

August 23, 2022

Erin Morris
Associate Administrator
Agricultural Marketing Service, USDA
1400 Independence Ave SW
Washington, DC 20250

RE: USDA Agricultural Marketing Service proposed rule; “Transparency in Poultry Grower Contracting and Tournaments”; Document number 2022-11997; FR Publication Date: June 8, 2022; FR pages 34980-35031; Docket Number AMS-FTPP-21-0044; RIN 0581-AE03

Dear Associate Administrator Morris:

On behalf of the nearly 20,000 family farmer, rancher, and rural members of the South Dakota Farmers Union (SDFU), thank you for the opportunity to comment on the proposed rule “Transparency in Poultry Grower Contracting and Tournaments.” SDFU appreciates USDA promulgating the proposed rule and asks the department to finalize the rule as quickly as possible.

The proposed rule includes essential, commonsense reforms to the Packers and Stockyards Act (PSA) that would result in greater fairness for contract poultry growers (hereafter “growers”) in their contracting arrangements with live poultry dealers or “integrators” (hereafter “poultry companies”). These reforms would help growers better assess contract terms and consider the expected value of contracts and would reduce opportunities for deception in poultry grower arrangements. The proposed rule acknowledges the significant information asymmetry that exists between poultry companies and growers and seeks to narrow the information gap through additional disclosures.

While the proposed rule does not provide all safeguards contract poultry growers need, SDFU believes the new proposed disclosure requirements can help reduce opportunities for deception or other abuses by poultry companies. USDA’s proposal could be improved through additions or modifications to the new requirements outlined in the proposed rule. Additional rulemakings should provide stronger protections for growers against retaliation by poultry

companies and go beyond information disclosures to clearly prohibit certain contract terms or business practices that are harmful to growers.

Poultry industry background and market structure

The poultry industry – in almost all broiler chicken production and commonly in turkey production – is vertically integrated. This means that the poultry company owns and manages all aspects of production, except “growout” (the raising of young poultry to harvest weight by growers that contract with the company). Poultry companies wield significant power over the growers they contract with through production contracts, payment systems, and by controlling many variables of production (poultry breed, breed stock age, frequency of stock placements, stocking density, length of time for growout, feed quality, housing specifications, and permissible veterinary care of the poultry being raised). Thus, growers take on significant risk when building the infrastructure needed to raise poultry, but they do so with little control over the production process.

Moreover, the poultry industry has become increasingly concentrated, and there are often few companies competing at the regional or local level. Consequently, poultry growers typically have few choices with whom to contract, and thus relatively little bargaining power in contract negotiations with poultry companies. There is evidence of unstable returns on equity in the industry for growers, and low rates of return even for larger operations. Lack of transparency regarding poultry grower arrangements between companies and growers can contribute to these unstable returns.

Given the hallmarks of the modern poultry industry as outlined above – including vertical integration, regional or local monopsonies or oligopsonies, heavy investments by growers in the physical infrastructure to grow poultry, and insufficient transparency in poultry grower arrangements – it is important to establish these new disclosure requirements.

SDFU supports the proposed rule, but additional safeguards are needed

SDFU and its national counterpart, the National Farmers Union (NFU), both have grassroots, member-driven policy that supports enhancing competition in livestock markets and protecting livestock producers from unfair competition and monopolistic practices through the PSA. Regarding poultry markets specifically, NFU policy supports “modifications to regulations under

the PSA that govern integrator fair-trade practices and [that] strengthen the enforcement mechanisms therein.”¹

SDFU believes the proposed rule, if finalized, would bring greater transparency to poultry contracting. The proposed disclosure requirements can increase competition in poultry production by ensuring growers have access to information necessary to weigh the risks and benefits of entering a contract. Important innovations in the proposed rule include:

- The new “Live Poultry Dealer Disclosure Document” to be furnished to current or prospective growers.
- The new requirement for poultry companies to specify, in contracts, the minimum number of placements to be delivered to a grower’s farm annually, and the minimum stocking density of each of those placements.
- The new requirements that specify the recordkeeping requirements and information disclosures for poultry companies when they group or rank poultry growers.

Nevertheless, the proposed rule falls short of providing all necessary reforms to increase transparency and fairness in poultry contracting arrangements. SDFU appreciates USDA’s acknowledgment through its advance notice of proposed rulemaking regarding “Poultry Growing Tournament Systems: Fairness and Related Concerns” that the proposed rule on transparency does not address all the concerns voiced by poultry growers. The proposed rule increases transparency in the contracting process, but it does not prohibit specific industry practices or contract terms that are unfair or unreasonable.

NFU policy² states that additional protections should include (though should not be limited to) the following:

- Prohibit companies from retaliating against producers for speaking out about problems in the industry or about their contracts, or for attempting to organize other producers to negotiate as a group for better contract terms.
- Reform... the ranking system, to assure that producers are not penalized for inputs controlled by the company.
- Protecting producers from contract termination, price reduction, fewer flock placements, or other disadvantages based on retaliation, inadequate or faulty inputs or services provided by the integrator, without being provided with ample opportunity to

¹ National Farmers Union, *Policy of the National Farmers Union*, (March 2022).

² Ibid.

remediate problems on the farm, and due to failure of a producer to make equipment changes (as long as equipment is in good working order).

- Prohibit companies from requiring producers to make unnecessary upgrades to their facilities unless the company pays for the costs of those upgrades.

SDFU understands that this proposed rule – Transparency in Poultry Grower Contracting and Tournaments – is not designed to address all these concerns. Nevertheless, NFU believes that additional rulemakings must consider these additional issues, and others that growers highlight as important for bringing greater fairness to poultry grower contracting.

Recommendations for strengthening the proposed rule

USDA's proposed rule includes helpful revisions to the PSA that will increase transparency in poultry contracting arrangements. Broadly, these revisions include the new requirement for poultry companies to furnish growers with the "Live Poultry Dealer Disclosure Document," additional information that must be specified in contracts, and new recordkeeping requirements and information disclosures when poultry companies rank poultry growers in a tournament system.

Live Poultry Dealer Disclosure Document

SDFU strongly supports the inclusion of the new "Live Poultry Dealer Disclosure Document" in the proposed rule. To strengthen the proposed rule and protections for growers, USDA should consider the following improvements to the disclosure document:

- *Disclosure of tournament formula pay variability and minimum cash flow:* In the disclosure document, poultry companies should be required to clearly disclose the variance from the contract's base pay rate in their tournament formula and a minimum cash flow estimate to ensure that all growers and lenders have a clear understanding not of the average outcomes of a contract, but the full range of possible outcomes. Payment from a poultry company outside of the maximum stated variance on a contract should be considered a deceptive and unfair practice under the PSA
- *Disclosure of poultry company-controlled variables that can affect tournament performance:* In the disclosure document, USDA should require poultry companies to disclose to prospective growers all variables within the company's control that could affect settlement pay. Omissions from this disclosure requirement should be considered deception and an unfair practice under the PSA.

- *Disclosure of poultry company contract termination rate and litigation history:* In the disclosure document, USDA should require poultry companies to disclose the number and percentage of growers with whom they have terminated contract in the past five years, nationally and within the prospective growers' complex, with a breakdown indicating termination cause, and any litigation.
- *Disclosure that growers have the right to install feed scales:* The disclosure document should state that growers retain the right to install feed scales on their farm to verify the accuracy of feed deliveries, and that retaliation against a grower for installing and using a feed scale is a violation of the PSA.
- *Disclosure of health risks to growers:* The respiratory dangers of breathing dust and ammonia from inside poultry houses is well documented. The disclosure document should clearly state these risks and provide information about how growers can protect themselves and their employees.
- *Provision of disclosure data to USDA at least annually:* USDA should collect disclosure data from poultry companies. The final rule should require companies to annually report to USDA the data they use to make any claims on the disclosure document to facilitate USDA investigations into non-compliance with the rule, when appropriate.

Contract Terms

To strengthen the proposed rule and protections for growers, USDA should consider a modification to the section on contract terms. In addition to the proposed requirements for poultry companies to specify annual minimum number of flocks and a minimum stocking density for each flock under the poultry growing arrangement, the final rule should clearly state what recourse growers have under the PSA if companies fail to meet the terms specified in the contract. The final rule should also state that it is contrary to the intent of this requirement for poultry companies to reduce the per-flock payment to growers to circumvent this requirement.

Poultry grower ranking systems disclosures at placement and settlement

Finally, to strengthen the proposed rule and protections for growers, USDA should consider improvements to the section on poultry grower ranking systems. SDFU supports these additional disclosures, even though the tournament system needs more thorough reform. To strengthen the proposed rule and protections for growers, USDA should consider the following improvements:

- *Flock performance history and best practices disclosure system:* USDA is proposing to require poultry companies to disclose in flock delivery disclosures a breeder farm identifier. The final rule should also require companies to disclose a breed identifier and a breeder flock identifier. Settlement sheets should include this information for all growers in a tournament. Growers should also have access to historical data on performance of all chicks from any breed, breeder facility, or breeder flock identifier dating back at least ten years.
- *Flock pick-up data disclosure:* Poultry companies should disclose on flock placement sheets the optimal pickup age for a flock's breed. On settlement sheets, companies should disclose the flock age at pickup, and whether flock age is accounted for in the tournament formula.
- *Feed provision disclosure on settlement sheets:* USDA should require poultry companies to disclose the quantity and type of feed delivered over the entire course of the growout of a flock. Any reduced provision of feed can negatively impact a grower relative to other growers in a tournament. There should also be a disclosure requirement regarding the type and quality of feed throughout growout.

Conclusion

Thank you for the opportunity to submit comments. If you have any questions or would like to further discuss SDFU's position, please contact Doug Sombke, SDFU President, via e-mail at dsombke@sdfu.org or by phone at 605-350-4211.

Sincerely,

Doug Sombke
President