

August 8, 2022

S. Brett Offutt  
Chief Legal Officer/Policy Advisor  
Packers and Stockyards Division  
United States Department of Agriculture, Agricultural Marketing Service  
Fair Trade Practices Program  
1400 Independence Avenue, SW  
Washington, D.C. 20250

**Re: Doc. No. AMS-FTPP-21-0044, June 8, 2022, Pages 34980-35031**

Dear Mr. Offutt,

The American Farm Bureau Federation (AFBF) appreciates the opportunity to submit comments to the United States Department of Agriculture (the Department) regarding proposed rulemaking on revising the list of disclosures and information that live poultry dealers (integrators) must furnish to poultry growers with whom integrators make poultry-growing agreements, which was published in the Federal Register on June 8, 2022.

Farm Bureau is the nation's largest general farm organization, with almost 6 million farm and ranch members in all 50 states and Puerto Rico. We develop policy through our grassroots network where our members deliberate, vote on, and adopt policies on a variety of issues that impact their ability to provide a sustainable future of safe and abundant food, fiber and renewable fuel for our nation and the world.

AFBF policy supports enforcement of the Packers and Stockyards Act of 1921 along with many other transparency measures that this proposed rule seeks to establish. Integrators can only be successful if their partners, the growers, are successful.

## **I. Historical Context**

The Packers and Stockyards Act (PSA) is a 100-year-old law that Congress passed to promote fairness and transparency in the marketplace and to address anti-competitive practices within the livestock industry. Since the passage of the PSA, and increasingly over the last half century, the poultry industry has become more integrated, and growers are committed to long-term contracts under which integrators have a considerable degree of control over growing opportunities and ultimately, the profitability of growers. Integrators control the number of flocks raised per year, the quality and number of birds set, and the quality of the feed they provide. Specifically, integrators can require costly facility upgrades, flock placements of lesser-quality birds, and varied stocking density. These and other mechanisms allow integrators lopsided control over the grower-integrator relationship, which these proposed transparency disclosures seek to alleviate, giving growers a level foundation to base their business decisions on.

By promoting greater transparency, growers will be able to make better informed decisions for their operations. This includes those seeking to enter the industry and established growers who wish to finance the construction of new grow houses or retrofit current ones to meet certain, sometimes seemingly arbitrary, new requirements set by their integrator. These proposals seek to enforce the spirit of the PSA and to modernize the current outdated regulations to better align with current industry norms.

## **II. Proposed Federal Regulations**

The Department is proposing to make changes in three general areas. One, to revise Subsection 201.100 by adding certain items to the list of required disclosures an integrator must make to growers or growers wishing to enter the industry in connection with their contracts. Two, the addition of a new subsection 201.214 that would require integrators to provide certain information to growers in the tournament system regarding the inputs controlled by the integrator related to the flocks growers receive. And three, making conforming changes to the PSA regulations by adding a list of definitions in subsection 210.2 to define the terms used in revised subsection 201.100 and the new 201.214.

AFBF policy generally supports the collection of information relating to the economic conditions that our grower members face as a tool to help them make better informed business decisions about expanding or making changes to their grow houses that would require a large financial investment.

- A. *Requiring an integrator to provide additional information to a grower consisting of:*
1. *Minimum number of flocks the grower can expect annually under the terms of the contract.*

AFBF generally supports the Department's proposal seeking to provide the grower with a minimum number of flocks the grower can expect annually under the terms of the contract. This disclosure would be beneficial to prospective and established growers alike. Establishing a minimum number of flocks per contract to all growers similar to the Small Business Administration (SBA) and the Farm Service Agency (FSA) requirements for loan approvals would allow producers to better manage business decisions for their operations.

2. *Minimum stocking density for each flock that the grower can expect under the terms of the contract.*

AFBF generally supports the Department's proposal seeking to provide the stocking density for each flock that the grower can expect under the terms of the contract. Should the integrator not meet their target for minimum stocking density, integrators should compensate growers for the loss of revenue as a result.

3. *Summary of all litigation over the previous six years involving the integrator and the integrator's growers. Including the nature of the litigation, initiating party, location, a brief description of the controversy and any resolution.*

AFBF supports transparency for poultry growers. While litigation may not be as prominent in some poultry-growing areas of the country compared to others, an across-the-board transparency requirement would be beneficial for new growers or prospective growers in an area of the country that has seen an increased amount of litigation with integrators.

4. *Summary of all bankruptcy filings over the previous six years by the integrator, including any parent company, subsidiary, or related entity by the integrator.*

Like the proposal on litigation transparency, AFBF supports transparency in all forms for the grower in their contracts with integrators. For growers who have fewer integrators in their area and less competition, this disclosure would be important for them and their lender. The risks assumed by the grower in an area with less competition are greater should a bankruptcy occur and there is no other integrator to contract with for flock placement.

5. *Requiring a statement describing the policies and procedures for the integrators regarding the sale of the grower's facility or assignment of the poultry grower's facility, or assignment of the contract to another grower.*

When a change of ownership could occur, integrators may come to the grower's farm and conduct an inspection. Many times, these inspections may come with new requirements for significant upgrades, which can be detrimental to the sale of the grow houses or the farm, and so reduces their value. AFBF supports integrators justifying mandatory building and equipment modifications. Should a flock be placed on the floor of the grow house prior to the sale and perform well, a prospective buyer should not be made to make expensive upgrades if the grow houses are already within the standards that the integrator requires for placement of a flock.

*B. The need for the integrator to provide specific financial disclosures in the Poultry Dealer Disclosure Document including:*

1. *A table showing the average annual gross payments to all poultry growers for the previous calendar year for all the facilities the integrator operates. The table would need to be organized by housing specifications and the average payments would be expressed in dollars per square foot.*

AFBF generally supports transparency within the contracts growers have with their integrator so they are best informed to make decisions that would positively

affect their operation. We feel this disclosure would provide that transparency and allow for the grower to be better equipped to see if it would make more financial sense to switch to a different kind of poultry (i.e. Cornish Hens) or negotiate with the integrator for a better price per square foot given their grow house specifications.

2. *A table showing the average annual gross payments made to growers by the local facility for the past five years. The table would be organized by year, housing specification tier and quintile. This proposal also includes how this should be calculated.*

Similar to the proposed disclosure on annual gross payments, AFBF generally supports the transparency this disclosure would provide. However, seeing that the Department has not laid out how this would be calculated, AFBF would like to be consulted by the Department as it works through developing such a calculation.

3. *If the grower's housing specifications are modified to include an additional capital investment or if the five-year average annual gross payments do not accurately reflect projected grower gross annual payments for any reason, the integrator will need to provide additional information.*

*The additional information would include projections of the average annual gross payments to growers with the facility with the same housing specifications for the term of the contract expressed in dollars per square foot, and an explanation of why the five-year annual gross payment averages do not accurately reflect a projection of future payments.*

Should the investment a grower makes in their operation occur within a certain time frame, AFBF believes that the integrator should clarify why this investment is needed and should also clarify to the grower how he or she may expect to see returns on their investment over the amortization. Many times, growers are faced with making adaptations to their operations with no justification as to why, without any reassurance that these investments are needed, even if their facilities are already within integrator specifications.

4. *A summary of all information that the integrator will collect and maintain from the grower related to variable poultry production costs.*

AFBF believes that the best resource a grower can have is full transparency with their integrator. The integrator should be forthright with what information they will collect and what information they will not. All information the integrator intends to collect should be disclosed. Also, all information the integrator collects

should be available to the grower and housed in an encrypted system to protect the grower's privacy and should not be subject to FOIA.

5. *Requiring the integrator to include the contact information for the local state Extension office so the producer can obtain relevant information relating to financial management and poultry production costs.*

AFBF generally supports the use of the Extension Service through the Public Land Grant University System.

6. *Integrators utilizing the tournament system would be required to disclose the following:*
  - a. *Placement disclosure within 24 hours of the delivery of a flock to a grower*
  - b. *Information relating to density*
  - c. *Name and all ratios of breeds of poultry*
  - d. *Ratios of males to females (if available)*
  - e. *Breeder facility*
  - f. *Breed flock age*
  - g. *Information related to health impairments of the breeder flock/poultry delivered*
  - h. *Any adjustments the integrator might have to make to calculate the pay based on these factors*

AFBF is supportive of the above disclosures that should be provided by the integrator to the grower. This will ensure more transparency by the integrator that will allow the grower to better manage the flock. Should a bad flock be placed, the grower is in a better position to protect themselves and the integrator is in a position to defend themselves on the placement of that flock.

7. *When the integrator settles with the grower, the following requirements are proposed:*
  - a. *A copy of the grouping or ranking sheet showing the grower's exact position in the complex for that period. Including housing specifics and the actual figures the ranking is based on.*
  - b. *Distribution of inputs to include stocking density for each placement, names ratios of breeds, ratio of male to female if available, all the breeder facilities, breeder flock ages and the number of feed disruptions each grower included during the grow-out period.*

AFBF supports increasing the transparency on the settlement sheet so a grower has a better understanding of where they placed in the tournament and why.

### **III. Disclosure Document Questions**

AFBF believes that the amount and type of information that is being disclosed to the grower is helpful in increasing transparency. We also believe that the information provided will help growers who are new to poultry growing or would like to grow poultry make better informed business decisions on what they can expect to receive in compensation.

While the proposed disclosures are thorough, AFBF believes that an integrator should not be able dictate to the grower which specific brand of equipment they need to use in their barns. For example, if an integrator comes to a grower's farm and tells the grower that they would need to increase the cubic feet per second flow of wind moving through the tunnel, the integrator should not, under any circumstances, dictate which brand of fan the grower must purchase and install in their grow house. Decisions on any equipment, including fans, feeders, waterers, hoses, metal and plastic pipe, metal and plastic pipe fittings, wire, electric panels, fuses, breakers, electric motors, sheet metal, wood, solar panels, etc. need to be left exclusively to the grower to meet the standards set by the integrator.

As noted above, AFBF believes it is imperative that a grower be notified when and why his flock is being canceled or suspended. Without having that disclosed to the grower, growers would not be able to file a notice with the Department if a potential violation of the PSA has occurred.

Generally speaking, AFBF supports the intent of the proposals. However, to be sure that the proposals outlined are effective, we believe that the Department should keep all options open when addressing the need for changing, or fine tuning the transparency disclosures to achieve maximum forcefulness. Examples of the need for change could be extending the timelines, making documentation available in more than one language, revising the Disclosure Document for increased transparency, revising the sale of farm language, specific information collection, certain financial information, and making the documents available in whatever format the grower prefers, whether electronic or hard copy, etc. all to make it more clear to growers.

AFBF urges the Department to look carefully at the variable costs associated with poultry growing as it is different for growers in all regions. Other disclosures affecting the variable costs such as environmental regulations, energy and water vary widely from region to region and is not a "one size fits all" disclosure.

Since this is a new concept and the disclosures are largely meant for the broiler industry, as that is where many of the complaints originate, AFBF believes that the Department should only apply this to contractual agreements within the tournament system of growing poultry. Should the need arise to move into other poultry sectors, the Department should consult with industry and stakeholders before making its proposal.

For data purposes and enhanced transparency, the Agricultural Marketing Service should look at other agencies within the Department to examine how they manage the government's efforts to maintain integrity and efficiency within programs. An excellent example includes the Center for

Agribusiness Excellence at Tarleton State University, which contracts with the Risk Management Agency and FSA for such purposes.

Should certain integrators find creative ways to circumvent disclosure requirement, the Department should be prepared to act and enforce when notified of such an occurrence. Additionally, if when following the implementation of the proposals, the Department finds that they are not effective or beneficial to the grower, the Department should have the regulatory flexibility to quickly address any effectiveness issues with the disclosures and work to correct them immediately. For that purpose, AFBF believes this should be an interim final rule, and not a final rule.

#### **IV. Proposed Requirements to Provide to Poultry Growers in Tournament Systems**

Maintaining records is a best management practice that should be widely used by both growers and integrators. Records should be kept for as long as necessary, so the grower has the ability use that information in whatever way is most beneficial. Since most of the records will likely be in electronic form, the burden of storage by the integrator should be minimal. AFBF also emphasizes any information that is stored by the integrator be encrypted and not be subject to FOIA.

The requirements to supply input information to the grower by the integrator has been a common theme from AFBF members. Contents, density and mix formula would all be helpful if made available to the grower. AFBF has concerns that disruption in the supply chain could lead to different feed mixtures within the complex and could negatively impact growers' feed to weight conversion.

Allowing a grower to have access to input distribution and settlement information should over time, allow that grower to see if they are being treated fairly compared to other growers in the complex. This would allow the grower to establish a pattern and would allow the grower take any necessary action should the grower feel unfair treatment by the integrator is occurring.

Informing growers about how they rank in comparison to other grow houses in the complex is also helpful. This would give growers ideas for on-farm management practices that may need to change.

Identifying specific breeder farms by their name rather than their identifier would be helpful in the event of consistent poor-quality chicks. However, disclosing the names of the individual growers is absolutely a breach of privacy. AFBF strongly opposes disclosure of individual grower names .

Disclosing the number of feed disruptions during the grow-out period that are 6 hours or more has also been a common theme from all poultry growing regions. Being out of feed for that long drops their conversion weight efficiency and would affect the grower on the settlement sheet.

Similar to the settlement sheet disclosures, this would allow for the grower to establish a pattern. If the grower is consistently out of feed multiple times for multiple hours during consecutive grow-out periods, this would allow the grower to have records and take whatever action the grower sees as necessary to correct the problem.

**V. Conclusion**

The American Farm Bureau Federation appreciates the work the Department has done in crafting a proposal that will increase transparency within the highly integrated poultry industry. We submit these comments on behalf of our poultry growing-members and look forward to a continued dialogue with the Department on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Kieffer", with a stylized flourish at the end.

Sam Kieffer  
Vice President, Public Policy