U.S. Department of Agriculture

Proposed rule on "**Transparency in Poultry Growing Contracts and Tournaments**"

Re: **Docket Number:** AMS-FTPP-21-0044

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The Institute for Agriculture and Trade Policy (IATP) thanks the USDA for the opportunity to comment on this important rule to enhance transparency in poultry growing contracts. IATP is a 36-year-old non-profit 501(c)3 organization based in Minneapolis, Minnesota. IATP works to ensure fair and sustainable food, farm and trade systems. Since our founding, IATP has advocated for fair and transparent markets for farmers, workers and consumers that support and empower rural communities. IATP has worked on the ground with Minnesota rural communities, in collaboration with Midwest and national family farm organizations, and with farmer and civil society organizations around the world.

IATP has long advocated for strong enforcement of the 100 year-old Packers and Stockyards Act, and the need for reforms to better reflect current market conditions in order to further establish farmers' rights under those rules. Agriculture markets are highly concentrated, reducing competition in most sectors and even more so in certain geographic parts of the country. The poultry sector is highly concentrated (vertically and horizontally), with more than 50% of poultry farmers left with only one or two companies to engage with. The major poultry companies that dominate the sector have a record of poor corporate behavior, with recent admissions of price fixing, a current Justice Department investigation of sharing employment practices to hold down wages and numerous environmental violations.

The 2008 Farm Bill included language directing the USDA to address issues of unfairness in poultry contracts. In 2010, poultry farmers risked retaliation from poultry companies to testify at an Alabama workshop organized by USDA and the Department of Justice. Those poultry growers described to government officials the abusive and unfair nature of poultry contracts, their lack of protection under current rules and their limited recourse in the courts to challenge unfair practices. Later in 2010, the USDA proposed rules to bring greater transparency and fairness to poultry contracts, but those rules were never finalized.

USDA's proposed rules to improve transparency in poultry contracts are welcomed, long overdue and an important first step. Also welcome is a July 2022 Justice Department consent decree requiring a new poultry company formed out of a merger between Sanderson Farms, Wayne Farms, Cargill and Continental Grain to comply with the USDA's proposed rules providing greater transparency. That consent decree also prevents the new poultry company from reducing a poultry growers' base payments agreed to under contract. The consent decree is an admission that poultry companies can operate under more fair and transparent conditions. While the USDA's proposed rules and the DOJ consent decree are a step forward, IATP encourages USDA to consider additional rules to more directly dismantle the exploitive tournament system, which we believe is inherently unfair and discriminatory. IATP also looks forward to the issuance of two additional rules USDA has committed to put forward related to unfair practices and competitive injury in agriculture markets.

General comments

Transparency is a fundamental tenet of a functioning market. Transparency is necessary for the buyer to know fully what they are purchasing. Transparency for the seller is essential to know what they will be paid for their service or product. It has been clear for more than a decade that modern poultry contracts utilizing the tournament system offer asymmetrical information; the company has full information (and control of production), while the poultry producer lacks full transparency of costs, quality of production inputs and returns. Most fundamentally, poultry producers lack critical information about exactly how much they will get paid and how the company calculates that number. New rules to require greater transparency will help farmers better understand the risks and potential rewards of poultry contracts and ultimately better assess whether signing such a contract makes sense. Greater transparency would also provide lenders with better information to decide whether loans for producers for significant upfront infrastructure costs make sense and can be paid off.

IATP supports USDA's proposed rule and recommends the following general additions for improvement:

- The rule should require a clear base (or minimum) price the farmer will be paid. It should address the unfairness of the tournament system whereby growers are ranked and bonuses are paid by pulling from the pay of other poultry growers. The poultry companies should be responsible for any bonuses paid, and bonuses should not be taken out of the established base price going to other poultry growers. The DOJ consent decree on the recent Sanderson merger sets a precedent to require a clear minimum price industry wide.
- Poultry companies should be required to provide enough birds and stocking densities sufficient to allow growers to pay their debts and be profitable. Contracts with growers should extend to the term of the loan.
- USDA's Farm Service Agency (FSA), which manages a loan guarantee program, has recognized repayment reliability concerns related to informational asymmetries and their effect on poultry grower payments and total revenues. We support adding requirements to poultry contracts that are consistent with FSA guidelines for guaranteed loans to poultry production contracts, including that contracts are for a minimum period of three years, and require that the grower be notified of specific reasons for cancellation.
- While acknowledging the challenges many poultry producers face, with only one or two poultry companies operating in many regions, the rules do not directly address the regional monopoly challenge, which gives the producer very little leverage in negotiation with global companies, such as Tyson or Pilgrim's Pride. Even with greater transparency, we believe a regional monopoly poses fundamental market challenges for producers that will always be vulnerable to unfair practices.
- The proposed rule could more clearly state that any integrator who retaliates in any way against a grower would be in violation of the Packers and Stockyards Act.

Contract specific

More specifically with regards to greater transparency in contracts, IATP believes it is basic fairness for workers, small businesses or contractors to know what they will be paid if they fulfill the contract. From this perspective, we offer recommendations aligned with analysis by the Rural Advancement Foundation International (RAFI) to provide even more transparency on payments to producers within the contract:

- Poultry companies should clearly disclose the potential high and low range of pay to ensure producers know the true price floor of a proposed contract.
- Integrators should be required to prominently disclose the contract's minimum estimated annual cash flow based on the number and density of the flocks guaranteed annually, the minimum possible pay rate (based on their tournament formula's variance percentage as discussed above) and estimated grower costs. This disclosure would provide a more transparent picture to growers and lenders concerning the minimum guaranteed cash flow of a proposed contract.
- Within contract disclosures, integrators should disclose all the potential input variables that they control, how they have affected the tournament performance of their current growers, whether their formula equalizes for input quality variability.
- Within flock delivery disclosures, poultry companies should disclose a breed identifier and a breeder flock identifier in addition to a breeder farm identifier for each grower in any grower's tournament group. Poultry companies 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.
- Poultry companies should provide the contract in a language the grower can understand. As stated, the details in these contracts matter, and it is critical that producers fully understand all potential costs and benefits before assessing whether to sign such a contract and for financial planning if they do choose to sign the contract.
- The confined poultry system is inherently risky to the rapid spread of disease. The industry has seen repeated outbreaks of different variants of avian flu devastate poultry farms around the country. Thus far in 2022, 187 commercial flocks have been infected with a highly pathogenic avian flu, with over 40 million birds infected nationally. It is critical that contracts are clear about the poultry company's responsibility in compensating the farmer for costs associated with infected birds, the costs of carcass disposal and other disease mitigation costs to allow future raising of chickens on the farm, and how that loss of birds due to a disease outbreak effects a producer's payment at the end of the contract.
- We would support AMS collecting contract disclosure data across the industry. Given the industry's consolidation and geographic monopolistic environments, collecting data on

the variables of these contracts would help inform producers, lenders and regulatory authorities.

Settlements

At the time of contract settlement, poultry growers should understand the exact calculation that determined their final payment. The poultry company must provide clarity on those calculations to ensure fairness and full transparency. IATP suggests the following additions, also consistent with RAFI's analysis, to the USDA's proposals on settlement sheets:

- Poultry companies should have to disclose the flock age at pickup as an impactful variable and whether they account for flock age in the tournament formula.
- The companies should account for input quality variables in their pricing formulas and address these variables within formulas that ensure fairness under the contract.
- Poultry companies should maintain an appeals process for growers to report feed quality or delivery issues, input quality issues or other grievances and should disclose any appeals and a summary of their resolution on settlement sheets.

The PSA was first passed more than 100 years ago during a different era. These proposed rules help the USDA respond to a new era that poses new challenges to ensure transparency and fairness. We believe the Justice Department's consent decree with the new poultry company (Sanderson, Wayne, Cargill, Continental) reinforces the need to set industry-wide rules for transparency and clarity on a minimum price in contracts. IATP looks forward to the completion of these rules on poultry contract transparency and to further rules the USDA is considering regarding the inherent unfairness of the tournament system.

Please feel free to contact IATP's Ben Lilliston (blilliston@iatp.org) with any questions regarding these comments.