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USDA AMS Fair Trade Practices Program  
1400 Independence Ave. SW  
Washington, DC 20250

**Re: Transparency in Poultry Grower Contracting and Tournaments Proposed Rule**

The National Sustainable Agriculture Coalition (NSAC) welcomes the opportunity to submit comments on the United States Department of Agriculture's (USDA) proposed rule to improve transparency to the poultry tournament system.

NSAC is a national alliance of over 130 family farm, food, rural, and conservation organizations that together advocate for federal agriculture and food policies to advance sustainable agriculture.<sup>1</sup> For

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<sup>1</sup> Agriculture and Land-Based Training Association Salinas, CA; CCOF Santa Cruz, CA; California FarmLink Santa Cruz, CA; C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture) Hereford, TX; Catholic Rural Life St. Paul, MN; Center for Rural Affairs Lyons, NE; Clagett Farm/Chesapeake Bay Foundation Upper Marlboro, MD; Community Alliance with Family Farmers Davis, CA; Community Involved in Sustaining Agriculture South Deerfield, MA; Dakota Rural Action Brookings, SD; Delta Land and Community, Inc. Almyra, AR; Ecological Farming Association Soquel, CA; Farmer-Veteran Coalition Davis, CA; Florida Organic Growers Gainesville, FL; FoodCorps, OR; GrassWorks New Holstein, WI; Hmong National Development, Inc. St Paul, MN and Washington, DC; Illinois Stewardship Alliance Springfield, IL; Institute for Agriculture and Trade Policy Minneapolis, MN; Interfaith Sustainable Food Collaborative Sebastopol, CA; Iowa Natural Heritage Foundation Des Moines, IA; Izaak Walton League of America St. Paul, MN/Gaithersburg, MD; Kansas Rural Center Topeka, KS; The Kerr Center for Sustainable Agriculture Poteau, OK; Land Stewardship Project Minneapolis, MN; LiveWell Colorado Denver, CO; MAFO St Cloud, MN; Michael Fields Agricultural Institute East Troy, WI; Michigan Food & Farming Systems – MIFFS East Lansing, MI; Michigan Organic Food and Farm Alliance Lansing, MI; Midwest Organic and Sustainable Education Service Spring Valley, WI; Missouri Coalition for the Environment St. Louis, MO; Montana Organic Association Eureka, MT; The National Center for Appropriate Technology Butte, MT; National Center for Frontier Communities Silver City, NM; National Hmong American Farmers Fresno, CA; Nebraska Sustainable Agriculture Society Ceresco, NE; Northeast Organic Dairy Producers Alliance Deerfield, MA; Northern Plains Sustainable Agriculture Society LaMoure, ND; Northwest Center for Alternatives to Pesticides Eugene, OR; Ohio Ecological Food & Farm Association Columbus, OH; Oregon Tilth Corvallis, OR; Organic Farming Research Foundation Santa Cruz, CA; Organic Seed Alliance Port Townsend, WA; Rural Advancement Foundation International – USA Pittsboro, NC; Union of Concerned Scientists Food and Environment Program Cambridge, MA; Virginia Association for Biological Farming Lexington, VA; Wild Farm Alliance, Watsonville, CA; Women, Food, and Agriculture Network Ames, IA.

almost four decades, we have worked across a range of federal agricultural policy issues to expand opportunities for the next generation of farmers, invest in local and regional economies, and scale up agricultural research efforts to build a more sustainable food and farming system. Many NSAC organizations include farmers and ranchers who raise livestock and poultry among their members.

Congress has clearly stated in its legislative history that the central goal of the Packers and Stockyards Act (PSA) is to create fair, open, efficient, and transparent markets for livestock. Overall, NSAC commends the Agricultural Marketing Service (AMS) Packers and Stockyards Division for seeking to complete work on these rules. Farmers have been waiting over 100 years for action to implement the PSA and bring some fairness to the livestock and poultry production industries.

NSAC believes that this proposed rule is an important first step to delivering a fair shake for producers who have been retaliated or discriminated against, or otherwise harmed, by the poultry tournament system. Even now, reports emerge of poultry companies coercing contract farmers to oppose this and forthcoming rulemakings – further demonstrating the dire need for these reforms.<sup>2</sup>

Short of moving beyond the tournament system entirely, NSAC believes that the following improvements should be made to the proposed rule to guarantee maximum effectiveness and fairness for producers. In addition, NSAC is a member of the Campaign for Agriculture Reform (CCAR), and as such fully endorses the recommendations submitted by CCAR in a separate comment.

#### Recommended Improvements to USDA's Live Poultry Dealer Disclosure Document

- *Disclosure of Maximum Tournament Formula Pay Variability and Minimum Cash Flow Estimate*:: In the Disclosure Document, integrators 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. We recommend that the USDA should require a minimum guaranteed cash flow estimate, 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 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.

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<sup>2</sup> <https://www.politico.com/newsletters/weekly-agriculture/2022/08/22/concern-is-growing-over-coercion-in-usda-chicken-rule-00053059>

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 the possible variables within the integrator's control that could have 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.
- *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.
- *Disclosure of Past Litigation History:* 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, integrators should be required to disclose any litigation that was brought against corporate successors and assigns. Additionally, 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 Contract Growers' Right to Install Feed Scales:* USDA should clearly state that any integrator that threatens or retaliates in any way against a grower who installs a feed scale on their farm to verify the accuracy of feed deliveries would be in violation of the Packers and Stockyards Act and subject to federal investigation and penalties. Furthermore, USDA should require integrators to disclose this right of contract growers in their Disclosure Documents.
- *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.<sup>3</sup>
- *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.

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<sup>3</sup> <https://nasdonline.org/197/d000146/respiratory-health-on-the-poultry-farm.html>

- *Disclosure of Business Risks Posed by Regional Monopsony:* USDA should track state and county level poultry industry concentration annually and require integrators to disclose the number of alternative integrator options that are within a 50-mile radius of a prospective or current contract grower's facility. If there are less than three options available, integrators should be required to prominently disclose to the prospective contract grower the risks associated with entering a poultry contract in that area. For example - "You are in an area where you have access to less than three poultry integrators with which to contract. USDA research has shown that growers in these areas make 7-8% less than the national average."
- *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, 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.

#### Recommended Improvements to USDA's Settlement Sheet Disclosure Requirements

- *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. 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.
- *Flock Performance History and Best Practices Disclosure System:* USDA should require integrators to disclose, within flock delivery disclosures, a breed identifier and a breeder flock identifier in addition to a breeder farm identifier. Integrators should be required to disclose these identifiers for each other grower in any grower's tournament group on settlement sheets. Integrators should then be required to provide a convenient method for growers to access or request historical data profiles outlining best management practices and tournament system performance (disaggregated by impactful variables like breeder flock age, flock pickup date, etc) of all chicks from any breed, breeder facility, or breeder flock identifier. These historical data profiles should be kept archived for at least ten years.

- *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 tournament formula.
- *Feed Provision Disclosures:* In addition to the provisions of proposed § 201.214(c)(2) regarding 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.
- *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.

Thank you for your consideration of these recommendations.