
August 8, 2022

Submitted via regulations.gov

S. Brett Offutt
Chief Legal Officer, Packers and Stockyards Division
US Department of Agriculture
Agricultural Marketing Service
Fair Trade Practices Program
1400 Independence Ave. SW
Washington, DC 20250

Re: Transparency in Poultry Grower Contracting and Tournaments (Docket number AMS-FTPP-21-0044, Federal Register Document Citation 87 FR 34980)

The opinions expressed herein are our own and do not necessarily reflect the views of The Johns Hopkins University.

Dear Mr. Offutt,

We are public health and food systems policy analysts at the Johns Hopkins Center for a Livable Future (CLF), an interdisciplinary academic center based at the Johns Hopkins Bloomberg School of Public Health. CLF applies science and systems thinking to help build healthy, equitable, and resilient food systems. Since 1996, CLF has studied the environmental and public health impacts of food animal production practices. We are members of the National Sustainable Agriculture Coalition, as well as other regional and national coalitions involved in food systems and environmental issues. In May 2022, we wrote about the issues with chicken industry consolidation and unfair practices affecting contract chicken farmers in [letters to 20 state attorneys general](#)¹, and in an [op-ed](#).²

We commend the Agricultural Marketing Service (AMS) for its attention to the issue of fair competition in poultry grower contracting and tournaments and for the very extensive and thoughtful effort that went into crafting this proposed rule. We believe that implementing this proposed rule will begin to correct the systemic imbalances of power and information gaps that often disadvantage poultry growers and threaten their livelihoods. **We support implementing this proposed rule as soon as possible.**

The enhanced transparency measures in this proposed rule are reasonable and well-justified. They will help ensure that poultry growers will—at long last—be provided with relevant information upon which to base business decisions, including better understanding of large financial commitments and contract terms. Currently, poultry

growers must make critical decisions about investing in new or upgraded chicken houses, taking on debts, and entering or remaining in the industry based on information that is incomplete at best and deceptive at worst. These modifications would give the poultry growers access to key information that any business owner would expect—and as the proposed rule points out, this is often information that integrators already collect for their own use.

Growers have consistently expressed concerns about unfair contract terms and the lack of information provided by poultry integrators. Former chicken contract grower Michael Diaz, who is currently part of the Grower Transition Program at the Socially Responsible Agriculture Project, described the struggles that poultry growers face in contract farming in a virtual event on August 2, 2022.³

“A lot of us really understand that it’s fairly easy to get into contract poultry but nearly impossible to get out,” Diaz said. “We worked as a contract poultry grower in South Carolina for about four years, and that was all that it took for us to realize that my wife and I had made a terrible decision on choosing to enter contract growing.”

Diaz also highlighted the importance this rule would have had to him personally, had it been in effect when he was signing his first contract with an integrator five years ago.

“The rule requires integrators to truthfully disclose information that growers need to make informed decision about their contract,” Diaz noted. “The USDA believes there are problems with regard to transparency....that [a] main problem is addressing the misleading information integrators share with the growers. Integrators tend to keep pertinent data and use it to take advantage of growers. Had I had the availability of information that this rule is proposing, there’s no way that my wife and I would have decided to get into poultry. There’s just no way.”

In addition to its direct relevance to individual growers’ business decisions and facilitating fairness in contracts, this proposed rule would also help AMS better identify illegal practices and enforce the Packers and Stockyards Act. The current lack of transparency makes it difficult for AMS to be aware of and respond to any deceptive and abusive practices.

To strengthen this proposed rule, we suggest AMS consider the following for the final language of the rule and/or in forthcoming rulemakings:

- AMS should establish a **publicly available poultry contract library** to facilitate greater fairness in the market and remove secrecy around contract

terms, similar to the existing Swine Contract Library. Congress requires USDA to maintain a Swine Contract Library containing information on the types of contracts offered by packers to swine producers. The library is intended to help producers understand contract provisions and the price discovery process and negotiate favorable contracts.⁴ Additionally, AMS is currently developing the Cattle Contracts Library Pilot Program, which was funded by the Consolidated Appropriations Act of 2022.⁵

- This proposed rule specifies that growers have the right to discuss their poultry growing arrangement with business associates despite any confidentiality provisions with the integrator. We believe this should go further to **protect growers' freedom of association**. Ensuring growers' ability to join poultry growers' associations and speak freely about their contracts would help mitigate anticompetitive industry practices.⁶
- In contract disclosures, **integrators should be required to provide the grower with details on the minimum annual income** they will receive. This includes the minimum base pay rate (along with the maximum variance possible within the tournament system formula) for the number and density of the flocks guaranteed over the year, minus estimated grower costs.
- AMS should provide details on how the proposed governance frameworks, anti-fraud protections, and executive review and certification requirements will be implemented and enforced.

Integrators and other opponents of increased transparency for poultry growers will likely argue that this proposed rule will be costly and may drive up consumer prices. While companies may choose to raise costs for consumers, we also know that large poultry companies have been posting record profits despite ongoing effects of COVID-19, supply chain disruptions, Highly Pathogenic Avian Influenza (HPAI), and other global factors such as the war in Ukraine. The handful of companies controlling the majority of US chicken sales have benefited from their market power and increased their profits significantly in recent quarters.^{7,8,9,10,11,12}

There's no doubt that integrators benefit from poultry growers' lack of bargaining power and inability to access key information to inform business decisions. The current system allows integrators to pass along the debts to the growers and maintain control of the valuable aspects of the business, such as ownership of the feed and the birds themselves. While this rule would not fundamentally change that system, the integrators would at least have to disclose accurate information to poultry growers as they decide whether to sign or continue contracts. As the proposed rule highlights, there are many aspects of the poultry growing arrangements that the farmers have no control over, but that affect production and therefore their pay. These production

factors include “poultry breeds, breeder stock age, frequency of flock placements, stocking density, length of the growout periods (the number of days birds are housed on the grower's farm), feed quality and delivery, and the type and administration of veterinary medicines.”¹³

Lastly, as AMS has been made aware¹⁴, integrators have been urging poultry growers to submit a standardized comment letter that advocates for dropping the proposed rule and making no changes to increase transparency. The Socially Responsible Agriculture Project explained this further in a virtual event on August 2, 2022 (see minutes 17:40-24:00 in the recording).¹⁵ Separately, a former grower told us that, in some cases, service technicians are hand-delivering these letters to growers. Due to the power dynamics involved, we know that some growers will comply—even if they disagree or feel it is detrimental to their own interests—because they are fearful of financial repercussions and retaliation. Further, since these comments are public record, growers know that integrators can check for their comment. An excerpt from this comment letter that integrators are sending to growers includes the following as the second paragraph:

“The current compensation system rewards family farmers for putting in the hard work to raise the best birds as efficiently as possible. It features fair, honest contracts that reward growers for superior, efficient performance, resulting in lowered costs of raising chickens that benefit the grower, our integrator, and the consumer. I am supportive of the current poultry grower compensation system because it encourages innovation and investment in the best equipment and practices. This innovation and efficiency have made the American poultry industry the best, most competitive in the world, and we are proud that we continue to efficiently produce affordable proteins at a time when across-the-board inflation has contributed to prices for consumers.”¹⁶

We encourage AMS to note the comments they receive with this language and seek to better understand the types of pressures contract poultry growers are under to oppose these rules at the behest of the integrators.

Thank you again for your attention to supporting fair competition in poultry contracting, and the reforms needed to enhance transparency and protect poultry growers from unfair and deceptive practices. We encourage AMS to finalize this proposed rule as soon as possible. Implementing this proposed rule will be an important step forward to greater bargaining power and information symmetry for poultry growers.

Sincerely,

Patti Truant Anderson, MPH, PhD
Johns Hopkins Center for a Livable Future
Johns Hopkins Bloomberg School of Public Health

Robert Martin, BA
Johns Hopkins Center for a Livable Future
Johns Hopkins Bloomberg School of Public Health

D'Ann L. Williams, MS, DrPH
Johns Hopkins Center for a Livable Future
Johns Hopkins Bloomberg School of Public Health

Bryan Sobel, MS
Johns Hopkins Center for a Livable Future
Johns Hopkins Bloomberg School of Public Health

¹ Letter to State Attorneys General on Protecting Contract Chicken Farmers from Unfair Business Practices. Johns Hopkins Center for a Livable Future. May 2, 2022. <https://clf.jhsph.edu/publications/letter-state-attorneys-general-protecting-contract-chicken-farmers-unfair-business>

² Anderson, P; Weaver, M. Op-ed: Monopolies Are Giving Chicken Farmers a Raw Deal. We're Urging States to Act. Civil Eats. May 2, 2022. <https://civileats.com/2022/05/02/op-ed-chicken-farmers-raw-deal-monopoly-consolidation-meat-industry-beef-pork-prices-inflation/>

³ Socially Responsible Agriculture Project. Facebook Live video. August 2, 2022. <https://www.facebook.com/sraproject/videos/3145544075757773/>

⁴ Swine Contract Library Information. US Department of Agriculture. <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/regulated-entities/swine-contract-library>

⁵ USDA to Host Listening Session on Cattle Contracts Library Pilot Program Development. US Department of Agriculture. Agricultural Marketing Services. April 11, 2022. <https://www.ams.usda.gov/content/usda-host-listening-session-cattle-contracts-library-pilot-program-development#:~:text=The%20Consolidated%20Appropriations%20Act%20of,expectations%20for%20the%20Pilot%20Program.>

⁶ Martin, R. Poultry Contracting and Tournament Pricing. Johns Hopkins Center for a Livable Future, 2015. <https://clf.jhsph.edu/viewpoints/poultry-contracting-and-tournament-pricing>

⁷ Hockett, M. Tyson's Sales Jump 12% Despite Considerable Volume Declines. Food Manufacturing, November 15, 2021. <https://www.foodmanufacturing.com/home/news/21903017/tysons-sales-jump-12-despite-considerable-volume-declines.>

⁸ Deese, B; Fazili, S; Ramamurti, B. White House Briefing Room Blog, December 10, 2021. Recent Data Show Dominant Meat Processing Companies Are Taking Advantage of Market Power to Raise Prices and Grow Profit Margins <https://www.whitehouse.gov/briefing-room/blog/2021/12/10/recent-data-show-dominant-meat-processing-companies-are-taking-advantage-of-market-power-to-raise-prices-and-grow-profit-margins/>

⁹ Deese, B Fazili, S; Ramamurti, B. White House Briefing Room Blog, September 8, 2021. Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families. <https://www.whitehouse.gov/briefing-room/blog/2021/09/08/addressing-concentration-in-the-meat-processing-industry-to-lower-food-prices-for-american-families/>

¹⁰ Warren, Sen. E. Letter to DOJ Re: Rising Poultry Prices. November 22, 2021.

<https://www.warren.senate.gov/imo/media/doc/2021.11.22%20Letter%20to%20DOJ%20re%20Rising%20Poultry%20Prices%20.pdf>

¹¹ Tyson Foods Reports First Quarter 2022 Results. Tyson Foods News Release, February 7, 2022.

<https://www.tysonfoods.com/news/news-releases/2022/2/tyson-foods-reports-first-quarter-2022-results>

¹² Detar, J. Pilgrim's Pride Stock Sizzles As Profit Shoots 124% Higher. Investor's Business Daily, April 18, 2022.

<https://www.investors.com/news/pilgrims-pride-shows-market-leadership-with-jump-to-83-rs-rating/>



13 Transparency in Poultry Grower Contracting and Tournaments. June 8, 2022. 87 FR 34980.
<https://www.federalregister.gov/d/2022-11997/p-82>

¹⁴ Douglas, Leah. Big U.S. chicken company, Mountaire, asks contractors to oppose transparency rule. Reuters, August 5, 2022. <https://www.reuters.com/world/us/big-us-chicken-company-mountaire-asks-contractors-oppose-transparency-rule-2022-08-05/>

¹⁵ Socially Responsible Agriculture Project. Facebook Live video. August 2, 2022.
<https://www.facebook.com/sraproject/videos/3145544075757773/>

¹⁶ Socially Responsible Agriculture Project. Facebook Live video. August 2, 2022.
<https://www.facebook.com/sraproject/videos/3145544075757773/>