage contracts, which reflects their costs of production and livelihoods needs, and should not be paid below that price.
- Growers should be paid fair prices above and beyond minimum price floors for any sustainable agriculture practice or animal welfare standard they use in their production of poultry.
- Growers should receive basic contractual guarantees for the minimum number of flocks in a year and minimum flock density, so that growers (and their lenders) can predict their minimum annual income to allow them to make informed investment decisions.
- Growers should be able to make their own decisions about when, or if, to make changes to their chicken houses they use to raise the birds.
- If a grower's facilities are in good working order, poultry companies may not coerce or cut off the contracts of growers who refuse to implement further modifications not agreed to in their initial contract.
- If a poultry company wants to incentivize additional actions by growers, those actions should be measured objectively and based on things within the grower's control and not something that can be unfairly manipulated by the poultry company or based on a relative comparison with other growers that may lead to growers being pitted against each other or uncut economically.

Finally, while not a silver bullet for addressing the exploitative practices by poultry companies as highlighted above, producer associations and cooperatives are an important tool for growers, through collective action, to protect their rights, defend their interests, and negotiate better contracts that deliver benefits above and beyond public policy-mandated minimum standards. Negotiating contract terms with producer associations and cooperatives also reduces transaction costs for poultry companies by avoiding having to negotiate contracts with individual and dispersed farmers. According to the Agricultural Fair Practices Act (AFPA), it is already illegal for integrator corporations to coerce growers to join or not join a cooperative or association of growers. It is also illegal for buyers to retaliate against producers who form a cooperative under the AFPA. However, further rulemaking should specifically reinforce this protection for contract growers currently under contract with an integrator who might choose to join, or not join a cooperative or association. Any retaliation against growers with existing contracts based on their cooperative or association membership status should be considered unlawful undue preference and discrimination under PSA. Growers should have the free choice to opt for fair square-footage contracts, or to voluntarily form local cooperatives or associations for the purpose of bargaining for standardized production contracts. Furthermore, for the purposes of bargaining for better contracts, a poultry grower cooperative or association must be fully autonomous from the integrator, only consist of poultry farmers, and comply with the Capper-Volstead Act. Finally, USDA should provide technical and material support to community-based organization (with demonstrated history of cooperative development in the community they serve) as well as to independent poultry growers directly, for forming producer associations and cooperatives in the poultry sector.

Conclusion

Thank you for the opportunity to comment and for your consideration of our views. Should you have any questions about this comment, please feel free to contact Jordan Treakle (Jordan@nffc.net).

Sincerely



Jordan Treakle
National Programs and Policy Coordinator
National Family Farm Coalition