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:

These comments, which pertain to the proposed rule "Transparency in Poultry Grower Contracting and Tournaments", are submitted by the Campaign for Contract Agriculture Reform (CCAR) and the Rural Advancement Foundation International USA (RAFI-USA). CCAR represents farmers, ranchers, and poultry growers across the United States with a personal stake in this rule and its implications. Each CCAR member organization engages livestock farmers, ranchers, and poultry growers to inform our policy recommendations and facilitate engagement between Congressional members, representatives of federal government agencies, and those farmers, ranchers, and poultry growers. Together, CCAR advocates for bringing equity to the contract negotiating process and against the exploitation of farmers, ranchers, and poultry growers in the meat industry. RAFI-USA is a nonprofit organization which challenges the root causes of unjust food systems, supporting and advocating for economically, racially, and ecologically just farm communities. RAFI-USA's Challenging Corporate Power Program (formerly known as Contract Agriculture Reform program) has worked with contract poultry growers for more than 30 years to fight for better treatment from, and regulation of, giant meatpacking companies.

It is vital that USDA listen to the voices of those contract poultry growers on the ground who are directly impacted by the practices of the poultry industry that this rule seeks to address. However, these same contract growers also face the greatest retaliation risks for making their voices heard. In our advocacy on these issues over the past decade, we have observed grower after grower that we have worked in partnership with experience retaliation from the integrators they contract with, in many cases to the point of losing their farm businesses. For this reason, we have conducted an anonymous contract grower survey in preparation for submitting these comments, which has allowed contract growers to narrate their experiences to us and provide us with their feedback on USDA's proposed rule and potential improvements that could be made to its measures.

In our comment, we will first summarize a range of critical issues within the existing poultry industry, providing our analysis of the context that has given rise to USDA's proposed rule. We will then summarize the aggregate results of our contract grower survey as it relates to USDA's proposed rule. We will then address those questions posed in USDA's proposed rule based on our expertise and the feedback we have received from our grower survey respondents. Finally, we will summarize our recommendations for improving USDA's proposed rule. Additionally, we will include an appendix of additional contract grower quotes that were not used in the body of our comment.

The Campaign for Contract Agriculture Reform is comprised of the following organizations, which endorse this comment:

Rural Advancement Foundation International - USA
National Farmers Union
Farm and Ranch Freedom Alliance
Ranchers-Cattlemen Action Legal Fund (R-CALF)
Government Accountability Project Food Integrity Campaign
Farm Aid
National Family Farm Coalition
National Sustainable Agriculture Coalition

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The Condition of Contract Poultry Growers: A Contextual Summary

Contract Poultry Growers are Negatively Impacted by Regional Monopsony

Today, a "big four" cluster of giant corporations exert coordinated oligopolistic[1] and oligopsonistic control over 54% of the poultry broiler market.[2] Giant poultry meatpacking "integrators" shape the structure and rules of our food system by design to extract the greatest possible profits for themselves, at the expense of contract poultry growers, their families, and their communities. Unfortunately, this efficiency cuts two ways; while efficiently producing meat, the industry also efficiently harms farmers and workers, their communities, and the land, air, and water we all rely on.

Monopsony and oligopsony, or concentrated buyer power (as opposed to monopoly, concentrated seller power) has historically been less of a focus for antitrust regulators. However, the regional constraints that farmers and ranchers face by virtue of their reliance on long-term land ownership and their production of perishable commodities make them particularly vulnerable to regionalized monopsony power. Thus, the abusive exercise of monopsony power has outsized impacts on farmers, including contract poultry growers, and is core to the drastic power imbalance they experience. The permissive nature of merger enforcement policy over the past 40 years has allowed regional monopsony power to become commonplace in food economies, resulting in a wide range of economic, social, and environmental harms.

For example, in the wake of last year's announcement that Cargill/Continental intended to acquire Sanderson Farms, industry supporters were quick to respond to criticisms of the proposed acquisition by pointing out that the resultant national Herfindahl-Hirschman Index for the U.S. poultry industry would be 1,080,[3] well below the 2,500 HHI threshold over which the FTC and DOJ consider an industry to be highly concentrated.[4] Leaving aside whether the current HHI threshold should be retained, this analysis sidesteps the fact that *regional concentration is a key factor that determines the impact of industry concentration upon farmers and ranchers.* It is vital that any analysis of the impacts of corporate concentration within our food system devote careful attention to regional monopsony power.

[A recent report published by the Union of Concerned Scientists](https://www.ucsusa.org/resources/tyson-spells-trouble#read-online-content)[5] on the concentration of the Arkansas poultry industry since the 1980s provides an instructive example of how national consolidation trends in poultry processing are even more pronounced on regional levels. The

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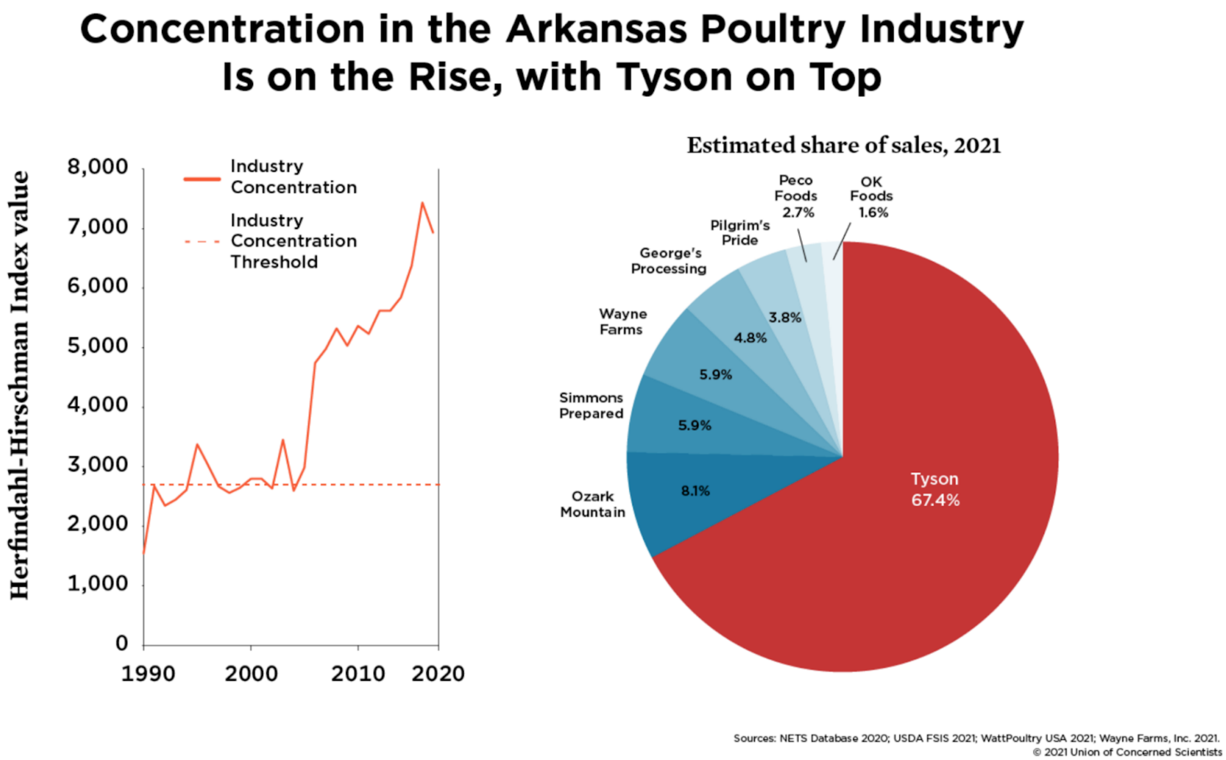
[1] Oligopolies or oligopsonies arise when just a few buyers or sellers operate in a market. In oligopolies and oligopsonies, the few companies operating in a market can more easily act as price setters by coordinating with each other to dictate prices and the quantity of goods and services they sell or buy. (Rebecca Boehm, Tyson Spells Trouble for Arkansas, Published Aug 11, 2021)
[2] https://www.whitehouse.gov/briefing-room/blog/2021/09/08/addressing-concentration-in-the-meat-processing-industry-to-lower-food-prices-for-american-families/
[3] https://www.wattagnet.com/blogs/14-food-safety-and-processing-perspective/post/43457-us-broiler-industry-not-as-concentrated-as-15-years-ago
[4] https://www.justice.gov/atr/herfindahl-hirschman-index
[5] The remainder of this case study heavily relies on the following online report by the Union of Concerned Scientists: "Tyson Spells Trouble for Arkansas," Rebecca Boehm, Published Aug 11, 2021. https://www.ucsusa.org/resources/tyson-spells-trouble#read-online-content

Arkansas poultry industry is dominated by Tyson Foods, which controls 67% of the state's market today. In 2020, the Arkansas poultry industry had an HHI value of 6,930, and the last time that the sector had an HHI value below the Department of Justice Antitrust Division's 2,500 threshold was in 1994.



The regional effects of this high level concentration on poultry growers ability to competitively negotiate their contracts become even more pronounced when analyzed on a county-by-county level. To understand why this level of regional analysis is necessary, it is vital to understand the practical constraints that limit farmers' ability to negotiate between more than one or two buyers. On average, live chickens are trucked just 34 miles from farms to processing plants to minimize the transportation costs and associated economic losses farmers may incur due to chicken injury or death during transit. This means that the radius within which a poultry grower can practically seek other buyers or contracts is extremely limited, and USDA research shows that "growers facing a single integrator are paid 7–8% less on average."[6] In Arkansas, UCS found that 11 of the state's 14 poultry producing counties had only one integrator available to contract growers, with Tyson being the exclusive option in 7 of those counties. Thus, the vast majority of poultry growers in Arkansas operated within a 100% monopsony environment in practical terms.

[6] https://www.researchgate.net/publication/305948391_Market_Power_in_Poultry_Production_Contracting_Evidence_from_a_Farm_Survey

In addition to the obvious anti-competitive effects of such monopsony power, the realities of regional agribusiness concentration also create ripe opportunities for tacit collusion between regional players. Over the years that CCAR-member RAFI-USA has spent advocating for contract poultry growers, it has become evident that it is commonplace for integrators within regional oligopsonies to refuse to contract with growers in each others' perceived "territory" without establishing any formal agreement to that effect. The impact of this is that a farmer has no, or very few, other options for making money with the facilities they have gone into debt to construct. Even in areas with multiple integrator companies, shifting between integrators is not always a viable option: new integrators may require expensive updates to equipment, and many farmers report informal no-poach agreements, where companies decline to take on "each other's" growers - which is one focus of the lawsuit by growers filed in Oklahoma.[7] Thus, even growers that might find themselves within range of more than one processing option must operate functionally under total monopsony, because integrators tacitly collude to limit potential growers' contracting options.

When poultry growers are forced to operate in such monopsonistic markets, with little to no ability to choose between multiple integrators to contract with, their precarity is profound. Knowing that their contract growers' ability to find a different integrator is extremely limited or impossible in such market conditions, integrators like Tyson have free rein to treat growers like they are disposable. In our own decades of organizing poultry growers, RAFI-USA has repeatedly observed integrators coercing growers to accept degraded contract terms or incur further debt loads to finance mandatory infrastructure upgrades though take-it-or-leave-it contract revisions. In cases where growers resist, the lack of competitive options affords dominant integrators the ability to retaliate against resistant growers either in the form of being dropped from their contract, or by delivering poor quality chicks or feed which — because of the tournament payment system[8] — will impact their farm's ability to stay afloat.

Contract Poultry Growers Experience Perverse Impacts due to the Tournament System

In today's poultry industry, greater consolidation comes with greater power for the largest integrators. Horizontal market consolidation has effectively eliminated fair competition on the regional level, while vertical integration has given integrators control of virtually every step of production, and eliminated market transparency. It is vital to understand that within the current industry structure, many farmers are not, in reality, independent economic entities selling livestock into markets, but rather are going into debt to contract their *labor* and *land* to integrator corporations to grow livestock they do not own. With the power they have, these corporations carefully and deliberately pass as much of the risk and costs of this system as possible on to the farmers with whom they contract.

Perhaps nothing exemplifies this dynamic more than the "tournament system" that is ubiquitous within the poultry industry. The tournament system is a payment scheme designed

[7] https://www.harvestpublicmedia.org/post/tyson-perdue-farms-shell-out-36-million-settle-antitrust-claims
[8] https://rafi-usa.medium.com/eight-questions-you-might-not-know-you-have-about-the-packers-and-stockyards-act-80b0af5054ea

by poultry processing corporations that transfers the financial risk involved with growing chickens onto growers they contract with, who are placed in "tournament" groups and pitted against each other. Contract poultry growers do not own the chickens they raise, nor do they choose the feed or medicine they use to raise them — these are all provided by the poultry corporation, or "integrator," that they contract with. Contract poultry growers are tasked with achieving the most efficient possible growth of their flocks for the least amount of feed - which is expressed, in performance terms, in their statistical feed conversion efficiency. It is vital at this point to note that the the final weight and feed conversion efficiency of a broiler flock depends largely on the initial health and gender of the chicks, the quality and reliable availability of their feed, and the timing of bird pick up at the end of the growout period - all factors that are controlled by the integrator, not the contract grower.

When these growers return flocks of fully grown chickens to their integrator for processing, the corporation does a detailed analysis of the feed conversion performance of each grower in that week's "tournament group." It then averages these statistics, docks the pay of the growers whose flocks were found to be below average, and transfers that money to growers of above-average flocks as bonuses. In essence, the effect of this system is to stabilize or externalize the costs of the integrator, while accomplishing an extractive transfer of bonuses to some growers by penalizing others - all within a system that is heavily influenced by integrator controlled inputs and actions.

Within this system, a grower can perform exactly the same functions and make exactly the same managerial decisions for one flock of birds as they do for the next flock of birds, and receive significantly different compensation between the two flocks relative to other growers in the settlement group. This could be a result of the quality of the inputs or the pick-up timing decisions made by their integrator, or this could be impacted by the group of other growers that they are put into competition with by their integrator within any given tournament group. Consider, for example, this account:

> The grower pays for all of his mistakes and all of the integrator's mistakes. It is not uncommon for several houses to have feed outages every grow out. Also, the service tech "looks better" if there is little to no feed left over at the end of the growout, so they tend to short the grower on the last load(s) of feed resulting in the birds being off feed an additional 10-14 hours earlier than they should be. Any time during the growout the birds are without feed negatively impacts performance - and thus our income.
> - Alabama poultry grower

While poultry corporations cast this system as encouraging healthy competition, in reality, the outcome of this competition is never in the control of growers. The most decisive variables that lead to a flock performing above or below average, like the health and quality of chicks, feed, and medicine or the timing of when flocks are picked up for processing, are all controlled by the integrator.

It is additionally important to note that the tournament system functions to allow integrators to externalize many of the mundane systemic costs of poultry production onto their contract growers. Poultry production, like any agricultural venture, does not operate like a Swiss clock - there are biological and human factors that introduce variability and error into the system, and these manifest as costs. Some, like the biological variability of the chickens themselves, have already been noted above and in USDA's own proposed rule, and are well illustrated in the following grower accounts from our survey:

> You have those farms that tend to get the better chicks and when you have 15% mortality the first couple of days there's no way to compete with that. Integrators deliver sickly chicks but offer no products to try to help those chicks and expect you to take the loss. - Alabama poultry grower

Others merit further discussion. Consider some of the following examples of mundane or non-intentional errors or issues that, due to the function of the tournament system, redound to growers, rather than to integrators, as costs:

> I am constantly the last stop on the chick delivery route...when your flock is the last load you get chicks that aren't uniform . I think this should be rotated so a grower isn't constantly behind everyone else. - Mississippi poultry grower

> My complex has two feed mills. One feed mill delivers feed correctly, but the other mill struggles constantly with shortages or overshipments. When they overship, they haul the extra feed back to the mill at the end of the flock. There is no way to know if I get credit for all the feed that is hauled back. It's pretty obvious to me that I'm getting shorted on those loads, but I have no way other than their records to prove it. Also our complex does not tell you what flocks or ages your birds come from. There is tremendous variation in chick quality. - Alabama poultry grower

Herein lies the perverse brilliance of the tournament system: instead of sharing these inherent costs equitably, integrators pit their growers against each other and extract these costs from whoever happens to fall below the arbitrary tournament average. Thus, instead of a legitimate competition, the tournament system functions as a way for poultry companies to transfer the risk and cost of any problems with the chicks, feed, or medicine they provide onto the growers with whom they contract.

Contract Poultry Growers Face Threats of Retaliation and Unfair Practices

In addition to its role in externalizing integrators' costs onto growers, the tournament system also affords integrators a myriad of ways of retaliating against growers whom they want to pressure into silence or compliance with their wishes, or whom they want to drive out of the industry. With their control over so many of the variables that affect poultry growers tournament system performance - from flock and input quality, to correct feed provision, to flock pick-up time, to tournament group composition - integrators have many ways in which they can drive down and hold down the incomes of their growers. This ability can be used to compel growers to comply with upgrade requests, threaten growers who speak out against their integrator, or drive growers into debt, bankruptcy, and even suicide. As one North Carolina contract poultry grower told us, "They don't have to cut you off, they can just bleed you dry. The barn we're sitting in here hatched flocks with salmonella issues. They can send those compromised flocks to growers they want to bleed." Multiple growers in our survey conveyed their experiences of these toxic dynamics:

> My main concern is that [my integrator] operates on fear and threatening tactics to make every grower they have scared they are going to lose their contract every single day. No human being should have to live every single day in fear that their livelihood and only source of income can be taken away from them. I am sick of it, someone needs to do something to help us! I love to grow chickens and feed the world, but I do not like to live as if under a dictatorship. - Mississippi poultry grower

> When I filed a complaint with the Packers and Stockyards Division about a weight issue, in which I was proven right, I was punished with bad tournament grouping for a year. Also, I have been told by my integrator, after receiving a really bad flock of birds, that they would be sure to not let it happen next time- so they know how to make it happen! - Alabama poultry grower

> We were shut off in 2012 due to massive updates that the company required. They used the tournament system to shut growers down. Because of the system we were shut off earlier than we should have. We only had three years left on our loan. - Arkansas poultry grower

> I was the number four ranked grower in my complex, and then went all the way to the bottom. When I asked my service tech about it, she said I had "help" to go to the bottom. - Texas poultry grower

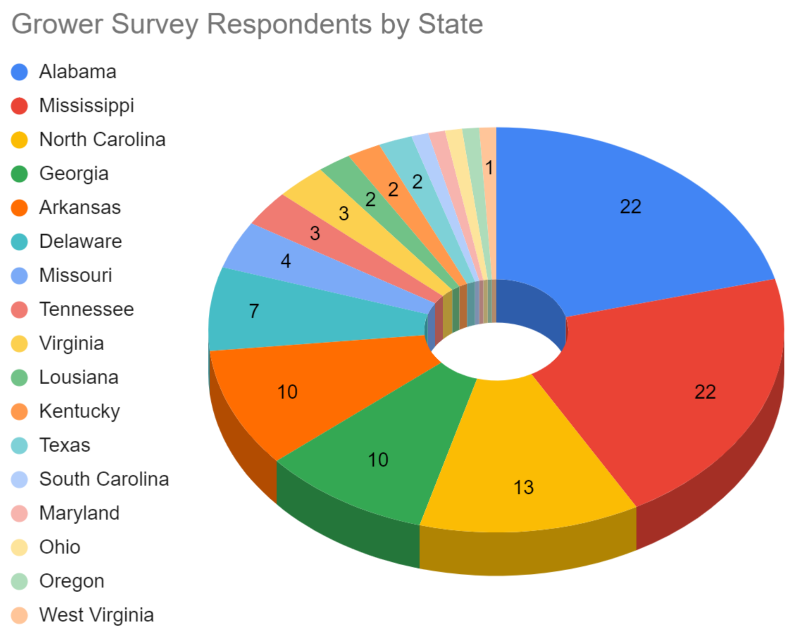
It is currently very difficult for farmers to successfully bring suits against meatpackers for violating the Packers and Stockyards Act (PSA), because many judges have required farmers to prove that the company's actions have harmed competition within their entire industry. Despite these rulings, the PSA does not require any demonstration of harm to competition to prevail in a case under Section 202(a) or (b). Considered in a different context, this requirement is obviously ludicrous. Imagine that your car is totaled by a driver running a red light. When you sue for damages, would any judge require you to prove that the damage you experienced will affect all commuters nationally? Likewise, since any given farmer's production only represents a tiny fraction of their overall industry, it is unreasonably difficult for a farmer's case to rise to this incoherent threshold of proof. This makes it very easy for large corporations to allege that their extractive practices against any given farmer that sues them are not hurting overall competition. Additionally, the "undue preference" rule released by USDA in December 2020 creates a truck-sized loophole[9] for integrators by stating that a "reasonable business decision" - which the agency declined to define - was a legitimate justification for their actions. In other words, it is acceptable to mistreat farmers as long as you can make money doing it.

This overall imbalance of power allows integrators to treat farmers like they are disposable. We repeatedly observe integrators cutting off farmers' contracts (often in retaliation after farmers speak out against unfair practices) and leave them with millions of dollars of debt tied up in specialized, single-use structures which do not have the ability to generate revenue, or contribute to a property's value, in the absence of an active contract. The abandoned poultry houses that litter the rural landscape across the Southeast testify to this pattern.

[9] https://www.rafiusa.org/blog/usda-harms-farmer-and-rancher-protections-in-final-rule-on-undue-preference/

Contract Poultry Growers Speak Up: Our Grower Survey Analysis

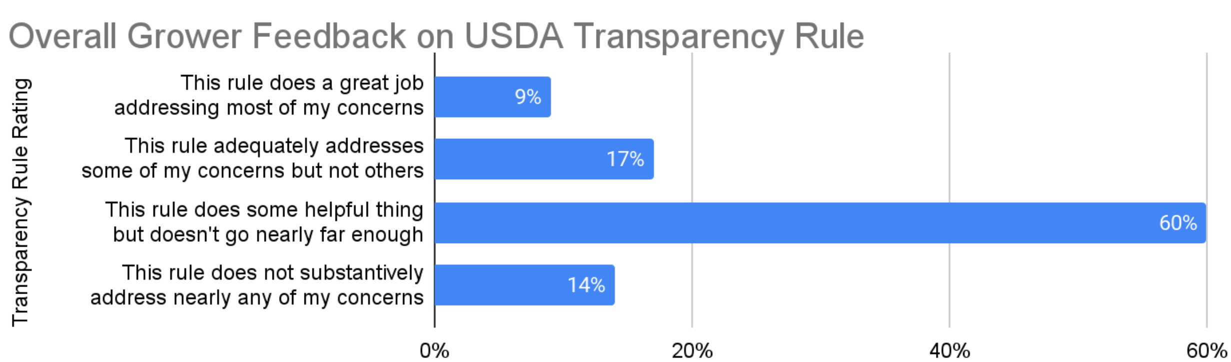
In preparation for our comments below, CCAR-member RAFI-USA conducted a survey of active and former contract growers that sought stories of their experiences of unfair or deceptive practices in the poultry industry, as well as their feedback on USDA's proposed rule. This survey was conducted anonymously, in response to widespread grower concerns about retaliation should they speak up about their experiences or support of reform.



A total of 105 contract poultry growers from 17 states responded to our survey. 90% of respondents were active growers while 10% were former growers. Only three grower respondents agreed that tournament systems "are generally fair and foster healthy competition," while 94% of grower respondents expressed at least one of the following sentiments regarding tournament systems:

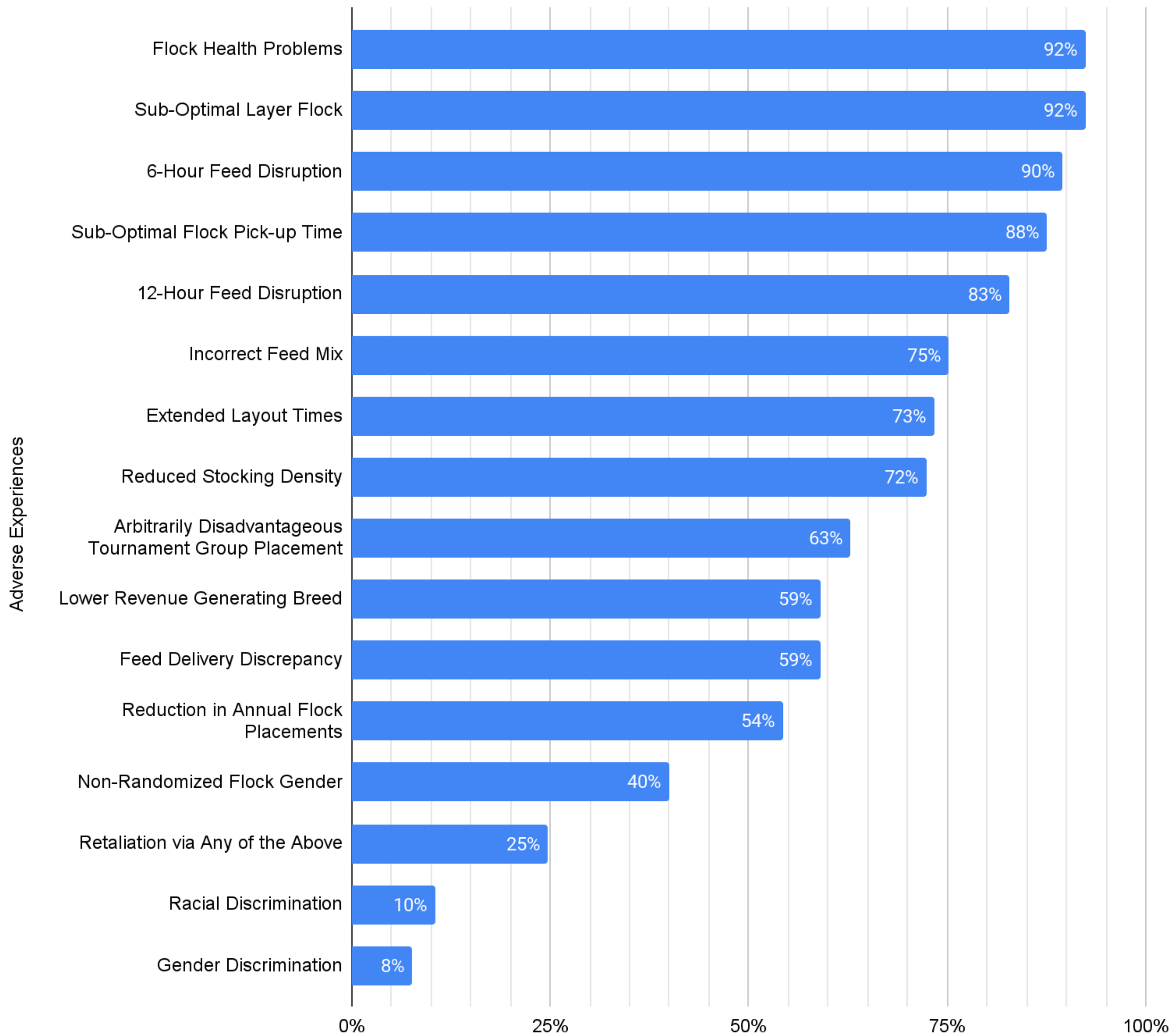
1. Tournament systems are generally unfair and pit growers against each other (75%)
2. Tournament systems are too often used to retaliate or discriminate against growers (70%)
3. Tournament systems often negatively impact grower income (68%)

Overall, growers reported that they found USDA's transparency rule to be a somewhat helpful but generally incremental and insufficient improvement to the industry status quo, with 60% of growers saying that the rule "does some helpful things but doesn't go nearly far enough."



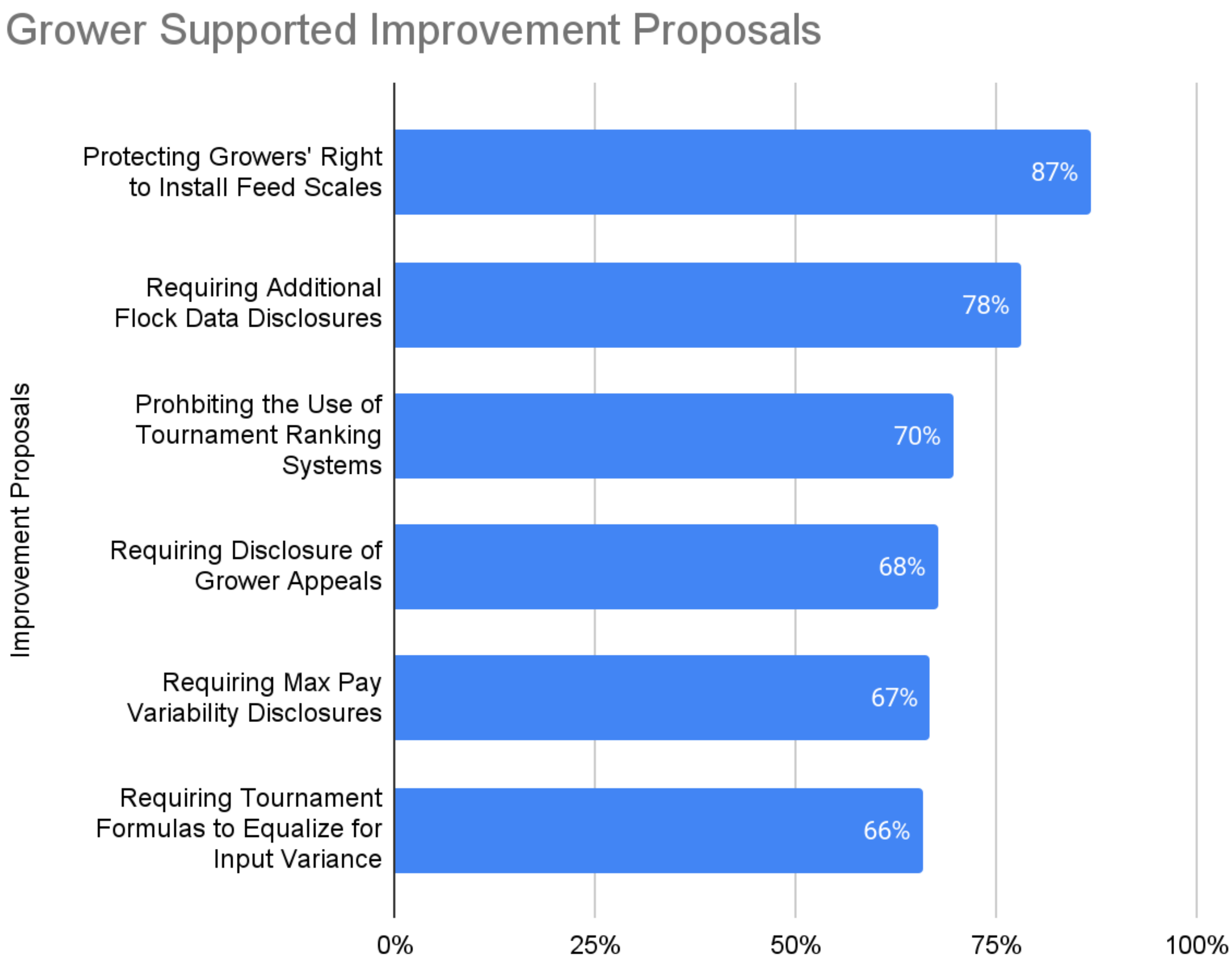
We asked our grower survey respondents about their experiences with a range of commonly reported issues, which are within the control of integrators rather than poultry growers, that can negatively impact their income:

Adverse Experiences of Contract Growers



As can be seen above, sub-optimal flock health and layer flock lineage have pervasive impacts on over 90% of contract growers, as do a range of feed provision and quality issues. A striking 83% of growers had experienced a 12-hour feed disruption (with even more - 90% - experiencing a 6-hour disruption), 75% had received incorrect feed mixes for their birds' age (which can majorly impact feed conversion efficiency), and 59% had experienced an incorrect feed delivery that differed from their feed load receipt. Additionally, 63% had been arbitrarily placed in a tournament group with a composition in which they were disadvantaged, which can arbitrarily change a grower's fortunes from profit to loss.

When asked about proposed improvements to USDA's rule that they would support, growers overwhelmingly indicated the desire to have their right to install feed scales explicitly protected, while slightly under 70% of growers supported the need for a USDA-mandated grower appeals process and a requirement that integrators disclose the maximum possible range of variance from contractual base pay within their tournament system formula. Furthermore, 89% of growers supported either the total abolition of the tournament system, and/or the requirement that tournament formulas compensate for factors not within the control of contract growers.



<u>Questions Regarding the Live Poultry Dealer Disclosure Document</u>

The Live Poultry Dealer Disclosure Document (Disclosure Document) proposed by USDA represents a significant and badly needed advance in the transparency required of integrators by the federal government on behalf of contract growers. USDA correctly identifies “incomplete contracts, wherein“one party has “discretionary latitude to deviate from expectations” as a core problem in the poultry industry. It is additionally vital to highlight that it is the pervasive experience of contract growers that incomplete and unfairly imbalanced contracts are offered deceptively and/or under duress. As one South Carolina poultry grower relayed to us:

> The contract terms are more than unfavorable. I would think that one of the most notable issues resides with their standards of operation. What I mean by this is many of us who are new to contract poultry are not given a clear picture of the integrators operating procedures until “after” a contract has been signed. The contracts are very biased and one-sided giving the bulk of control and authority to the initiator of the contract and then, only after you have committed to playing their game you are then given the rule book. The rule book is the grower handbook which gives you all the things you must do to remain in compliance with their contract. Without getting into the numerous details of the grower handbook I will leave you with this, the grower is NOT an independent contractor as the “contract” eludes. It is very misleading and borders fraud in my opinion. Every operation on your farm is dictated by the rules in the handbook which is not revealed during a contract signing. The defense will naturally be that the integrator's practices are proprietary information but it is a grave mistake to leave that information out before allowing a contract to be signed. Again it borders fraud when contracts lead you to believe one is independent. The practices of the integrators are very calculated to insure the integrators are protected legally while entrapping the farmer into modern day indentured servitude.

Additionally, it is not uncommon for integrators to provide deceptive earning claims, or recruit prospective growers on the basis of non-binding assurances that are later revoked. As one North Carolina poultry grower told us, “we were told we were guaranteed five flocks a year when we signed our contract. Then they decided to give us four per year, and we complained that we were guaranteed five, and they said, "show it to us in the contract."

By ensuring that prospective contract growers, or current contract growers being presented with a new contract, have access to all of the information they actually need to make an informed business decision - and by vigilantly ensuring that the information disclosed is actually true - USDA will be making a key and vital contribution to the integrity of this nation’s poultry markets.

All of the disclosure requirements included in this proposed rule, as well as our additional disclosure recommendations, are fully within the statutory scope of the Packers and Stockyards Act.

Throughout our comments, we use terms “poultry dealer,” “live poultry dealer,” “poultry company,” and “integrator,” interchangeably. We intend all of these terms to be used synonymously.

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, prospective poultry growers are often unaware how much their income will vary as a poultry contract grower, and the high likelihood of being paid below the poverty line[10], even after being required to make investments in excess of $1 million as part of the contract arrangement with a poultry integrator. These disclosures will give growers information which will allow them to have a better understanding of their poultry income stream under the proposed contract arrangement.

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.

Through our engagement with contract poultry growers, we have identified additional types of information that should be disclosed on the Disclosure Document:

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.: For live poultry dealers using a poultry grower ranking system to calculate grower payments, including bonuses or penalties, the live poultry dealer should be required to disclose on the cover sheet of the Disclosure Document:

[10] Malcolm Gay, “Many Growers Live Below Poverty Line,” Richmond Times-Dispatch, September 15, 2002, referenced in Pew Charitable Trust report “The Business of Broilers: The Hidden Costs of Putting a Chicken on Every Grill.”
https://www.pewtrusts.org/~/media/legacy/uploadedfiles/peg/publications/report/businessofbroilersreportthepewcharitabletrustspdf.pdf

1) 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;
2) 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.

For live poultry dealers that use a poultry grower ranking system to pay poultry growers, the expected income disclosure on the cover sheet of the Disclosure Document should be required to clearly disclose the maximum percentage of variance, both positive or negative, from the contract's base pay rate that is possible within their tournament system formula. This would provide growers with increased transparency concerning the true price floor of a proposed contract. This estimate should be calculated from the contract's base price per unit of production, the minimum number of flocks and stocking density guaranteed annually, the maximum percentage of variance, both positive or negative, from the contract's base pay rate that is possible within their tournament system formula, and a good faith estimation of variable costs that the prospective grower will be liable for. This will ensure that all prospective growers and lenders have a truly transparent picture, not only of the average or ideal possible outcome of a contract according to an integrator, but of the true range of possible cash flow outcomes, however negative or positive they may be. Furthermore, if an integrator were to make a payment to a grower that exceeded the disclosed maximum percentage of variance within the contract, that should be considered a violation of the contract as well as a deceptive and unfair practice under the Packers and Stockyards Act.

Disclosure of Integrator-Controlled Variables That May Affect Tournament System Performance
In the Disclosure Document, integrators should be required to clearly disclose to prospective contract growers all of the possible variables within the integrator's control that could have an effect on a contract grower's settlement pay, whether their tournament ranking formula compensates for such variability, and if so, how. Any omission from this disclosure requirement should be considered an unfair and deceptive practice under the Packers and Stockyards Act.

Disclosure of Integrator Contract Termination Rate
In the Disclosure Document, integrators should be required to clearly disclose the number and percentage of growers with whom they have terminated contracts in the past ten years, both nationally and at the prospective contract grower's complex, with a categorical breakdown of termination cause. This information will give prospective growers a sense of the nature of the contract relationship with the integrator if they chose to sign a contract, as well as the range of contract cancellation risks they could face.

Disclosure of Past Litigation with Contract Growers
Within the required disclosure of past litigation (§ 201.100(c)(1)), integrators should also be required to disclose any litigation to which they have been subject to on the part of the Department of Justice, Department of Agriculture, or other federal agencies. Furthermore, all successors or assignees of any live poultry dealers subject to such litigation should also be required to disclose that information.

Poultry integrators contract with growers for pullet, breeder hen, and broiler chicken production. In contrast, those same companies hire plant workers and chicken catchers on staff. Whether they are contract growers or actual employees, mistreatment by the integrator of one subset of their labor force often speaks to the integrity of the company and foretells mistreatment of other subsets of their labor force. Therefore, prospective contract growers should also be informed of litigation with plant workers and chicken catchers, not just with growers. Proposed § 201.100(c)(1) should be amended to address this issue.

Disclosure of Health Risks to Growers from Poultry House Dust and Ammonia
The respiratory dangers of breathing dust and ammonia from inside poultry houses have been well documented, and prospective growers must be given that information as well as information about how to protect themselves and their employees from those dangers.[11]

Disclosure of Poultry Grower Rights and Protections under the Packers and Stockyards Act and other relevant statutes and regulations. Under proposed new section 201.100(a), we recommend that live poultry dealers be required to disclose to poultry growers what their rights are in entering into a poultry growing arrangement. This should be achieved by requiring live poultry dealers to provide growers a link to a USDA website that clearly explains those rights and protections. In addition, live poultry dealers should also provide a link to the joint 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.

If poultry dealers revise their disclosure documents after a grower has signed a contract, the dealer should be required to compensate the grower for any losses to the grower associated with the change in dealer commitments. The point of the disclosure is to give prospective growers full transparency about the nature and value of the contract arrangement prior to making an investment. If the nature and value of the contact arrangement for the grower changes for the negative, there should be some form of compensation to the grower to account for that change. Otherwise, a unilateral change by the poultry dealer in their commitments

[11] https://nasdonline.org/197/d000146/respiratory-health-on-the-poultry-farm.html

made to the grower in their disclosure document should be considered a fraudulent inducement to sign a contract.

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.

In general, USDA should do all it can to ensure that the Disclosure Document and the disclosures that will arise under this process will be in plain 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. In Appendix B, we have included our proposed edits and additions to the text of proposed § 201.100

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.

Additional language should be added to proposed sections 201.100 and 201.214 to require all documents written by the live poultry dealer to be provided in a language that can be competently understood by the prospective or current poultry grower. Of course, where those sections require the live poultry dealer 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?

For many poultry growers, there are few other economic opportunities in their areas. Poultry dealers often locate their poultry complexes in economically depressed areas of the country, where growers have few other options. Those conditions make potential growers very susceptible to poultry company marketing about alleged benefits of entering into a contract relationship with that company. Therefore, it is 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).

One other avenue for USDA to provide prospective growers about the economic hazards of producing poultry under a tournament system is through Farm Service Agency (FSA) loan guarantees. As part of the requirements for participating in the 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. In that context, the poultry contract term 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, or a range that explicitly includes such an estimate as the minimum figure, 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.

This will ensure that all prospective growers and lenders have a truly transparent picture, not only of the average or ideal possible outcome of a contract according to an integrator, but of the true range of possible cash flow outcomes, however negative or positive they may be.

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?

Within the required disclosure of past litigation [§ 201.100(c)(1)], integrators should also be required to disclose any litigation brought against them by the Department of Justice, Department of Agriculture, or other federal agencies. Further, all corporate successors and assigns of these integrators should also be required to disclose such litigation.

In addition, poultry integrators contract with growers for pullet, breeder hen, and broiler chicken production. In contrast, those same companies hire plant workers and chicken catchers on staff. Whether they are contract growers or actual employees, mistreatment by the integrator of one subset of their labor force often speaks to the integrity of the company and foretells mistreatment of other subsets of their labor force. Therefore, prospective contract growers should also be informed of litigation with plant workers and chicken catchers, not just with growers. Proposed § 201.100(c)(1) should be amended to address this issue.

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. Insofar as disease or disaster is not comprehensively compensated for within an integrator's appeals policy, that should be disclosed within our recommended required disclosure of integrator controlled variables that may affect tournament system performance. 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 15
Should we require dealers to disclose the contractual grounds for termination or suspension of the poultry growing arrangement? Why or why not?

Growers have often raised concerns about terminations without valid grounds. In this rule, poultry integrators should be required to clearly disclose their policies for grower termination. Growers make very large investments under their contract arrangements with poultry integrators, and it is important for them to know the circumstances under which the company will terminate them and leave them without income.

In addition to requiring disclosure regarding grounds for termination or suspension of the poultry growing arrangement, 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. For example, poultry dealers should disclose that X percent of growers were terminated for Y cause, etc.

Growers are required to make very large investments in on-farm poultry growout facilities as part of the poultry growing arrangement with an integrator. There are very few, in any, alternative uses for those facilities. The economic impacts of termination are quite severe for the grower, who is left with a large stranded investment, and a huge unpaid and unserviceable debt. In contrast, the economic impacts for the poultry dealer of terminating a grower are minimal because all of the capital costs for building and maintaining the growout facilities are generally borne by the poultry grower, not the poultry dealer. Therefore, at the very least, prospective growers must be fully aware of their prospective integrator's history of contract termination or suspension, if they are to make informed business decisions prior to investment.

But disclosure by itself 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. The asymmetry between grower investment and grower power over their farming operations puts growers under a great deal of economic stress and uncertainty.

One Mississippi poultry grower explains the uncertainty and anxiety caused by the lack of clear standards for contract termination:

> Any one service tech or manager can put you out of business, have your contact pulled, just because they don't like you…They make rules that can adversely affect growers' well being even though they are not ethical. Lots of paperwork has been falsified to hurt particular growers. Also undue pressure has been put on growers that report correct "7-day mortality", have uncontrollable mortality, and uncontrollable flock outcomes - when the grower has run the company's exact growing program protocol knowing it wasn't good for the chickens but out of fear of having their contract pulled. No human being should have to live everyday in fear that their growing contract could be terminated on every given day

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?

As recommended in our response to Question 14, 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. As mentioned above in our responses to Question 2 and 9 above, 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. For live poultry dealers using a poultry grower ranking system, this disclosure should also include information about the maximum percentage of variance, both positive or negative, from the contract's base pay rate that is possible within their ranking system formula.

To elaborate further - it is our contention that these improvements would provide a more transparent picture to growers and lenders concerning the business proposition they are being presented with by an integrator in a contract negotiation. When considering any industry standard contract, one of the most basic assessments a prospective grower must make is whether a contract will result in an annual cash flow that is sufficient to make payments on their loans, cover their operating expenses, and still furnish a decent living for themselves and their families. To solve this basic math problem, there are five fundamental factors that a prospective grower needs to know:

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. The maximum amount of money that could be added to or deducted from the contract's stated base price within the live poultry dealer's tournament ranking formula, if the dealer is using a poultry grower ranking system to pay the grower.

USDA's current proposed disclosure requirements address the first four, but not the fifth, of the above factors. As currently proposed, this leaves prospective contract growers without a key piece of information they need to calculate the range of annual cash flow possibilities they must consider in making this potentially life-shaping business decision.

While integrators may claim that knowledge of the base price or average performance is sufficient, it is the experience of nearly every grower we have spoken to that their incomes have varied widely from what they expected during contract negotiations. For this reason, we think it is vital that growers - and lenders - have transparency about the estimated annual income of a contract not only based on average performance, but also based on *minimum possible performance.*

With the ability to truly and transparently estimate the minimum annual income from the poultry growing arrangement's annual income estimate, both prospective growers and lenders will be better equipped to forecast the true range of possible outcomes of the contracts offered by integrators. We further recommend that USDA should require this minimum annual income estimate disclosure, or a range that explicitly includes such an estimate as the minimum figure, to be boldly featured on the cover sheet of the Disclosure Document. This will ensure that all prospective growers and lenders have a truly transparent picture, not only of the average or ideal possible outcome of a contract according to an integrator, but of the true range of possible cash flow outcomes, however negative or positive they may be.

Question 20
What effect, if any, would the required financial disclosures have on the lending system and on the provision of credit to growers?

In a normally functioning capital market, banks do their due diligence to determine if the enterprise to which they will lend is economically sustainable and has a high likelihood of being able to service their debts. This means that lenders would normally scrutinize the contract relationship that underlies the operation of any contract poultry grower borrower, and would decline the loan if it is determined that the contract is not economically viable for the grower. However, when the federal government guarantees the loans for chicken growout houses, lenders no longer scrutinize the contracts that underlie those operations to the same degree. In fact, it is very rare for a poultry grower to receive a loan to build chicken houses on their land, unless it is guaranteed by USDA's Farm Service Agency (FSA) or by the Small Business Administration (SBA). In this way, federal loan guarantees are indirectly subsidizing poultry contracting practices that are unsustainable and economically detrimental for poultry growers, their families, and their communities. Lenders using the federal loan guarantee programs should be required to scrutinize the economic viability of the underlying poultry contract in the same way they would in the absence of the federal loan guarantee. The proposed disclosures enumerated in this rule, as enhanced by our proposed additions, would give lenders a great deal of important information to aid in their scrutiny of the economic risk of the operation under review.

The FSA loan guarantee program has many positive benefits throughout rural America. In no way are we arguing against the FSA loan guarantee program itself. However, in the unique case of lending for contract poultry houses, the mechanisms used by the FSA to guarantee loans must be updated.

Specifically, FSA should not allow participating lenders to guarantee poultry loans unless the contract has a term that is *at least* as long as the life of the loan. Currently FSA's rules require poultry contracts to be for at least three years, but then allow them to revert to being "flock-to-flock" contracts after that three-year period. For a grower to take on debt of $1 million or more to build sole-purpose chicken houses on their own farm with vague assurances of income for only three years, puts that grower in an extremely vulnerable position economically. The grower is particularly vulnerable once the 3-year minimum term has expired, because they must "negotiate" their next contract under extreme duress, giving the poultry dealer complete leverage to force the grower to accept very unfavorable terms, taking advantage of the grower's fear of being cut off and left with a massive, unserviceable debt.

Question 21
Would the provision of information about grower variable costs benefit growers? Why or why not?

Yes, we agree with the proposed requirement for poultry dealers to disclose which costs are borne by growers. However, we are concerned about the proposed change to Section 201.2 to add a definition of *grower variable costs* to mean "those costs related to poultry production that may be borne by the poultry grower, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance."

We realize that the language of the proposed definition refers to costs that "may be borne by the poultry grower," but our concern is that by listing specific costs in the definition, it could create a baseline assumption that going forward, those specific costs will always be borne by the grower.

In an ideal and aspirational circumstance, where poultry integrators are fairly competing for poultry grower services, we could envision conditions where integrators would pay for some of these listed variable costs themselves. Therefore, the proposed definition of *grower variable costs* under Section 201.2 should be modified to read as follows:

> "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.

Prospective growers need to have as much information as possible about the full list of economic implications of signing a poultry growout contract with a poultry dealer. If poultry dealers are requiring growers to bear these costs, the integrators should also be disclosing that information up front.

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?

It is our understanding that poultry companies share extremely detailed market and grower data with each other through private data collection firms. Because the data is kept confidential and is only shared with poultry dealer clients of the data collection firms, it contributes to the information asymmetry addressed in the proposed rule preamble. Are companies sharing pricing data and contract terms between competitors in a manner that is collusive? Do companies use this data to set low pay prices to growers, without fear that their competitors will pay more to entice growers to switch companies? Do companies share data that allows them to apportion territory to ensure that growers cannot move from one company to another, even within the same geographic area?

We know that one thing that discourages growers from moving from one company to another is that different companies in the same area will often set different poultry house design and equipment specifications, which requires expensive upgrades if a grower changes integrators. Do poultry companies use the data sharing service as a way to share poultry house specifications to discourage growers from moving from one company to another?

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" in the rule would be very useful, 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.[12] 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, as discussed in greater detail in our response to question 29 below.

[12] ttps://harvardlawreview.org/2012/03/deception-as-an-antitrust-violation/

Question 29
Are there other ways AMS could sufficiently ensure the completeness and accuracy of the Disclosure Document, and if so, should these replace or be added to any of the proposed provisions?

AMS should be more specific regarding the procedures the agency will use to ensure the completeness and accuracy of the disclosure data provided by poultry dealers to growers and prospective growers. For example, the rule should specify the minimum number of poultry dealer audits per year to be conducted by USDA, and should also specify that the audits will be unannounced, in order to incentivize integrators to be truthful and complete in their disclosures. In addition, live poultry dealers should be required to submit Live Poultry Dealer Disclosure documents to the Packer and Stockyards Division annually.

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. For instance, the requirements should apply to poultry dealers contracting relationships with pullet and breeder hen growers, in addition to broiler growers. Pullet, breeder hen, and broiler growers are all cogs in the same wheel of production controlled by the poultry dealers. To deny pullet and breeder hen growers disclosure information that will help them make wise business decisions and avoid deception is illogical.

Contract Term Questions

It is important to note that while we strongly support USDA's proposed rule mandates for new disclosure requirements as a important first step toward a more fair, competitive and transparent poultry production system, these disclosure requirements do not actually 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 extremely helpful to growers and prospective growers for the reasons explained in the explanatory text of the proposed rule. 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, as explained in more detail in response to question 17 above, we also recommend that there be a requirement for poultry dealers to disclose the maximum amount of money that could be added to or deducted from the contract's stated base price within the integrator's tournament ranking formula. Without having this key piece of information, prospective contract growers will not be able to calculate the range of annual cash flow possibilities that they must consider in making this potentially life-shaping business decision.

While integrators may claim that knowledge of the base price or average performance is sufficient, it is the experience of nearly every grower we have spoken to that their incomes have varied widely from what they expected during contract negotiations. For this reason, we think it is vital that growers - and lenders - have transparency about the estimated annual cash flow of a contract not only based on average performance, but also based on *minimum possible performance.*

With the ability to truly and transparently calculate the true minimum annual guaranteed cash flow estimate, both prospective growers and lenders will be better equipped to forecast the true range of possible outcomes of the contracts offered by integrators.

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. Also, either in this rule, or a subsequent rule, AMS should clarify that is a prohibited practice for integrators to try to circumvent the intent of this rule by reducing the per-flock payment to growers.

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 or deducted from 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. Until that time, we reiterate our recommendation that the range in possible pay variability above and below the contract base price be clearly disclosed to prospective growers.

<u>Settlement Disclosure Questions</u>

As part of the tournament ranking payment systems currently used by the poultry industry, growers are given "settlement sheets" after birds have been picked up from the farm and rankings of growers in the tournament have been calculated. Current Packers and Stockyards Act rules for poultry require that "the settlement sheet shall contain all information necessary to compute the payment due the poultry grower. For all such arrangements in which the weight of birds affects payment, the settlement sheet shall show, among other things, the number of live birds marketed, the total weight and the average weight of the birds, and the payment per pound." [9 CFR § 201.100(b)] These measures are useful in helping farmers check the calculations in their settlement checks, but they provide little information to farmers about factors contributing to farm performance.

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. 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.

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. In our survey, a Mississippi grower described the importance of this nuance in the context of a "split dump" or "split catch" - when a flock drop off or pick up is broken up by a weekend - and how this can impact tournament system outcomes:

> When you get a split dump or split catch flock, the age of your flocks is averaged across all of your barns in the tournament. On a small bird flock, if one house carries over the weekend it makes your flock look like they are 34 plus days old when in reality most of the farm was caught at 32 days. In that situation you never rank well because the younger birds haven't put on as much weight - but because of the overall averaging they appear older on paper.

In other words, averaging flock statistics across multiple poultry houses on one farm is another way that integrators are able to covertly extract more profits from growers. Aside from this, providing barn-specific statistics will also allow the grower to recognize any problems that involve a particular house and allow the rectification of the problems.

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. This can have drastic effects, as one grower relayed to us:

> We've always been in the same tournament group with about 25 growers from the surrounding area. In the past few years, I was placed in a much smaller division with only three other growers. We're all top growers, but after that change one of us was always average, one was above, and one was below. How fair is that?" - Mississippi poultry grower

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.

Only in the instance where the supplied inputs or actions of integrators do not impact grower pay, such as in a square footage contract, should a poultry dealer be exempt from these disclosure requirements regarding inputs.

For decades, CCAR and RAFI-USA have partnered with contract poultry growers to advocate that USDA take action against the tournament system and other unfair practices that pit contract growers against each other and base their income on factors over which they do not control, or factors that are within the control of their integrators. On its own, USDA's proposed rule, "Transparency in Poultry Growing Contracts and Tournaments," does not achieve this goal, and we will continue to advocate for such reform.

Question 3
What burdens does this recordkeeping create for dealers?

It is our understanding that much of this information is already self-reported by the industry through shared industry data collection service companies, and therefore the recordkeeping required under this proposed rule should not be a significant burden on poultry companies.

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. As has already been acknowledged by USDA and outlined above, poultry production performance can be affected by a myriad of factors. Some of these factors, primarily concerning flock and input quality, have been accounted for within USDA's proposed transparency requirements. Others have been overlooked, and are recommended for inclusion as listed in our response to Question 5 below.

However, there are other mundane yet pervasive issues, like feed delivery discrepancies, that growers often do not have a fair way to report and resolve. Similarly, growers who consistently receive subpar quality inputs, or face repeated unfair treatment, need structures and protections for resolving such disputes. Disclosure requirements alone cannot ensure transparency and guard against deception and retaliation in these cases. Additional USDA-mandated systems and structures are needed to ensure fairness and transparency in the integrator/grower relationship.

Discrepancies and disputes surrounding feed quality and delivery was one of the most consistently reported issues highlighted by the growers who completed our grower survey. Flock performance - and thus grower pay - can be significantly impacted by a diverse range of feed discrepancies beyond a simple lack of feed for a period of time. For example, if a portion of the feed in delivery is inadvertently or carelessly not fully deposited on a grower's farm, their feed efficiency metrics will suffer. Or, because flocks are progressively transitioned from a finer ground feed to a pelleted feed to maximize feed efficiency, if flocks are, at some point during their growth, provided with the incorrect feed mix, feed efficiency metrics will suffer. From their on-the-ground vantage point, contract growers are best positioned to identify when these issues arise - and according to our surveying and interviewing, these issues are pervasive. 96% of growers in our survey reported experiencing a negative impact on their income due to one or more of the following feed issues:

- Having a feed disruption of at least 6 hours (90%)
- Having a feed disruption of at least 12 hours (83%)
- Receiving an incorrect feed mix for my flock's growth stage during grow-out (75%)
- Receiving less feed than stated on my feed load receipt (59%)

One story in particular that was relayed to us is an excellent example of the type of issue that require further structures to account for. A poultry grower we spoke to described a time when he observed an issue with one of his feed deliveries. The feed truck driver stopped the truck's auger when the truck had been emptied, but before all of the grain in the auger had been transferred to the grower's grain bins. This resulted in the grower not receiving several thousand pounds of feed that his integrator thought he had received. Despite the flock being, in his estimation, a well performing flock with chickens that had put on more than average weight, he came in last place in that flock's tournament group, likely due to the feed discrepancy he experienced. "I asked our representative if there was any way they could catch that a feed truck's auger didn't run completely," he told us - and was told there was no recourse for the issue.

Growers in our survey had other detailed comments about these issues:

> I am on flock 26 with my integrator. In 25 flocks I have yet to be able to match the feed tickets to what they show in my settlement. This results in an average of 250,000 pounds per flock of feed that they say I used that I don't have tickets for. This greatly affects my feed conversion…One flock I actually found a ticket they had in my settlement twice. When I called they did admit the problem but they found another ticket that supposedly wasn't added and it was for 11,000 pounds which was supposedly just enough to not change my feed conversion. - Arkansas poultry grower

> My integrator made me take the chicken off feed for 12 hours five days before they were picked up - it killed my feed conversion - Arkansas poultry grower

> We had a flock down the road that got pellets too early - the birds were scratching the feed out terribly and wasting it. They replaced the feed for that farm. I asked the supervisor how they were going to be paid? She said she honestly didn't know. - North Carolina poultry grower
>
> Our complex has two feed mills. One mill feed generally delivers correctly, but when we receive feed from the other mill we either run out all the time or have feed that sits nearly the whole flock because of overshipments. I personally had two loads that were shorted because they were whole loads I got credited for, but I have no way to know if I got credit for the oversipped feed that was hauled back. - Alabama poultry grower
>
> Feed delivery is another issue. Sometimes when we receive split loads of feed we do not get the feed that we supposed to because when they deliver, the first farm gets more of the feed because the doors on the truck leak - Louisiana poultry grower

Given the varied nature of the feed discrepancies that growers experience, we recommend[13] that integrators be required to maintain a transparent appeals process for growers to report any issues that affect how their flocks perform or how their pay is calculated. We anticipate that feed issues could be a very common usage of such a system, but many other issues could be reported as well, including disease and disaster issues, persistent input quality problems, disputes with integrator representatives, or other grievances. Contracts should specifically enumerate under 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. Additionally, USDA should require the grievances submitted to the live poultry dealer by a poultry grower under the appeals process, and live poultry dealer plan of action to address the grievances, to be acknowledged and clearly disclosed to the poultry grower in writing, without confidentiality restrictions. This would create an official documented record of a grower's dispute history with their integrator, which they could provide to the Packers and Stockyards Division if they must resort to making a public complaint.

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 as outlined below:

[13] As mentioned in Question 14 of the Disclosure Document questions above

Disclosure of Expected Flock Feed Conversion History Based on Breeder Flock Age

We welcome USDA's attention to the effects of breeder flock age and health on contract grower performance outcomes. As one Georgia poultry grower told us, "It is impossible to compete, in a tournament system, against farms that receive chicks from older hens as opposed to receiving chicks from 22-24 week old hens." However, we believe that further transparency should be provided to growers regarding the expected feed conversion efficiency performance of their flocks, based on the age of that flock's breeder flock. To that end, we recommend that in addition to requiring the disclosure of breeder flock age, USDA should require integrators to disclose, within flock delivery disclosures, the average feed conversion efficiency of flocks hatched from breeder flocks of that age. This will allow growers to compare their own performance to a more accurate flock efficiency performance expectation.

Flock Pick-up Data Disclosures

Poultry feed conversion efficiency peaks at a certain age, after which their feed conversion efficiency starts to lag. Consequently, there is an ideal flock pick-up time range in a flock's life cycle. When integrators choose to pick up flocks before or after this ideal range, for whatever reason (often pick-up time is determined based on integrator complex supply needs), growers end up being penalized for their flock's less optimal weight or efficiency metrics, even though pick-up time is not in their control. Therefore, we recommend that USDA require integrators to disclose their data about the optimal pickup age for a flock's breed on flock placement sheets, and to disclose, on settlement sheets, the flock age at pickup as an impactful variable, and whether they account for that in the tournament formula. As several contract growers relayed to us in our survey:

> All flocks that are sold in a week should all be the same age, not some selling at 48 days and some selling at 53 days. If we have to compete against each other then it should be a level playing field." - Mississippi poultry grower
>
> Some farms are moved at 49 days and others moved at 53 days. You can't compete with farms that are moved at 49 days when you are moved at 53 days. - Maryland poultry grower

Bird Mortality Disclosure

Mortality of chickens during growout often reflects health and disease problems that originate at the hatchery, prior to bird placement in the growers' chicken houses. This is particularly true of bird mortality in the early weeks of the growout. Other times, the mortality can relate to disease issues in the grower's chicken houses. We recommend that USDA require integrators to disclose weekly bird mortality data on settlement sheet disclosures to give the grower, the integrator, and potentially state and federal animal health officials, information that would be useful in understanding the source of health or disease problems causing anomalous mortality.

Feed Provision Disclosures
In addition to the provisions of proposed § 201.214(c)(2) with regard to disclosures about feed disruptions, we recommend that USDA require integrators to disclosure information about quantity and type of feed delivered throughout the flock's growout. If a grower receives less feed than the poultry dealer claims, even if there is no actual feed disruption, it can completely skew the feed conversion data in a way that puts a grower at a significant competitive disadvantage relative to other growers in the settlement. In addition, there should be full transparency and disclosure regarding the type of feed delivered to a grower. If a poultry dealer inadvertently or intentionally delivers the wrong feed to a grower (e.g. breeder hen feed vs. broiler feed) it can be very detrimental to the birds and to flock performance. Requiring dealers to clearly disclose the type of feed delivered helps to ensure that dealers double check the type of feed delivered to prevent errors. Finally, if a poultry dealer provides lower quality feed to one grower relative to another grower in a settlement, such as feed with high moisture level, it can make a significant difference in the grower's ranking and cost them thousands of dollars as a result. There should be a requirement for the poultry dealer to document the quality of the feed provided, and disclose their data within settlement sheet disclosures. These feed disclosure recommendations are further explained in our response to question 4 above.

Grower Appeals Disclosure
As outlined in our response to Question 4, integrators should be required to maintain an appeals process for growers to report feed quality or delivery issues, input quality issues, or other grievances, and should be required to disclose any appeals and a summary of their resolution on settlement sheets. This would create an official documented record of a grower's dispute history with their integrator, which they could provide to the Packers and Stockyards Division if they must resort to making a public complaint.

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, as well as the additional disclosures we recommend in response to question 5 above, would be extremely helpful to growers in several ways:

a) Having detailed information about the dealer-supplied inputs, and how their variability impacts the grower's ranking in the settlement, gives the grower information to explain the variability in their income stream;
b) Requiring dealers to be transparent about the quantity and quality of inputs they provide to growers acts as a deterrent to any dealer actions to target inferior inputs towards certain growers in a manner that puts them at a competitive disadvantage relative to other growers;

c) Requiring dealers to be transparent about the inputs they provide to growers also sheds light on dealer actions to shift risks of inferior inputs from themselves to the growers, and this helps to prevent deception. This transparency also helps poultry dealers better understand the impact of variable quality inputs on growers and creates an incentive for them to use better practices to help minimize input variability;
d) Requiring dealers to be transparent about the quantity and quality of inputs they provide to growers would expose dealer actions to retaliate against certain growers or disadvantage certain growers. Hopefully, this transparency will discourage dealer actions to retaliate or discriminate against growers for fear of those actions being exposed.
e) Requiring dealers to disclose useful information about the inputs they provide to growers can also help growers better understand ways to improve their own on-farm practices to improve their performance.

Question 9
Would the requirement to provide placement disclosures affect dealers' business practices? If so, how?

Hopefully, the requirement for dealers to be transparent about the quality of inputs they provide to growers will make them more aware of how the variability in quality of inputs is affecting growers, will deter dealers from targeting individual growers with inferior inputs, will encourage dealers to develop strategies to reduce the variability in input quality, and will encourage dealers to compensate growers for their lost income associated with inferior inputs.

However, as stated above, it is not enough just to hope that transparency will result in improvements in poultry dealer treatment of growers. We believe that subsequent PSA rulemaking is needed to go beyond these disclosure requirements, and to provide clarity about which industry practices violate the broad prohibitions of the PSA.

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 about which we hear contract poultry growers express concerns. Specifically, we are often told that growers are pressured by integrators to take on further debt to upgrade their facilities without being provided adequate information on the relative costs and benefits or purported profitability or efficiency gains by integrators. For example, one contract grower relayed to us a conversation that they had with a regional poultry housing upgrade service provider, in which the service provider acknowledged that no studies had been conducted quantifying the performance benefits of upgrade being required by integrators in their region. By mandating or coercing upgrades without transparent costs and benefit analysis, integrators are thus able to externalize the costs and losses of their own research and development experiments onto growers.

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. According to the proposed rule, growers will be able to see when other growers in their settlement groups with different housing specifications are and are not outperforming them, and make more informed decisions about their own infrastructure investments on that basis.

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. As one contract grower commented to us in our survey,

> Before demanding a grower spend thousand of dollars on upgrades [integrators should have to] prove that the upgrades will be profitable for the grower…Integrators should not be allowed to use threats and intimidation against growers that they will pull contracts just because we question or refuse their upgrade requests - Alabama contract grower

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. Additionally, we strongly agree with the following contract grower recommendation from our survey:

> Any upgrade demands should be given a minimum of 6 months to begin the process. No more showing up and demanding that a grower replace equipment that's in working order just because the integrator thinks a grower will "do better" if they replace working equipment. Growers are currently being held out of birds until these demands are made. - Mississippi Grower

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 USDA adopts our recommendations to require integrators to provide growers with a flock performance history and best practices disclosure system (as discussed in question 5 above), growers knowledge of the infrastructure and management needs of various flock types will improve even more.

However, it is important to understand that the tournament system's current zero-sum dynamic, in which any given grower's performance advantage could penalize another grower in their complex, actively suppresses productive collaboration and knowledge sharing between growers. As one grower insightfully told us in our survey:

> The tournament system stifles advancements in poultry production. If and when a grower develops a technique that improves his performance, the last thing he will do is share that information because he is in constant competition with his fellow growers. - Alabama poultry grower

Most poultry companies patronizingly insist that without the tournament system, their growers will become lazy and resist innovation. Our contention is that this attitude is a condescending misunderstanding of contract poultry growers character and motivations. On the contrary, the vast majority of contract poultry growers are extremely hard-working individuals who take pride in producing good food and are highly motivated to improve their management and flock performance. However, they are currently strongly dis-incentivized from sharing knowledge amongst themselves about best practices, or the merits of on-farm upgrades, because this could result in their penalization within the tournament system.

Further action by USDA to change this hostile dynamic in the poultry industry could improve innovation, facilitate transparency about the merits of new technologies, and facilitate best practice knowledge sharing amongst contract poultry growers. If integrators were no longer allowed to pit growers against each other in the way they currently do, 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. As one grower in North Carolina told us, "We're all out here trying to do better - if we see someone performing better because they've gotten new feed lines, then you might decide to invest in the same equipment."

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 16
How would the proposed changes to settlement disclosures affect dealers' business practices?

Our hope is that the required settlement disclosures will, through the greater transparency they afford, provide growers with more in-depth insights into how their tournament system performance is impacted by factors not within their control. In situation where unfairness, deception, discrimination, or retaliation is suspected, these records will hopefully strengthen growers' ability to provide evidence of their experiences. Therefore, we hope that these disclosures will create stronger incentives for integrators to more closely attend to the relative quality of the inputs they provide, and avoid practices that are unfair, deceptive, discriminatory, or retaliatory. However, it is important to note that nothing in the existing rule prevents growers from continuing practices that are highly objectionable to current growers - it only requires a higher level of transparency about those practices.

Question 17
Under existing regulation 201.100(f), live poultry dealers are not required to disclose the names of other growers on ranking sheets. Under 201.214 of this proposal live poultry dealers would disclose a breeder farm identifier in the settlement disclosures but would not be required to disclose the name of breeder farms. Should we reevaluate our position on this issue? Why or why not?

In our conversations with contract growers, we have not received indication that the disclosure of grower or farm names should be required.

Question 18
Currently, dealers are not required to disclose the names of all competing growers on ranking sheets. Should we require dealers to disclose the names of all competing growers in settlement documents? Why or why not?

In our conversations with contract growers, we have not received indication that the disclosure of grower or farm names should be required. The potential of creating anonymized farm identifiers could be explored.

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. As described in our response to Question 4 above, this issue is pervasive, with 90% of growers we surveyed indicating that they had experienced a feed disruption of at least 6 hours that negatively impacted their income. We recommend that the rule be amended to require disclosure of feed disruption of 6 hours or more.

Improvements to USDA’s Proposed Rule: A Summary

<u>Recommended Improvements to Proposed Revised § 201.2—Terms defined</u>

Definitions of facility and poultry house. The term “facility” is used throughout existing PSA regulations, as well as in this proposed rule. However, the term is not defined in the PSA regulatory definition section (section 201.2). As used in the current and proposed PSA regulations, the term “facility” appears to be a reference to a poultry grower’s poultry houses collectively, not individually. Therefore, we also recommend that a definition be added to section 201.2 for “poultry house,” to allow for clarity in circumstances where USDA needs to make reference to individual poultry houses, versus a grower’s poultry houses collectively (i.e. “facility”).

Definition of tournament system. In addition, the undefined term “tournament system” is used repeatedly in this proposed rule in a manner that appears to be synonymous with “poultry grower ranking system,” which is defined under section 201.2. Therefore, we recommend that the term “tournament system” be defined in section 201.2 to be synonymous with “poultry grower ranking system.”

Definition of grower variable costs. We have concerns about the proposal to define “grower variable costs” to mean:

> “those costs related to poultry production that may be borne by the poultry grower, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance.”

We realize that the language of the proposed requirement refers to costs that "<u>may”</u> be borne by the poultry grower, but our concern is that by listing specific costs in the definition, it could create a baseline assumption that, going forward, those specific costs will always be borne by the grower. In an ideal and aspirational circumstance, where poultry integrators are fairly competing for poultry grower services, we could envision conditions where integrators would pay for some of these listed variable costs themselves. Therefore, the proposed definition of *grower variable costs* under section 201.2 should be modified to read as follows:

> “those costs related to poultry production that may be borne by the poultry grower~~, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance.”~~

Definition of deception and deceptive. Establishing a clear definition of “deception” in the rule would be very useful, 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.[14] Therefore, a claim or allegations based on deception or a deceptive practice requires no proof of likelihood of competitive harm or injury.

Recommended Improvements to Proposed Revised § 201.100, including USDA's Live Poultry Dealer Disclosure Document

- *Disclosure of Maximum Percentage of Variance Possible, Both Positive and Negative, from a Contract's Base Price Rate Within A Tournament System Formula:* For live poultry dealers that use a poultry grower ranking system to pay poultry growers, the expected income disclosure on the cover sheet of the Disclosure Document should be required to clearly disclose the maximum percentage of variance, both positive or negative, from the contract's base pay rate that is possible within their tournament system formula. This would provide growers with increased transparency concerning the true price floor of a proposed contract. This estimate should be calculated from the contract's base price per unit of production, the minimum number of flocks and stocking density guaranteed annually, the maximum percentage of variance, both positive or negative, from the contract's base pay rate that is possible within their tournament system formula, and a good faith estimation of variable costs that the prospective grower will be liable for. This will ensure that all prospective growers and lenders have a truly transparent picture, not only of the average or ideal possible outcome of a contract according to an integrator, but of the true range of possible cash flow outcomes, however negative or positive they may be. Furthermore, if an integrator were to make a payment to a grower that exceeded the disclosed maximum percentage of variance within the contract, that should be considered a violation of the contract as well as a deceptive and unfair practice under

[14] ttps://harvardlawreview.org/2012/03/deception-as-an-antitrust-violation/

the Packers and Stockyards Act. (See responses to Questions 2, 9, and 17 in the Live Poultry Dealer Disclosure Document section of the proposed rule preamble).

- *Disclosure of Minimum Annual Income Estimate:* We recommend that the USDA should require a minimum annual income estimate to be boldly featured on the cover sheet of the Disclosure Document. This estimate should be calculated from the contract's base price per unit of production, the minimum number of flocks and stocking density guaranteed annually, and the maximum possible penalty percentage that is possible within their tournament system formula. (Question 2)
- *Disclosure of Integrator Controlled Variables That May Affect Tournament System Performance:* In the Disclosure Document, integrators should be required to clearly disclose to prospective contract growers all of the possible variables within the integrator's control that could have an effect on a contract grower's settlement pay, whether their tournament ranking formula compensates for such variability, and if so, how. Any omission from this disclosure requirement should be considered illegal deception under the Packers and Stockyards Act. (See response to Question 2 in the Live Poultry Dealer Disclosure Document section of the proposed rule preamble).
- *Disclosure of Integrator Contract Termination Rate:* In the Disclosure Document, integrators should be required to clearly disclose the number and percentage of growers with whom they have terminated contracts in the past five years, both nationally and at the prospective contract grower's complex, with a categorical breakdown of termination cause. (Question 2)
- *Disclosure of Past Litigation History:* Within the required disclosure of past litigation [§ 201.100(c)(1)], in addition to disclosure of litigation with poultry growers, integrators should also be required to disclose any litigation to which they have been party, brought against them by the Department of Justice, Department of Agriculture, or other federal agencies. Additionally, prospective contract growers should also be informed of litigation with plant workers and chicken catchers. Proposed § 201.100(c)(1) should be amended to address this issue. Furthermore, these litigation disclosure requirements should also apply to all successors and assigns. (Questions 2 and 12)
- *Disclosure of Health Risks to Growers from Poultry House Dust and Ammonia:* The respiratory dangers of breathing dust and ammonia from inside poultry houses has been well documented, and prospective growers must be given that information as well as information about how to protect themselves and their employees from those dangers.[15] (Question 2)
- *Requirement to Provide Disclosures in Grower's Language:* 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. The disclosure requirement of the proposed revisions to Section 201.100 and new proposed Section 201.214 should be changed to reflect that requirement. (Question 7)

[15] https://nasdonline.org/197/d000146/respiratory-health-on-the-poultry-farm.html

- *Provision of Disclosure Data to USDA Annually:* USDA should require integrators to annually disclose the data they are calculating and disclosing within the Disclosure Document, especially regarding grower incomes, grower costs, 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 31)
- *Data audit details.* 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.
- *Disclosure of Poultry Grower Rights and Protections under the Packers and Stockyards Act and its implementing regulations.* Live poultry dealers should be required to disclose information to current and prospective poultry growers about their rights under the Packers and Stockyards Act and other related statutes and regulations. This should be achieved by requiring live poultry dealers to provide growers a link to a USDA website that clearly explains those rights and protections.

Recommended Improvements to USDA's Settlement Sheet Disclosure Requirements under new Proposed Section 201.214

- *Requiring Disclosure of Grower Appeals*: USDA should require integrators 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. Insofar as disease or disaster is not comprehensively compensated for within an integrator's appeals policy, that should be disclosed within our recommended required disclosure of integrator controlled variables that may affect tournament system performance. Additionally, USDA should require the grievances submitted to the live poultry dealer by a poultry grower under the appeals process, and live poultry dealer plan of action to address the grievances, to be acknowledged and clearly disclosed to the poultry grower in writing, without confidentiality restrictions. This would further strengthen the value of these disclosures as an official record of the treatment of growers by their integrator. (Question 4)
- *Requiring Input and Settlement Data Disclosures For Each Poultry House:* For poultry growers with multiple poultry houses, the quality of company-provided inputs can vary greatly between a grower's poultry houses. Therefore, disclosure of data under Section 201.214 should be for each poultry house on a grower's operation, rather than for an average of the grower's entire farm, to make sure the grower has the information

they need to analyze their performance and to better understand the variable quality of the inputs provided by the live poultry dealer. (Question 4)

- *Disclosure of Expected Flock Feed Conversion History Based on Breeder Flock Age and Breed:* In addition to requiring the disclosure of breeder flock age, USDA should require integrators to disclose, within flock delivery disclosures, the average feed conversion efficiency of flocks hatched from breeder flocks of that age and breed. This will allow growers to compare their own performance to a more accurate flock efficiency performance expectation. (Question 5)
- *Flock Pick-up Data Disclosures:* USDA should require integrators to disclose their data about the optimal pickup age for a flock's breed on flock placement sheets, and to disclose, on settlement sheets, the flock age at pickup as an impactful variable, and whether they account for that in the poultry grower ranking system formula. (Question 5)
- *Feed Provision Disclosures:* In addition to the provisions of proposed § 201.214(c)(2) with regard to disclosures about feed disruptions, we recommend that USDA require integrators to disclose information about quantity and type of feed delivered throughout the flock's growout. If a grower receives less feed than the poultry dealer claims, even if there is no actual feed disruption, it can completely skew the feed conversion data in a way that puts a grower at a significant competitive disadvantage relative to other growers in the settlement. In addition, there should be full transparency and disclosure regarding the type of feed delivered to a grower. If a poultry dealer inadvertently or intentionally delivers the wrong feed to a grower (e.g. breeder hen feed vs. broiler feed) it can be very detrimental to the birds and to flock performance. Requiring dealers to clearly disclose the type of feed delivered helps to ensure that dealers double check the type of feed delivered to prevent errors. Finally, if a poultry dealer provides lower quality feed to one grower relative to another grower in a settlement, such as feed with high moisture level, it can make a significant difference in the grower's ranking and cost them thousands of dollars as a result. There should be a requirement for the poultry dealer to document the quality of the feed provided, and disclose their data within settlement sheet disclosures. Lastly, we recommend that feed disruptions 6 hours or more be required to be disclosed instead of the 12-hour feed disruption trigger in the proposed rule. (Question 5)
- *Disclosure of Cost/Benefit Analysis of Proposed Infrastructure Upgrades*: USDA should 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 11)

Appendix A: Additional Grower Quotes By Theme

On the Tournament System

“Our experience with contract poultry was negative on so many levels. The tournament system is a broken platform on which a farmer's efforts and performance on their farm are no guarantee for success. The inputs are not equal for every farmer, leaving the end result to chance instead of effort. The only entity guaranteed for success every time in the given tournament system structure is the integrator who is sponsoring the tournament. Even with a high placement a farmer knows he only received what another farmer lost, and often times the farmer who lost may have had better practices and efforts during that grow out period. It’s a shameful win often times.” - South Carolina poultry grower

I feel that there are to many things that grower have no control of to be fair in the tournament system - “Alabama poultry grower

The integrator I work for has not given a raise in 15 years or longer. My number one cost is propane… [I]t has … [gone] up over 200% in the last 2 years and everything else has too. [S]o if y’all want to help the chicken farmer do something about how they are paid and treated. - Georgia poultry grower

I have asked them to prove to me that they actually pay somebody top pay. There is no proof that they pay anybody more than bottom pay on the sheets we are shown…At this point they could show me at the bottom of the sheet and show everybody else above me. This would allow them to pay everybody low pay and maximize profits. I have asked them about it and they don’t deny it. - Arkansas poultry grower

We should all get paid on what we grow and not penalized for things out of our control. We have no say on the birds we get, when they get the birds, what feed is delivered, what vaccines they play with in the hatchery. All we can control is the housing and inside conditions of said housing. - Delaware poultry grower

The tournament style pay system the integrators have in place are terrible for most growers, often times friends and family and even employees of the company get the best chicks and the ones like me that don’t fit in those categories get what’s left and we are expected to compete against those better birds for our paycheck, several years back we only grew 5 flocks , the year before we grew 7 flocks, we almost went under, long down times, they cut density, I put up everything I had to go into this business and almost lost it all and did nothing to cause it, integrators make millions of dollars and most of us growers are barely making it working 7 days a week, and to top it off they don’t have to offer us health insurance, I have a school bus route to have insurance for my family, just a lot of things that are not good for the growers - Georgia poultry grower

The tournament system is unfair - there is far too much that is out of the growers hands. The difference in quality of chicks from flock to flock is huge. You can run out of feed for hours numerous times a flock. How can you do well in such tight competition with such non uniform inputs? There is NO competition! It all depends on what they give you. We are supposed to compete with other growers that settle the same week but they commonly use growers from different weeks to "Place you where they want you in the competition ranking." All this affects what we get paid. Growers won't complain because they could lose their farm. It's a unique situation where you have to do what they want or risk losing your business, home and way of life all at once. - Delaware poultry grower

The better growers are given poorer quality birds, while subpar growers are given the more optimal. - Tennessee poultry grower

Farmers' management should be the sole factor in determining farmer pay. In every tournament settlement farmers [are] forced to absorb integrator inequities and inefficiencies before they get paid. To be honest it is just flat out stealing which should be looked at as criminal. - North Carolina poultry grower

Here in Mississippi we have 4 grower divisions that are in different parts of the state, 2 ½ hours between some of them. We all have different weather, feed mills, quality of grains, and quality of chicks and we are all competing against each other. No variables are the same. - Mississippi poultry grower

We've noticed they're isn't much rhyme or reason to the system. We've done better than other growers on all ends and still placed low. Worse numbers and placed high. They are quite vague on anything besides "it's based on weight, mortality and feed conversion. - Ohio poultry grower

The tournament system is totally unfair. Growers need to be paid for what they grow and guaranteed at least a base pay and then if flock does better be compensated for it. We are sent substandard birds with the likelihood of having some sort of disease that will affect growth and mortality later in there growout. During growout time period I have to cull out thousands of birds because the difference in sizes has a big impact on my final paycheck if I would leave all of the smaller birds in with the rest of the flock when they go to slaughter. Have birds that are a foot tall and birds half that size, can't have a good performance when you have to deal with that problem in every flock. - West Virginia poultry grower

The past year has been terrible as far as bird health, and for this reason, on three quarters of the flocks I was given, my integrator took me out of the tournament system and paid me based on an average of the performance of my past five flocks. The problem is they calculate this average based on what you made on previous flocks. So after the second one in a row you get punished for a flock they have already paid you using a five flock average. Plus if they are paying you this way because of bird health issues, they should have to show you exactly how they figured the average and they should also have to let the entire complex know about the health issues that the five flock average payment option is available. Now it's all top secret from one grower to the next and then when you get your adjusted pay there is ZERO disclosure of how it is figured or what flocks it's figured from. - Arkansas poultry grower

The tournament system is an unfair system because we receive birds from different age hens which will cause a difference in the way our chicks grow. It is also unfair because we are expected to compete when every farm is different. - Georgia poultry grower

The tournament system is designed to put growers against each other. If you're above average then all is well but if you do below average then it becomes a dire situation. I've been on the bottom 2 flocks in a row which put my whole farm in jeopardy. For the first time in 30 years I've had to take a second job just to keep my farm from going under. All this because of poor chick quality and of no fault of my own. - Mississippi poultry grower

<u>On Contract Terms and Negotiations</u>

"There should also be a maximum "out time" between flocks listed in every contract. Any out times that exceed that maximum out time listed, the grower should be paid per square foot for each house that would equal what that grower would be making while growing birds." - Mississippi poultry grower

We signed a new contract at the beginning of this year and after everything was signed by us and upper management they decided they did not want to honor it, leaving us with no help and in a lot of debt. The poultry industry as a whole needs to be looked over very closely. - Georgia poultry grower

There needs to be a base pay set on square footage. When they set base pay per lb, the companies still have too much control. I don't have a problem with the bonus system other than the bottom pay is way too low. The growers on bottom should still make a profit. I've been growing for 20 years and have been very fortunate to be better than average on all but a few flocks. But I've seen growers do all they can and still be below average. - Alabama poultry grower

Well on contracts, they are so often signed under duress. The techs have no idea as to what's in the contract, you don't have time to read it and don't get a copy of the contract. It's the same with any amendments to the contracts. Any time there is a contract, both sides should be able to negotiate the contents, as a grower it's been put to me as either you sign it or you won't get chickens. - Alabama poultry grower

Usually they threaten us with cutting our contract if we don't run their programs; we don't know how much feed they delivered or how many chickens they catch, we can only go by what they tell us. - Georgia poultry grower

I am not a fan of the integrators not providing as many flocks as promised in a year, requiring very costly capital investments for upgrades at anytime on farms that are consistently above average farms, changes in populations of birds at any time with no notice, and not being credited for feed outs or gas consumption due to change in placement schedules. - North Carolina poultry grower

Growers with paid off houses should also have a long term contract. Before demanding a grower spends thousands of dollars on upgrades they must prove that the upgrades will be profitable for the grower and not just because we say so. Integrators should not be allowed to use threats and intimidation against growers that they will pull contracts just because we question them [about] things they want to require us to do. - Alabama poultry grower

When we have received raises in the past where we were ALWAYS required to upgrade houses. Then when the upgrades were paid for, out times went up or birds were caught earlier. When our farm was built, 14-16 days was a normal out time. It's not been less than 21 days in years. That takes an entire flock over the course of a year. The last few years we have had less flocks because of our times. Managing the bills has been a nightmare. 1 less flock a year on small birds is 40,000.00 the grower just doesn't have. - Mississippi poultry grower

I have asked about switching contracts to the only other poultry integrator within 100 miles of my farm, but was denied due to a "gentleman's agreement" between them and my current integrator that keeps growers from switching sides. - Arkansas poultry grower

If you get close to paying off your houses, they'll tell you it's time for another upgrade! Most farmers start out thinking they can sell and retire someday but when you're ready to sell they give you a list of hundreds of thousands of dollars in upgrades before any new owner would place chickens forcing the growers to lower the farm price. We are supposed to be contractors but were told when to place chickens, when they move, Temperatures, lighting, every aspect of the process is dictated to us. We are employees without the benefit of an employee. We don't get medical, dental, 401k retirement, nothing. We just get to shut the doors at the end of our careers and watch the building fall into disrepair. They get rid of older houses by forcing upgrades that are too expensive to make a fair profit .They can just get someone else to go into millions in debt to build new beautiful poultry houses with their name on them. All at no cost to them. What a great scheme. Hopefully someone, someday can help the poultry farmers because they are unable to speak. - Delaware poultry grower

On Integrator Controlled Variables

I have gotten really small chicks from a flock of hens of an age of only 26 weeks old, which is known and verified by veterinarians that they will grow smaller in weight and size compared to "prime chicks of 32-50 week old hens. There is no way, it is impossible to compete fairly if you do not have the same age chicks. Then you sell/settle against farmers who have prime chicks that beat you and you receive a minus and have to give money to the "better grower" - North Carolina poultry grower

Frequently integrators allow farms to run out of feed. Birds will sometimes go 16 to 24 hours without feed. Not only is this a welfare issue it affects the production of the farm. Birds are also caught early if they are performing well which affects our ability to make a good profit by growing a heavier bird. Chick quality (genetics) accounts for 90% of the performance of the flock (feed 5% health 2%) and the environment (which the grower controls) only 3%. Studies published show these statistics. This means the integrator is responsible for 97% of the chicken's performance. If they send the grower poor chicks then the performance and productivity of the farm will be poor. Chicks are not properly managed and endemic pathogens (such as coccidia) are not adequately managed by integrators. I am a licensed veterinarian (retired) so can speak well to this fact. The vaccination and feed additive programs are all based off of cost to the integrator with no thought on how it will affect farm productivity or animal welfare. My family has been in the commercial broiler industry for over 60 years. A lot has changed and some of the change is good however all power and control has always been and remains with the integrator and our farms and families are at their mercy or lack thereof. - Alabama poultry grower

Your birds go out on different days. It is a known genetic fact that birds' feed conversion ratio changes daily as they age. I might sell my birds today at 46 days old and you sell tomorrow and your birds are 49 days old. There is no way you can compete fairly when your birds are 3 days different in age. - North Carolina poultry grower

We have no control over the quality of the birds or feed. Some flocks do well and some suck! You have no control. Integrators want you to spend money to fix their problems and also to keep you as an indentured servant. - Georgia poultry grower

You can not control the feed. In my company the only 2 things factored in your settlement is chick cost and feed cost. There is no way possible to make sure all growers get the same amount or percentage of starter feed, grower feed and finisher feed. Each of these feeds have different protein and fat content. The finisher feed has a higher fat content. If another grower goes on finisher feed 2 days before I do his birds will gain more weight. So he will make more money. There is no way I as a grower can control when someone gets feed at the incorrect intervals. Oftentimes you receive the feed they have on hand, and not the correct feed that you need. I have gotten grower feed when I should have gotten finisher. - North Carolina poultry grower

I bought an existing farm then built 2 new houses right beside them. The old houses are upgraded to receive top pay just like the new ones but they make my old houses one farm name and my new houses one farm name and compete against each other every batch. - Alabama poultry grower

You can not control how many birds the catch crew suffocates or kills. They may suffocate 30-40 per house at my farm and only suffocate 10 per house at your farm, that would be a1,200 pound difference on a 4 house farm. This is beyond your control - North Carolina poultry grower

Have had poor quality chicks that were unhealthy when they arrived from hatchery that was three states. Chicks were stressed and dehydrated when they arrived to our farm. Had to compete with chicks that were locally grown. Had no chance to be competitive for our sell week. Have had numerous flocks where 3 to 5 day mortality is extremely high due to being transported for over 24hrs before arriving at our houses. Integrator then came out to find something to place blame on me when there was nothing I could do. My current tech knows nothing about poultry. His degree is not in poultry science nor had he ever set foot in a poultry house until he took this job. So I have no one to answer questions I may have or could give me constructive advice. Also having to pay for services the company has contracted out but not receiving what we pay for. There is no accountability for our integrator. They have two sets of rules. One for growers and one for integrator. - Alabama poultry grower

Split loads of feed is a problem too. It is a known fact that the bottom doors of the hopper bottoms often do not close correctly, which means whoever is off loaded first will receive more than their amount of feed from an open, or not fully closed hopper bottom pocket door. I have gotten shorted on feed from split loads before. - North Carolina poultry grower

We receive birds from several hatcheries in Alabama. Birds from different hatcheries definitely are not the same. We have seen the difference time and time again yet we still settle against the other farms with far superior chick quality. It's impossible to compete with growers who get the good chickens vs those who get all the culls. Our integrator cries animal welfare if we have a feedline go down and it takes us longer than a couple hours to repair yet they let growers run out of feed for 12 to 24 hours even longer. That's a major animal welfare issue not to mention hurting the growers performance, then they take money when you don't perform well due to their issues. - Alabama poultry grower

Quality of birds from the hatchery. I have gotten birds that were too hot during the incubation period at the hatchery, and they had their rear end burnt due to excessive heat in the incubation process. Those birds did not grow as well as my other birds, which means they did not compete well with other farms due to the hatchery, not my growing performance. - North Carolina poultry grower

I've often felt the competition has hurt our pay. It's especially hard for larger farms who have increased chances of bad feed or bad chicks from an older hen flock. We also suffer if we have one bad flock in a year it continues to factor into our 6 flock average and pulls out pay down substantially until the bad flock rolls off of the 6 flock average. - Georgia poultry grower

There are several stories I have but a couple that carry the most weight with me right now is seven years ago [our integrator] started bringing us birds with severe genetic disadvantages. The chick quality was terrible and there was no way to make these birds perform, it was a nightmare and totally out of my control but I was blamed for it like so many other growers and my income suffered severely. They threatened to put me in a high management program where we had to perform better over the next three flocks or our contract would be terminated. I ended up selling that farm due to the impossible standards… Second incident was last winter - we shipped out in a major snow storm and had to stop loading. I had four houses out of feed for over 24 hours before we started loading again. Hard to tell how many pounds I lost and the quality of the birds was bad anyway. We have been dealing with this for years. - Missouri poultry grower

Feed outages happen regularly, birds going hours without food, but you sell against a farm that never ran out of feed and their birds grew fine, it just is not fair. - North Carolina poultry grower

I have gotten a different breed before. All the other growers got a higher performing breed than I received but I was required to sell against the other farms. There is no way you can be competitive when you are raising a totally different breed from those you are selling against! - North Carolina poultry grower

What I find unfair is that we have no control over the quality of chickens placed or the quality/quantity of feed brought in by the integrator. It's like a game of roulette yet we are expected to compete against each other as if everything was equal for everyone. Sometimes we run out of feed for 10-12 hours and I'm still expected to compete with another farmer that didn't run out of feed. I report my feed inventory and pray that they bring feed in a timely manner. I have no control in that aspect and that is unfair. I've been trying my best but somehow I always end up near the bottom of the list and I've been penalized over $30,000 in the last 2 years. - Mississippi poultry grower

Our current tournament system is unfair due to having multiple feed types that are settled in the same groups every week. Our integrator allows growers from the antibiotic free houses and also Non-GMO antibiotic free houses to settle together in the same week. These are two completely different feed types that are blatantly smashed together to make the settlement process easier for the company. In the past they settled each grower in a competitive manner via the feed type the contract grower was feeding at the time. As it currently sits, I am forced to compete against other contract growers that receive feed derived from ingredients from a completely different type of corn, soybean, etc as the rest of us growers. This is unfair and absolutely unequal. The company nutritionist formulated different feeds for Non-GMO and Antibiotic free birds; this indicates to me that they are not equal feedstuffs and they should not have growers competing against each other with different input ingredients. I have also had multiple instances of being shorted on the amount of feed that I was supposed to be delivered, but was charged for the full amount even though I did not receive the full amount. The same has happened for chick delivery but I was never compensated. - Arkansas poultry grower

I was given sick birds, and I finished so poorly that I could not even make a bank payment. My integrator acknowledged they gave me sick birds and that was the reason for my poor performance, but they still took over half of my check to offset their losses. When I asked about my losses I was told that this is how the business works. I had to get an extra loan to pay for my gas and electricity. In another example, I was brought a bad batch of feed 3 days before my flock was picked up. The birds stopped eating and drinking. My integrator acknowledged the mistake. My birds were the lightest I ever grew. They died a lot towards the end. The company did nothing to offset my losses. - Georgia poultry grower

We bought our farm and were told that we would have help with our first 3 flocks because we were brand new to the industry. We were not even helped with the first flock. We were also placed on a test flock rotation where two of our houses were given 5000 less birds than the other houses. We were told that they would pay us for the birds that were not placed because it was a test flock. When payment time came we were not paid for the less birds and were told it was our problem because we didn’t place well. We have had issues with the feed mill claiming they sent feed but it not being on our farm but still being counted in our tournament pay. They will not tell us the age of the hens or any information about the breeder farm our eggs came from. - Georgia poultry grower

They can't give each grower the same inputs. Every load of chicks is different and feed is inconsistent at best. - Virginia poultry grower

Stop switching growers to different types of birds. If a grower is under contract to grow a 50 day old bird and has been growing that type of bird for years, then the integrator shouldn't be allowed to switch that grower to 60 day old birds just because they want to "swap" things up. Our loans and bills are paid on what we are accustomed to growing and switching us up makes it hard to get everything paid like normal. - Mississippi poultry grower

As far as unfair practices, Agristats should be done away with. If you don’t have experience with this, you need to. It’s a nationwide tally of all participating companies that includes all expenses in growing chickens. There are no company names on the sheet, but everyone knows by bird size and region who is who. - Alabama poultry grower

We grow and our barns are set up for tray packs. In August 2020 we were required to grow big birds. We are in south Mississippi and August is the hottest part of the year. Of course we did not meet weight requirements for big birds and we were 30 points above cost. When we discussed our concerns about our settlement our division manager said, and I quote, "y'all did better than we thought you would ". In other words the integrator set us up to fail that flock. In another instance we were given chicks with salmonella. We were told other farms received infected birds also. We were the only farm given medicated feed and were still placed in the tournament system the week we sold. Our birds performed horribly and we were above cost. - Mississippi poultry grower

Having one division that has old smaller houses with less birds combined with a new division that has larger houses with more birds in each house. No way to compete when you can't house the same amount of birds per house. - Texas poultry grower

They give us chickens from unknown source. Some chicks are disformed on arrival . We are not allowed to write the total number of dead chicks on arrival, or the total amount of chicks that truly die on a given day (should not exceed a certain number). Even if you have good weight (more than 7 pounds), they will say you did not do good on the feed cost. If chickens don't eat much, then you will not make money from weight nor from cost. Sometimes, more chickens die in a house and they don't allow you to write it down on the mortality card. At the end of the batch, you are not credited for the ones that died, thus you will not beat the cost. The feed formula that they control can affect bird growth, weight, and thus affects how well I do in the tournament. - Mississippi poultry grower

Higher quality chicks are given to friends of integrators employees. This results in lower rankings. Integrators can fluctuate the number of flocks/ birds to help their bottom line without consideration for growers. Contracts have no guarantees for this to keep growers protected from cuts. - Mississippi poultry grower

On Service Techs

Service techs having too much power can close you down for anything and make you set out several flocks when what they requested could be resolved with chicks in house and no loss of income. My bank note is 28.000 per flock. [M]issing several flocks will take me a year or more to recoup the lost revenue. I think the usda needs to have final say so in matters such as this but nothing will be done. I have been here a long time things are getting worse instead of better - Louisiana poultry grower

I have placed my farm up for sale because I can no longer tolerate the disrespect and lack of decency that the integrators have shown over the last 2 years. It was as if a switch was flipped and big corporations decided it was time to start to squeeze the growers. I have several theories of why this is being done but my opinion doesn’t matter. I have run my poultry business exactly like my other businesses (which I will add are relatively successful) and I have never been micromanaged to the degree I am now in my entire working career across different industries. The fact alone that a service technician who in my experience is just a hired hand with little background in what it takes to grow chickens can subjectively write a grower, who has several hundred thousands to millions invested, out of business is completely ridiculous. The middle management will visit the farms also making subjective decisions on the very livelihood of the growers. It is by far the most unfair, unethical, and inefficient way of doing business I have ever encountered. Lastly through what I'm sure is collusion amongst the major integrators there are no options for us as growers to provide our services and our facilities to other integrators as they generally do not have multiple processing plants in a geographical area. In effect the poultry industry has become modern day slavery at worst or indentured servitude at best. - Mississippi poultry grower

The company knows who will do good when they place the chicks. They can bring you sorry chicks or good ones. It all depends on how they feel that day because all the managers just want to bully the grower. And if they mess up the feed well there goes your feed conversion and you will do bad and get penalized for it and it's always the growers fault they don't take the blame for anything. - Mississippi poultry grower

We have to run by a program which is at the discretion of the service hands on how to run not the growers in that case they should be liable not us - Mississippi poultry grower

Appendix B: Recommended revisions to new proposed § 201.100

We recommend some changes to the proposed Live Poultry Dealer Disclosure Document provisions in new proposed § 201.100, as revised by this proposed rule. **(Our recommendations to the proposed text are bolded and underlined for the sake of clarity).**

§ 201.100 Disclosures and records to be furnished poultry growers and sellers.

(a) *Obligation to furnish information and documents.* A live poultry dealer must provide the documents described in this paragraph (a) to a prospective or current poultry grower. **All documents written by the live poultry dealer shall be provided in a language that can be competently understood by the prospective or current poultry grower.**

(1) Except as provided in paragraph (e) of this section, when a live poultry dealer seeks to renew, revise, or replace an existing poultry growing arrangement, or to establish a new poultry growing arrangement that does not contemplate modifications to the existing housing specifications, the live poultry dealer must provide the following documents at least seven days before the live poultry dealer executes the poultry growing arrangement:

(i) A true, written copy of the renewed, revised, replacement, or new poultry growing arrangement; ~~and~~

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b), (c), and (d) of this section, **and;**

(iii) a link to a USDA website listing poultry grower rights as protected by the Packers and Stockyards Act and its implementing regulations.

(2) When a live poultry dealer seeks to enter a poultry growing arrangement with a poultry grower or prospective poultry grower that will require an original capital investment, the live poultry dealer must provide the following to the poultry grower or prospective poultry grower simultaneously with the housing specifications:

(i) A copy of the poultry growing arrangement that is affiliated with the current housing specifications,

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b), (c), and (d) of this section, ~~and~~

(iii) a link to a USDA website listing poultry grower rights as protected by the Packers and Stockyards Act and its implementing regulations, and

~~(iii)~~ (**(iv)** A letter of intent that can be relied upon to obtain financing for the original capital investment.

(3) When a live poultry dealer seeks to ~~offer~~ **propose or require** ~~or impose~~ modifications to existing housing specifications that could reasonably require a poultry grower or prospective poultry grower to make an additional capital investment, the live poultry dealer must provide the following to the poultry grower or prospective poultry grower simultaneously with the modified housing specifications:

(i) A copy of the poultry growing arrangement that is affiliated with the modified housing specifications,

(ii) a cost-benefit analysis of the poultry house modifications being proposed or required by the live poultry dealer

~~(ii)~~ **(iii)** The Live Poultry Dealer Disclosure Document, as described in paragraphs (b), (c), and (d) of this section, ~~and~~

(iv) a link to a USDA website listing poultry grower rights as protected by the Packers and Stockyards Act and its implementing regulations, and

~~(iii)~~ **(v)** A letter of intent that can be relied upon to obtain financing for the additional capital investment.

(b) *Prominent Disclosures.* The Live Poultry Dealer Disclosure Document must include a cover page followed by additional disclosures as required in paragraphs (c) and (d) of this section. The order, form, and content of the cover page shall be and include:

(1) The title "LIVE POULTRY DEALER DISCLOSURE DOCUMENT" in capital letters and bold type;

(2) The live poultry dealer's name, type of business organization, principal business address, telephone number, email address, and, if applicable, primary internet web page address;

(3) The length of the term of the poultry growing arrangement, **and any exceptions that would cause the contract to be terminated earlier than the term length specified;**

(4) The following statement: "The income from your poultry farm may be significantly affected by the number of flocks the poultry company places on your farm each year, the density or number of birds placed with each flock, and the target weight at which poultry is caught. The poultry company may have full discretion and control over these and other factors. Please carefully review the information in this document."

(5) The following:

(i) The minimum number of placements on the poultry grower's farm annually under the terms of the poultry growing arrangement, and

(ii) The minimum stocking density for each flock to be placed on the poultry grower's farm under the terms of the poultry growing arrangement.

(iii) For live poultry dealers using a poultry grower ranking system to calculate grower payments, including bonuses or penalties, 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,

(iv) 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.

(v) The appeals process by which growers can raise concerns and grievances to the live poultry dealer regarding live poultry dealer actions and inputs that have negatively impacted grower pay, including, but not limited to:

(1) poultry house and equipment requirements;
(2) feed quality and delivery;
(3) bird quality, delivery and pick up:
(4) grower ranking system group composition:
(5) other factors affecting grower performance in the ranking system settlement.

(6) The applicable of the following two statements:

(i) "This disclosure document summarizes certain provisions of your poultry growing arrangement and other information. You have the right to read this disclosure document and all accompanying documents carefully. At least seven calendar days before the live poultry dealer executes the poultry growing arrangement, the poultry company is required **by the U.S. Department of Agriculture (USDA)** to provide you with: (1) this disclosure document, and (2) a copy of the poultry growing arrangement." OR

(ii) "This disclosure document summarizes certain provisions of your poultry growing arrangement and other information. You have the right to read this disclosure document and all accompanying documents carefully. The live poultry dealer is required **by the U.S. Department of Agriculture (USDA)** to provide this disclosure document to you simultaneously with (a) a copy of the poultry growing arrangement, (b) any new or modified housing specifications that would require you to make an original or additional capital investment, and (c) a letter of intent."

(7) This statement: "Even if the poultry growing arrangement contains a confidentiality provision, by law you still retain the right to discuss the terms of the poultry growing

arrangement and the Live Poultry Dealer Disclosure Document with a Federal or State agency, your financial advisor or lender, your legal advisor, your accounting services representative, other growers for the same live poultry dealer, and your immediate family or business associates. A business associate is a person not employed by you, but with whom you have a valid business reason for consulting when entering into or operating under a poultry growing arrangement." and

(8) The following sentence in bold type: "Note that USDA has not verified the information contained in this document. If this disclosure by the live poultry dealer contains any false or misleading statement or **fails to provide information that is important and relevant to your business relationship with the live poultry dealer** ~~a material omission~~, a violation of federal and/or state law may have occurred. **A website has been established by USDA and the U.S. Department of Justice to give farmers the ability to file complaints of this nature. The website address is farmerfairness.gov.**

(c) *Required disclosures following the cover page.* The live poultry dealer shall disclose, in the Live Poultry Dealer Disclosure Document following the cover page, the following information:

(1) A summary of litigation over the prior six years between the live poultry dealer and any poultry grower**, poultry catcher, poultry plant worker, or any federal agency,** including the nature of the litigation, its location, the initiating party, a brief description of the controversy, and any resolution. **This requirement shall also apply to all successors and/or assignees of the live poultry dealer.**

(2) A summary of all bankruptcy filings in the prior six years by the live poultry dealer and any parent, subsidiary, ~~or~~ **,** related entity, **successors or assignees** of the live poultry dealer; and

(3) A statement that describes the live poultry dealer's policies and procedures regarding the potential sale of the poultry grower's facility or assignment of the poultry growing arrangement to another party, including the circumstances under which the live poultry dealer will offer the successive buyer a poultry growing agreement.

(4) all of the possible variables within the live poultry dealer's control that could have an effect on the poultry grower's settlement pay, whether their grower payment formula compensates for such variability, and if so, how.

(5) the number and percentage of growers whose contracts have been terminated by the live poultry dealer in the preceding 5 years, nationally and at the prospective grower's complex, with a categorical breakdown, by percentage of terminated growers, of the causes for grower termination.

(6) Information about human respiratory health hazards associated with exposure to air in chicken houses, and precautions growers and their family members should take to limit those hazards. (*NOTE: USDA should designate a credible fact sheet on this topic from a relevant health agency that live poultry dealers would be required to give to growers*).

(d) *Financial Disclosures.* The live poultry dealer must include in the Live Poultry Dealer Disclosure Document the following information:

(1) A table showing average annual gross payments to poultry growers for the previous calendar year for all complexes owned or operated by the live poultry dealer, organized by housing specification, and expressing average payments on the basis of U.S. dollars per farm facility square foot.

(2) Tables showing average annual gross payments to poultry growers at the local complex for each of the five previous years. The tables should express average payments on the basis of U.S. dollars per farm facility square foot. The tables should be organized by year, housing specification tier (lowest to highest), and quintile (lowest to highest). The step-by-step process for calculating table values is:

(i) Group growers according to the housing specification affiliated with their poultry growing arrangement;

(A) Include all growers under contract for a complete calendar year and growers under flock-to-flock poultry growing arrangements during that year, and

(B) Exclude growers whose housing specifications changed during the calendar year from the calculation for that year.

(ii) Sum all payments to each grower during the calendar year to determine each grower's total annual payments;

(iii) Divide each grower's total annual payments by the square footage of the grower's farm facility to normalize annual payments to reflect dollars per farm facility square foot;

(iv) Sort normalized annual payments into quintiles (smallest to largest); and

(v) Sum all normalized annual payments within each quintile and divide the result by the number of growers in the quintile to determine an average annual gross payment to poultry growers for that quintile.

(3) If poultry housing specifications for poultry growers under contract with the complex are modified such that an additional capital investment may be required, or if the five-year averages provided under paragraph (2) do not accurately represent projected grower gross annual payments under the terms of the applicable poultry growing arrangement for any reason, the live poultry dealer must provide the following additional information:

(i) Tables providing projections of average annual gross payments to growers under contract with the complex with the same housing specifications for the term of the poultry growing arrangement at five quintile levels expressed as dollars per farm facility square foot, and

(ii) An explanation of why the annual gross payment averages for the previous five years, as provided under (2), do not provide an accurate representation of projected future payments, including the basic assumptions underlying the projections provided under (i) of this paragraph.

(4) A summary of information the live poultry dealer collects or maintains relating to grower variable costs inherent in poultry production.

(5) Current contact information for the State university extension service office or the county farm advisor's office that can provide relevant information about poultry grower costs and poultry farm financial management in the poultry grower's geographic area.

(e) *Small Live Poultry Dealer Financial Disclosures.* A live poultry dealer, including all parent and subsidiary companies, slaughtering fewer than 2 million live pounds of poultry weekly (104 million pounds annually) is exempt from the requirements in paragraph (a)(1) of this section.

(f) *Governance and Certification.*

(1) The live poultry dealer must establish, maintain, and enforce a governance framework that is reasonably designed to—

(i) audit the accuracy and completeness of the disclosures required under (a), which shall include audits and testing, and which shall include reviews of an appropriate sampling of Live Poultry Dealer Disclosure Documents by the principal executive officer or officers;

(ii) ensure compliance with all obligations under the Packers and Stockyards Act and regulations thereunder.

(2) The principal executive officer or officers, or persons performing similar functions, shall certify in the Live Poultry Dealer Disclosure Document that the live poultry dealer has established, maintains, and enforces the governance framework and that based on the officer's knowledge, the Live Poultry Dealer Disclosure Document does not contain any untrue statement of a material fact or omit to state a material fact which would render it misleading.

<u>(3) The live poultry dealer shall annually disclose the data within the Live Poultry Dealer Disclosure Document to the Packers and Stockyards Division (or any successor subagency) of the U.S. Department of Agriculture. USDA will conduct random audits of the data to confirm accuracy.</u>

(g) *Receipt by growers.*

(1) The Live Poultry Dealer Disclosure Document must include a poultry grower's signature page that contains the following statement: “If the live poultry dealer does not deliver this disclosure document within the time frame specified herein, or if this disclosure document contains any false or misleading statement or a material omission (including any discrepancy with other oral or written statements made in connection with the poultry growing arrangement), a violation of federal and state law may have occurred. Violations of federal and state laws may be determined to be unfair, unjustly discriminatory, or deceptive and unlawful under the Packers and Stockyards Act, as amended. Allegations of such violations may be reported to the Packers and Stockyards Division of USDA's Agricultural Marketing Service.”

(2) The live poultry dealer must obtain the poultry grower's or prospective poultry grower's dated signature on the poultry grower's signature page in paragraph (1) as evidence of receipt. The live poultry dealer must provide a copy of the dated signature page to the poultry grower or prospective poultry grower and must retain a copy of the dated signature page in the dealer's records for three years following expiration, termination, or non-renewal of the poultry growing arrangement.

(h) *Right to discuss the terms of poultry growing arrangement offer.* A live poultry dealer, notwithstanding any confidentiality provision in the poultry growing arrangement, may not prohibit a poultry grower or prospective poultry grower from discussing the terms of a poultry growing arrangement offer or the accompanying Live Poultry Dealer Disclosure Document with:
* * * * *

(i) * * *

(2) The following variables controlled by the live poultry dealer:

(i) The minimum number of placements of poultry at the poultry grower's facility annually, and

(ii) The minimum stocking density for each flock placed with the poultry grower under the poultry growing arrangement.

(iii) For live poultry dealers using a poultry grower ranking system to calculate grower payments, including bonuses or penalties, 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,

(iv) 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.

Appendix C: Recommended revisions to new proposed § 201.214

We recommend some changes to the proposed Settlement Sheet Disclosure Document provisions in new proposed § 201.214, as revised by this proposed rule. **(Our recommendations to the proposed text are bolded and underlined for the sake of clarity).**

§ 201.214 Transparency in poultry grower ranking pay systems.

(a) *Poultry grower ranking system records.* If a live poultry dealer uses a poultry grower ranking system to calculate grower payments, the live poultry dealer must produce records in accordance with paragraphs (b) through (e) of this section. **All documents written by the live poultry dealer shall be provided in a language that can be competently understood by the poultry grower.** The live poultry dealer must maintain such records for a period of five years.

(b) *Placement Disclosure:* Within 24 hours of flock delivery to a poultry grower's facility, a live poultry dealer must provide the following information to the grower regarding the placement, **broken down by each poultry house:**

(1) The stocking density of the placement;

(2) Names and all ratios of breeds of the poultry delivered**, and historical breed performance and best management practice recommendations as specified in section 201.214(e)**;

(3) If the live poultry dealer has determined the sex of the birds, all ratios of male and female poultry delivered;

(4) The breeder facility identifier;

(5) The breeder flock age;

(6) The expected feed conversion efficiency of flocks hatched from breeder flocks of that age and breed.

(7 bird mortality, broken down by week, during the flock growout cycle;

~~(6)~~ **(8)** Information regarding any known health impairments of the breeder flock or of the poultry delivered; ~~and~~

(9) optimal pick-up time for the birds delivered to each poultry house;

(10) quantity, type and quality of feed delivered for each poultry house; and

~~(7)~~ **(11)** Adjustments, if any, that the live poultry dealer may make to the calculation of the grower's pay based on the inputs in (1) through (6) of this paragraph.

(c) Poultry grower ranking system settlement documents. A live poultry dealer must provide ranking system settlement documents that include the following information:

(1) *Grouping, ranking, or comparison sheets*. The live poultry dealer must furnish the poultry grower, at the time of settlement, a copy of a grouping or ranking sheet that shows the grower's precise position in the grouping, ranking, or comparison sheet for that period. The grouping or ranking sheet need not show the names of other growers, but must

show their housing specification and the actual figures upon which the grouping or ranking is based for each grower grouped or ranked during the specified period.

(2) *Distribution of inputs.* The distribution of inputs among participants must be reported to all poultry grower ranking system participants. The grouping or ranking sheets required in paragraph (1) must disclose the following information relating to live poultry dealer-controlled inputs provided to **each individual poultry house** **of each** grower participant:

(i) The stocking density for each placement;

(ii) The names and all ratios of breeds of the poultry delivered to each poultry grower's facility;

(iii) If the live poultry dealer has determined the sex of the birds, all ratios of male and female poultry delivered to each poultry grower's facility;

(iv) All breeder facility identifiers;

(v) The breeder flock age(s); ~~and~~

(vi)The expected feed conversion efficiency of flocks hatched from breeder flocks of that age; and

(vii) actual pick-up time for each poultry house, in comparison to the optimal pick up time specified for each house under paragraph (b)(9);

~~(vi)~~ **(viii)** The number of feed disruptions each poultry grower endured during the growout period, where the grower was completely out of feed for ~~12 hours~~ **6 hours** or more.

(ix) quantity, type and quality of feed delivered for each poultry house.

(d) ***Poultry grower ranking system appeals disclosure.*** **Pursuant to the appeals process disclosure provision in section 201.214(b)(5)(v), the grievances submitted by a poultry grower regarding live poultry dealer actions and inputs related to a specific flock settlement shall be acknowledged by the live poultry dealer in writing to the poultry grower, along with the live poultry dealer's plan of action to address the grievances, and a summary of the resolution of the dispute. The poultry grower shall have the right to share information regarding the dispute, in accordance with section 201.100(h).**

(e) ***Breed performance data.*** **In addition to the information disclosed by live poultry dealers pursuant to Section 201.214(c)(2)(ii) regarding the ratio of breeds delivered to poultry grower's poultry houses, live poultry dealers shall also disclose information about the historical performance of those breeds and best management practices poultry growers should use to maximize the performance of those breeds.**

Appendix D: Comments on Cost-Benefit and Regulatory Impact Analyses of the Proposed Rule:

It is our understanding that live poultry dealers already collect a great deal of data about all aspects of the poultry production system, including data about grower, housing and flock performance, through industry data consulting firms. The existence of these poultry industry data sharing activities was the subject of a recent proposed consent decree between the U.S. Department of Justice, an industry data consulting firm, and three poultry processing companies.[16] While we don't know the details of all the data shared by live poultry dealers through those services, we concur with AMS' stated belief that "... most live poultry dealers already keep nearly all of the required records. Therefore, the added costs of creating the records are expected to be relatively small." We believe that this is likely to be true in terms of the additional data disclosures that we recommend in our comments, as well.

We further concur with AMS' general analysis that the costs to live poultry dealers with these disclosure requirements are relatively low, with costs being somewhat higher at the beginning of the rule's implementation timeframe, as live poultry set up the initial protocols for disclosure compliance.

With regard to the benefits of the proposed disclosure requirements, as well as our additional recommended disclosure requirements, we agree with AMS' statement that quantifiable benefits of the rule outweigh the costs, but that many of the rule's additional benefits to growers are hard to quantify. For example, while the following attributes of this rule are clearly beneficial to prospective and current poultry growers, these benefits are challenging to quantify. This would include the benefits to growers of:

- being able to predict their range of income for the coming year;
- having transparency about the quality of inputs provided by the live poultry with whom they contract;
- having more information upon which to base investment decisions;
- having some assurances that a live poultry dealer will not be able to retaliate against the grower economically through the use of an opaque payment system that allows them to deliver inferior inputs without any record of that action;
- being treated more like a trusted business partner who is given valuable information about how to maximize the performance of their operation; and
- the gradual cessation of fear and anxiety that are so common among poultry growers, if the transparency envisioned by this rule reduces opportunity for deception and intimidation.

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https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy

In addition, we believe there are also many difficult-to-quantify benefits that will accrue to poultry-dependent communities as a result of this rule. In the rural communities that surround the nation's poultry processing plants, it is very common to see abandoned poultry houses littered across the landscape, which degrades the value of those farms and the communities in which they are located. This occurs because poultry growers go deeply into debt to build expensive, high-tech, poultry growout houses on their farms, based on verbal, non-binding assurances of income and fair treatment from live poultry dealers. Unfortunately, those verbal assurances are rarely borne out in reality, nor fully reflected in the details of the incomplete and asymmetric contracts. In addition, because live poultry dealers do not themselves make any financial investment in the poultry houses, it is easy for the live poultry dealer to cut off a grower, or reduce their bird placements, and shift production to other growers with newer chicken houses. This vicious cycle leaves many growers with stranded investments in the form of empty poultry houses, without even the income needed to demolish the building and remove the debris.

This rule will give prospective growers the information they need to analyze the relative pros and cons of signing a contract to grow chickens, and will eliminate many of the tactics used by live poultry dealers to deceptively induce growers to build poultry houses without any assurances of a future income stream to service the loans secured to build them. Over time, the benefit of having a more transparent and fair business environment for growers will also benefit the communities in which they live.

In addition, if AMS adopts our recommendation that live poultry dealers be required to disclose information to poultry growers about the respiratory health dangers of breathing poultry house dust and ammonia, and the precautions growers should take to protect themselves and their employees, the health benefits and foregone health care costs to growers and the public health systems in their communities could be significant and quantifiable.