



August 23, 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-21-0044
Proposed Rule, Transparency in Poultry Contracting and Tournaments
RIN: 0581-AE03, *Fed. Reg.* 34980-35031 (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 “Transparency in Poultry Grower Contracting and Tournaments” (Docket Number: AMS-FTPP-21-0044). 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 also a member of the Campaign for Contract Agriculture Reform (CCAR) and NFFC fully supports CCAR’s comments on the “Transparency in Poultry Grower Contracting and Tournaments” proposed rule. In summary, NFFC supports the “Transparency in Poultry Grower Contracting and Tournaments” proposed rule but we believe it does not go far enough; below we offer a number of suggested additional provisions, and look forward to upcoming public comment periods for additional proposed rules that are needed to complement this “Transparency in Poultry Grower Contracting and Tournaments” proposed rule, and in-turn strengthen the competitiveness, equity, and transparency of the poultry sector.

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). With the proliferation of contract poultry production, and the use of the tournament system, over the past 30 years the evidence of industry consolidation and the negative impacts on contract poultry growers is clear.¹ Testimony, both public and anonymous, in past hearings and comment periods by poultry

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 illustrates a system of monopsony and oligopsony market control by corporate poultry meatpacking integrators that is uncompetitive, inequitable, and exploitative of poultry growers. For far too many years, poultry growers and farmer advocates have spoken out against this exploitative 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 deceptive and unfair practices by powerful corporations and business actors in the sector. This is also to emphasize to USDA that there is an urgent need for USDA to 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 response to the AMS request for comment, NFFC offers the following:

Question 1

Would the amount and type of information required help poultry growers make informed business decisions and better understand the poultry growing arrangement, or otherwise better address deception risks that growers may face in the poultry contracting process and in the operation of a poultry growing arrangement?

Yes. Poultry integrators are not required to disclose, nor regularly provide in practice (to our knowledge), accurate information on the expected income of poultry growers under contract. Furthermore, prospective growers are often unaware of potential poultry house infrastructure upgrades they may be (often arbitrarily) forced to make by integrators in order to continue to receive additional future contracts. This asymmetry of access to information puts prospective growers in a distinct and unsurmountable disadvantage both for negotiating contracts with integrators, and making informed and financially sustainable business decisions for their farm.

Question 2

What items might be added to or deleted from the proposed requirements to make the Disclosure Document most useful? Is any of the required information extraneous? Is any material information relevant to the poultry contracting process, including the terms in and risks of poultry growing arrangements, missing and should be added? Please explain what and why.

Six additional types of information are suggested to be required to disclose on the Disclosure Document:

1. Disclosure of an estimate of the minimum annual income the grower can expect from the poultry growing arrangement, including range of variability from contract base pay rate under poultry grower ranking systems, including:
 - a) the maximum bonus percentage and penalty percentage, above and below the stated contractual base pay rate, that the poultry grower's pay could vary within any payment formula included in the contract;
 - b) A minimum annual income estimate that shall be calculated based on the base pay rate, reduced by the maximum stated possible penalty percentage, multiplied by the minimum guaranteed number of flock placements and minimum guaranteed stocking density.
2. Disclosure of Integrator-Controlled Variables That May Affect Tournament System Performance
3. Disclosure of Integrator Contract Termination Rate, indicating the number and percentage of growers with whom they have terminated contracts in the past decade.



4. Disclosure of Past Litigation with Contract Growers, employees, the Department of Justice, Department of Agriculture, or other federal agencies.
5. Disclosure of Health Risks to Growers from Poultry House Dust and Ammonia, and provision of public health resources on how growers can protect themselves and their employees from these health risks.
6. Disclosure of Poultry Grower Rights and Protections under the Packers and Stockyards Act and other relevant statutes and regulations, including the USDA/Department of Justice Farmer Fairness complaint website (<https://www.usda.gov/farmerfairness>).

Question 5

Are there additional instances where a revision to the Disclosure Document would be appropriate? If so, please explain.

Proposed changes to disclosure documents after a grower has signed a contract should be first agreed by all parties to the contract. Furthermore, any changes that result in negative financial impacts on the grower should be documented, disclosed, and fully compensated to the grower immediately by the poultry dealer for the duration of the contract. Fa

Question 6

Is the wording of the proposed Disclosure Document and the disclosures that may be expected to arise under it readily understandable? If not, please suggest changes for improvement, including means to ensure that any disclosures in the Disclosure Document are readily understandable.

Disclosure Documents should be in plain language, devoid of highly technical language, and understandable to a wide array of growers. It should also be unambiguous to avoid any discrepancies in interpretation by live poultry dealers, USDA and Department of Justice regulators, and the Courts.

Question 7

Are there circumstances in which the dealer should be required to provide the Disclosure Document in a language other than English? Are other business materials provided in other languages already? If so, please describe those circumstances and comment on the benefits and additional burden of such a requirement.

It should be mandatory that all documents written by the live poultry dealer be provided in a language that can be competently understood by the prospective or current poultry grower. In instances where the live poultry dealer is required to supply documents or text written by USDA or other agencies, the onus should be on those agencies to make those resources available, translated into other languages. It should be considered a deceptive practice under the Packers and Stockyards Act, and a violation of the proposed rule's requirements, to offer a contract, Disclosure Document, settlement sheet, or settlement sheet disclosure to a prospective grower in a language they are unable to competently read or understand.

Question 8

Are the proposed Disclosure Document statements regarding a poultry grower's right to read the Disclosure Document and to share the document and consult with certain other entities about the contents useful for growers? Or, for example, should growers be given additional notifications regarding where they can find out more about their legal rights under the Packers and Stockyards Act, such as a USDA summary of or a link to those rights? Or, would less information be appropriate? Why or why not?

It's critical that USDA take all opportunities available to inform growers of the economic circumstances they will face if they sign a poultry production contract, particularly one that involves a tournament system for paying the grower. This should include a requirement that the disclosure document provide a link to a USDA summary of grower rights, as well as a link to the joint USDA/Department of Justice Farmer Fairness complaint website (<https://www.usda.gov/farmerfairness>).

In addition, as part of the requirements for participating in the Farm Service Agency (FSA) loan guarantee program, FSA should require financial institutions that lend to poultry growers to give them information about their rights to disclosures required by this rule. Neither FSA or the Small Business Administration (SBA) should guarantee a loan unless the term of the poultry growing arrangement is long enough to enable the grower to reasonably repay the loan, meaning that poultry contract terms should be for at least the length of the loan.

Question 9

Are there additional advisories to poultry growers that should be required in the Disclosure Document cover pages? If so, please explain why and suggest appropriate language for such notices.

We recommend that the USDA should require a disclosure of an estimate of the minimum guaranteed annual income the poultry grower will receive from the poultry growing arrangement to be boldly featured on the cover sheet of the Disclosure Document. This estimate should be calculated from the following set of disclosed information:

1. The contract's base price per unit of production
2. The minimum number of flocks guaranteed annually
3. The minimum flock stocking density guaranteed
4. A good faith estimation of variable costs that the prospective grower will be liable for
5. For live poultry dealers using a poultry grower ranking system, the maximum percentage of variance possible, both positive or negative, from the contract's base pay rate within their tournament system formula.

Question 12

Are there certain legal violations or other matters which could call into question the financial health or integrity of the live poultry dealer such that they should be disclosed?

Integrators should also be required to disclose any litigation brought against them by contracted producers, employees, Department of Justice, Department of Agriculture, or other federal agencies.



Question 13

Is the proposed disclosure regarding the dealer's policy on sale-of-farm circumstances adequate to ensure transparency and effective grower decision making?

Refusal on the part of a poultry dealer to offer a contract to anyone who buys the farm of any contract grower can be a mechanism to limit the ability of a grower to exit a bad contract relationship. The requirement for a poultry dealer to disclose their policies with regard to the sale of farms, and those disclosures should be binding on the dealer.

Question 14

Should we require dealers to disclose policies and procedures for determining whether disaster or sick flocks are caused by the integrator or grower and how growers will be compensated under each scenario? Or, where a dealer maintains policies that do not remove sick flocks from the tournament, should we require additional disclosures regarding sick flock risks to the grower? Why or why not?

Integrators should be required to maintain an appeals process for growers to report any issues that affect how their flocks perform or how their pay is calculated. Such issues could include feed quality or delivery issues, input quality issues, disease or disaster issues, or other grievances. The Disclosure Document should disclose the details of the integrator's appeals process, including the method for submitting an appeal, and how appeals will be resolved. Specifically, integrators should be required to enumerate in which situations they will be contractually obligated to settle a grower's pay outside of the tournament system due to an identified issue, discrepancy, or appeal, including issues related to disease or disaster. USDA should require all appeals and resolution summaries to be disclosed on settlement sheet disclosures.

Question 15

Should we require dealers to disclose the contractual grounds for termination or suspension of the poultry growing arrangement? Why or why not?

Poultry integrators should be required to clearly disclose their policies for grower termination as an essential minimum standard of transparency. In addition, integrators should also be required to disclose how many growers have been terminated by the company over the past 10 years, including a quantification of the reasons for termination.

But disclosure alone is not sufficient. Clear rules should be established for when terminations should be considered an unfair or deceptive practice. For instance, grower termination for exercising their legal rights, such as freedom of association with other growers, to publicly raise concerns about the poultry growing arrangement, or to discuss their farms and their contracting arrangements with USDA officials or Members of Congress, should be a prohibited practice under PSA.

Question 16

Are there any other policies and procedures that dealers should be required to disclose? For example, should we require disclosure of policies and procedures around tournament groupings, compensation incentives of the dealers' representatives, or how growers may appeal or report determinations or actions?

Integrators should be required to maintain an appeals process for growers to report any issues that affect how their flocks perform or how their pay is calculated. Such issues could include feed quality or delivery issues, input quality issues, disease or disaster issues, or other grievances. USDA should require all appeals and resolution summaries to be disclosed on settlement sheet disclosures. This would further strengthen the value of these disclosures as an official record of the treatment of growers by their integrator.

Question 17

Are the proposed disclosures relating to grower payment history and projections adequate to enable poultry growers to make sound business decisions, are the proposed metrics appropriate, and is the local complex the appropriate standard? What, if any, other information should be required, and why? If so, how should it be provided?

USDA's requirement that integrators disclose a quintile breakdown analysis of complex and national grower incomes, disaggregated by facility specifications, is a helpful intervention that should increase transparency for growers in the poultry industry. Having information about real grower outcomes in one's region will give growers a good picture of how their fellow growers - and competitors - are fairing in the industry they are considering joining.

However, we also believe that USDA should take an important additional step to ensure full contractual transparency in the poultry industry. It is our contention that integrators should be required to clearly disclose the minimum annual income the grower will receive from the poultry growing arrangement.

Question 21

Would the provision of information about grower variable costs benefit growers? Why or why not?

The proposed requirement for poultry dealers to disclose upfront which costs are borne by growers is an important step toward needed transparency in the industry. But the wording of this disclosure must be carefully articulated to not misconstrue its meaning, and falsely indicate that these costs *necessarily* may be borne by growers – which party ultimately bears those costs should be a topic of negotiation between integrators and growers. Therefore, we recommend the proposed definition of *grower variable costs* under Section 201.2 should be modified to read as “those costs related to poultry production that may be borne by the poultry grower.”



Question 22

Have we listed the appropriate items regarding the grower variable costs dealers should enumerate and disclose to growers? For example, should we specify that dealers disclose information about costs related to compliance with environmental regulations, energy, water, and waste disposal? Are the timing of housing upgrades, including financing costs, reasonably predictable enough by dealers such that those costs should be considered part of grower variable costs during the poultry growing arrangement? Why or why not?

It is important to note that we believe it should be considered an unfair practice for poultry dealers to require growers to bear the cost of environmental compliance and waste disposal, especially since the environmental problems associated with poultry production are related to the system of production dictated by the poultry dealers themselves, and growers have no say in those production practices. Even though the chickens and the feed that creates excrement are owned by the poultry dealers, they continue to create the system that causes environmental risks, and then use their market power and one-sided contracting practices to foist the costs of those risks onto the grower. This is a perfect example of how industry consolidation and lack of competition in the poultry sector harms farmers as well as the communities in which they live. However, until such action can be taken by USDA to make it an unfair practice for poultry dealers to require growers to bear the cost of environmental compliance and waste disposal, dealers should be required to clearly disclose who will bear those costs.

Question 24

What types of information about grower variable costs do dealers currently collect? Are or how could dealers be incentivized to collect any information that they do not collect, or otherwise obtain such information in a reasonable manner?

Because of the lack of transparency in the data sharing services used by poultry companies, we do not know the answers to these questions. We recommend that USDA's Agricultural Marketing Service and the U.S. Department of Justice Antitrust Division investigate possible collusion between poultry companies via private industry data sharing activities. We also recommend that growers be given access to the data as well, to help them in making wise business decisions.

Question 25

How else can USDA refine and improve the disclosure regime outlined in this proposal? For example, would additional detail around the scope or definition of deception under the Packers & Stockyards Act be useful for implementing this disclosure regime—for example, a definition such as “Deception shall mean a material representation, omission, or practice that is likely to mislead a reasonable livestock or poultry producer or grower”? Why or why not?

Yes, establishing a clear definition of “deception” is an important step, because it gives growers, the regulated entities, and the Courts, a clear understanding of the intent of the rule. Because “deceptive”

is the actual word used in the prohibitions under Section 202(a) of the Packers and Stockyards Act, it is very important that the word “deceptive” be explicitly defined, as well as “deception.” In addition, the terms “deception” and “deceptive” should be defined with regard to all entities regulated under the PSA and all the farmers protected under the PSA, not just live poultry dealers and poultry growers.

Therefore, we believe the definition should be expanded as follows:

“Deceptive” or “deception” shall mean a written or oral misrepresentation, an omission of material information, or a falsification or misapplication by a packer, live poultry dealer, swine contractor, stockyard owner, or market agency or dealer that is likely to mislead a reasonable livestock producer, swine production contract grower or poultry grower.

In addition, while deception can cause anticompetitive harm, it has no redeeming value or pro-competitive justifications.² Therefore, a claim or allegations based on deception or a deceptive practice requires no proof of likelihood of competitive harm or injury.

Question 27

Is the proposed governance structure appropriate and sufficient for ensuring the accuracy of information provided in the Disclosure Document? Why or why not?

No, by themselves, the proposed governance structures are not sufficient. While the proposed rule includes provisions to require poultry companies to establish a process to audit and certify the accuracy of the data disclosed to growers, we are recommending that USDA also do unannounced audits of the companies to confirm the accuracy of the disclosures.

Question 31

Should AMS collect disclosure data, and if so, how might we use such data to enhance compliance and accuracy and monitor for possibly deceptive practices?

USDA should require integrators to annually disclose the data they are calculating and disclosing within the Disclosure Document, especially regarding grower incomes, grower costs, and alternative integrator options within 50 miles of their growers, to the Packers and Stockyards Division. USDA should assign staff who are dedicated to analysis of this data, to research industry consolidation and fair competition, and be able to identify early any patterns that may require corrective or enforcement action.

Question 32

As proposed, the Disclosure Document requirement would apply to live poultry dealers in all segments of the poultry production industry. How appropriate are the proposed requirements for all types of poultry production? Should the requirement to provide the Disclosure Document be limited in application to broiler and turkey production, or is it appropriate to apply it to other types of poultry?

It is critical that these disclosure requirements apply to all aspects of chicken and turkey production, as the transparency challenges articulated in these comments relate, to different degrees, to the industry as a whole.

² <https://harvardlawreview.org/2012/03/deception-as-an-antitrust-violation/>



Contract Term Questions

It is important to note that while we strongly support USDA's proposed rule and mandates for new disclosure requirements as an important first step toward a more fair, competitive and transparent poultry production system, these disclosure requirements do not effectively prohibit specific industry practices or contractual terms that we view to be unfair, deceptive, unjustly discriminatory, unduly preferential or unreasonably prejudicial. Poultry dealers are already prohibited under the Packers and Stockyards Act (PSA) from using such practices or devices, but USDA has failed to clearly enumerate all of the industry practices that meet these tests. Therefore, in subsequent rulemaking, we urge USDA to use its existing authorities under the Packers and Stockyards Act to provide more clarity about which specific industry practices violate the broad prohibitions of the PSA.

Question 1

Do the proposed requirements to specify an annual minimum number of flocks and a minimum stocking density for each flock under the poultry growing arrangement adequately address the need for transparency to avoid deception in poultry growing arrangements? Why or why not?

The proposed requirements to specify an annual minimum of flocks and minimum stocking density for each flock under the poultry growing arrangement will be very important to growers and prospective growers. Both figures are crucial to a current or prospective grower's ability to evaluate potential earnings under the contract and their ability to meet financial obligations. Requiring live poultry dealers to include this information in poultry growing contracts would improve transparency and reduce the risk of deceptive inducement in the contracting process. Providing such information would also allow lenders and insurers to better evaluate the desirability of poultry loans they are asked to consider. In addition, requiring poultry dealers to provide these guarantees up front will make it much more difficult for dealers to retaliate against growers who exercise their rights to speak out about their circumstances, or seek to organize other growers for advocacy purposes. However, we also recommend that there be a requirement for poultry dealers to disclose the minimum guaranteed incomes for growers. Without having this key piece of information, prospective contract growers will not be able to calculate the annual cash flow possibilities that they must consider in making this potentially life-shaping business decision. We also recommend that the rule be amended to clearly state what recourse growers have if the integrator does not meet the guaranteed minimums required by this section.

Question 2

Are there alternative solutions we should consider? For example, in relation to the guaranteed minimum number of flocks per year, would it be more useful to growers and simpler for integrators to express that value as a guaranteed number, or range, of days between flocks? Why or why not?

Requiring a guaranteed number of flocks per year, the guaranteed density of flocks, as well as the maximum amount of money that could be added to the contract's stated base price within the

integrator's tournament ranking formula, is much more useful to growers than requiring poultry dealers to disclose a guaranteed number or range of days between flocks.

If a grower knows how many flocks they will receive and roughly how many birds will be in each flock, that helps them plan. However, as explained above, that information is only useful to a grower if they can reasonably predict how much they will be paid for each flock. If there is a wide variation in grower pay between flocks as a result of the tournament system, for reasons outside of the grower's control, as is currently the case, even knowing the number of flocks and the density of those flocks will not allow growers to predict their annual income from their operation.

In subsequent rulemaking, we recommend that USDA actually specify that it is an unfair and deceptive practice under the Packers and Stockyards Act for poultry dealers to pay growers below the base price specified in the contract.

Settlement Disclosure Questions

The "tournament" or "ranking" pay system is based on the assumption that all growers are provided comparable inputs and any variance in performance is a result of farm management. Yet farmers have no ability to verify the equality of company-supplied-and-controlled inputs. The characteristics of these inputs, such as the health of the chicks delivered, can have a great impact on the farm's actual performance and therefore the farmer's final pay. The actual price a farmer receives can vary considerably from flock to flock even though the variation in performance is relatively small. Only if farmers have systematic access to information on factors that significantly impact farm performance, and are solely under the contracting companies' control, can they verify fair treatment and fair pay.

Consequently, we are very supportive of USDA's proposed settlement sheet disclosure requirements, as they represent an important but incremental first step toward a more transparent, fair and competitive system for contract poultry growers. However, it is also important to acknowledge a number of anti-competitive factors and unfair practices that are not mitigated by USDA's Packers and Stockyards Act rulemaking thus far. First, while poultry companies will be required to disclose input quality variables and feed discrepancies within tournament groups and how their ranking formula accounts for those variables, they are not, under the current rule, required to create new tournament formulas that actually account for variable inputs. As long as integrators are able to provide poor quality inputs to growers without providing any compensation or recourse within their grower payment systems, growers will still be operating within an unfair system.

Second, the poultry companies should be required to disclose input quality variables and feed discrepancies by house on each grower's farm thereby preventing the poultry companies from hiding these variables and discrepancies within the grower's settlement sheet through the use of on-farm averaging.

Finally, tournament group composition effects (wherein a grower can produce identical outcomes on two flocks, but receive different revenue based on which other growers they must compete with in each tournament group) are not addressed or accounted for in the currently proposed rule. Thus, integrators will still have the ability to unilaterally manipulate the performance average against which growers are compared, by exercising control over how growers are grouped together into tournament groups.



In future rules, we strongly encourage USDA to implement further reforms to account for these outstanding issues in the poultry industry.

Additionally, we recommend that the disclosure requirements for tournament settlements should apply to any poultry contract in which there exist integrator-controlled factors that may impact the baseline or bonus income of the contract grower. For example, even in a fixed performance contract, if a poultry dealer is providing inputs to growers, there should be full transparency about the quality of those inputs, because they can affect grower performance.

Question 4

How well does the proposed requirement to supply input information about each placement to growers at the time of placement respond to grower requests for such information?

As stated above, live poultry dealers should be required to disclose input quality variables and feed discrepancies by house on each grower's farm thereby preventing integrators from hiding variables and discrepancies within the grower's settlement sheet through the use of averaging. With this improvement, USDA's placement disclosure and settlement disclosure requirements will increase the transparency with which contract growers have access to information about their flocks, other inputs, and their performance in the context of their complex.

Question 5

Is the type or amount of information required appropriate, or should certain items be added to or deleted from the list, or otherwise modified? More particularly, should information about the contents and origin (or mix) of the feed supplied or the provision of veterinary services be disclosed to all tournament participants or not? Why or why not?

USDA's settlement sheet disclosure requirements proposed in § 201.214 are welcome but incomplete. There are a number of additional factors that impact grower settlement performance that are not currently required to be disclosed in the proposed rule, which USDA should add including:

- Disclosure of Expected Flock Feed Conversion History Based on Breeder Flock Age
- Flock Pick-up Data Disclosures
- Bird Mortality Disclosure
- Feed Provision Disclosures
- Grower Appeals Disclosure

Question 6

Is the required information useful to a grower's operations or not, including in managing risks and otherwise in preventing deception? Why or why not?

The settlement disclosures required under proposed new § 201.214 would be extremely helpful to growers in all aspects of their farm operation, particularly their financial planning.

Question 10

How well does the requirement to provide input distribution information, along with settlement payment information, for all members of the tournament respond to grower requests to improve transparency, address information asymmetry, and reduce the chance of deception in the tournament payment system?

By requiring integrators to disclose input quality, feed discrepancy, and facility specification information for each grower in a tournament group to each tournament participant, growers should be able to better assess whether they are experiencing retaliation or consistently being disadvantaged by the quality of the inputs they are being provided. If growers keep these records over time, they may have stronger bodies of evidence to provide to regulators should they believe they are experiencing discrimination or retaliation.

Question 11

Does the requirement to disclose the housing specifications along with settlement payment information improve transparency, address information asymmetry, and reduce the chance of deception in the tournament payment system? Why or why not?

Integrator mandated or coerced upgrades are among the top issues challenging grower's financial sustainability. USDA's requirement to disclose housing specifications throughout the various disclosures required in this rule will improve growers' ability to assess the relative performance and income gains that may be correlated with more modern infrastructure. It is our contention that contract growers, who are purportedly independent farm owners and who are required to be liable for the debt load associated with poultry farm infrastructure, should have full discretion over the choice to upgrade their infrastructure as long as their equipment and farm operations are in compliance with state and federal law. Within a truly transparent and competitive system, growers should have access to all of the information they need to decide for themselves whether infrastructure upgrades will add value to their farm businesses. To that end, we would further recommend that USDA create an additional transparency disclosure requirement for integrators proposing or requiring modifications to existing grower infrastructure specifications, in which integrators are required to disclose their own cost/benefit analysis of the proposed upgrades to growers. If these cost/benefit disclosures were to be found to be broadly fallacious, that should in turn constitute a violation of the Packers and Stockyards Act as a deceptive practice, as should any threats of retaliation or contract discontinuation related to proposed upgrades that are not mandated by federal or state law.

Question 12

Would the proposed settlement information help growers evaluate and improve, if necessary, their performance, make informed business decisions, or mitigate risks? Why or why not?

Provided that integrators are required to disclose input quality variables and feed discrepancies by house on each grower's farm, USDA's settlement disclosures will provide growers with more transparent information about the relative behavior of their integrator towards themselves and their fellow growers, and will give growers new insights into the impacts of various on-farm infrastructure specifications are having on the performance of flocks in their complex. This could provide growers with improved insight into whether infrastructure upgrades would be an advantageous addition to their own farm. Furthermore, if integrators were no longer allowed to pit growers against each other in the way they currently do through use of the tournament system, and were required to transparently share their information about the potential merits of upgrades they'd like to see proliferate in the industry, growers would be more free and incentivized to spread the word amongst themselves about how they were optimizing their performance.



Question 14

Do growers face any obstacles to sharing or discussing placement or settlement information with others that should be addressed; if so, what are those obstacles and how should they be addressed? Should rights to discuss the terms of poultry growing arrangement offer apply to all the disclosures proposed by this rule? Why or why not?

Growers should be able to confer with other growers about their businesses, including the poultry dealer disclosure data generated under the requirement of this rule. Decades of poultry dealer efforts to discourage or even penalize growers from sharing information with each other or discussing common business interests have created a culture of fear and secrecy that is detrimental to growers' interests. By requiring more transparency in the poultry growing arrangement, this rule can help reverse that trend - if (and only if) this rule explicitly protects growers' rights to share information. Poultry growers already have the right, as specified in existing Section 201.100(b)(5), to "discuss the terms of a poultry growing arrangement offer" with other growers for the same live poultry dealer. We appreciate that this proposed rule extends that right to include the right to discuss the Live Poultry Dealer Disclosure Document as well. We believe that poultry growers should also have the right to discuss the settlement sheet disclosures under proposed Section 201.214, and it should be clarified that that right is encompassed within the current "right to discuss the poultry growing arrangement" provision.

Question 20

We propose to require dealers to disclose the number of feed disruptions each poultry grower endured during the growout period, where the grower was completely out of feed for 12 hours or more. Is this an appropriate length of disruption to trigger reporting? Should we require a shorter time, such as 6 hours? Please explain your views.

Feed disruptions of any length during the growout process can cause significant impacts on the growth of broiler chickens, and as a result, can place a grower at a significant competitive disadvantage relative to other growers in their settlement group who may not have experienced the feed disruption. We recommend that the rule be amended to require disclosure of feed disruption of 6 hours or more.

Conclusion

NFFC supports the “Transparency in Poultry Grower Contracting and Tournaments” proposed rule but we believe it does not go far enough. In this comment we have offered a number of suggested additional provisions that would strengthen the proposed rule. Furthermore, we call on USDA to do more than just make sure that contract growers know that they are being deceived or treated unfairly – USDA must follow the full intent of the Packers and Stockyards Act and proactively act to stop the deception or unfair treatment from taking place in the first place.

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

A handwritten signature in black ink, appearing to read "Jordan Treakle". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

Jordan Treakle
National Programs and Policy Coordinator
National Family Farm Coalition