**United States Department of Agriculture Agricultural Marketing Service**
**June 8, 2022 Rulemaking on the Packers and Stockyards Act of 1921**

**Public Comments of the Attorneys General of Minnesota, California, Delaware, Idaho, Illinois, Iowa, Pennsylvania, Maryland, Nevada, and North Carolina on Document Number AMS-FTPP-21-0044**

August 8, 2022

We, the undersigned Attorneys General, submit these Comments in response to the United States Department of Agriculture Agricultural Marketing Service's (AMS) request for public comment in connection with its June 8, 2022 proposed rulemaking on the Packers and Stockyards Act of 1921 (the Act) (7 U.S.C. § 181 et seq), 87 FR 34980 (hereinafter, the "Proposed Rule"). Transparency in Poultry Grower Contracting and Tournaments, 87 Fed. Reg. 34980 (proposed June 8, 2022) (to be codified at 9 C.F.R. pt. 201). The Proposed Rule increases the required disclosures live poultry processors must provide to growers in tournaments or when entering a new contract to increase transparency. These comments support the Proposed Rule but question if the governance framework established in §201.100(f) would minimize the transparency achieved through other portions of the Act. The United States Secretary of Agriculture should adopt the Proposed Rule but should consider including within the governance framework contemplated in §201.100(f) of the Proposed Rule an initial or periodic governmental or external check or review.

## The Current State of the Poultry Industry

In the chicken industry, 9 out of 10 broiler chickens are grown through contract farming. Tina L. Saitone & Richard J. Sexton, *Concentration and Consolidation in the U.S. Food Supply Chain: The Latest Evidence and Implications for Consumers, Farmers, and Policymakers*, Federal Reserve Bank of Kansas City, Sep. 25, 2017. Half of chicken farmers in the United States work in regions that are dominated by one or two chicken processors. Claire Kelloway & Sarah Miller, *Food and Power: Addressing Monopolization in America's Food System*, Open Markets Institute (March 2019). The high buyer concentration in local markets allows poultry processors to respond punitively to any grower's complaints about their contract. *Id*. This leaves poultry growers no room to negotiate their contracts. Dean Zimmerli, *Something Old, Something New: Relying on the Traditional Agricultural Cooperative to Help Farmers Solve the Power Imbalance in Modern Meatpacker Production Contracts*, 24 San Joaquin Agric. L. Rev. 59, 68 (2014).

Processors maintain further control of the industry by providing growers with the chicks and other inputs necessary to keep the birds healthy and alive. Growers do not own the chickens they raise and are compensated by the weight of their chicken farm. The weight of a chicken farm indicates the growth of the chickens from the time the grower received them to when the processors pick them up, minus any food or medical expenses. National Chicken Council, *The Tournament System: What is the Tournament System? How are Chicken Farmers Paid?*, https://www.chickencheck.in/faq/tournament-system/. The compensation system increases growers' reliance on processors to receive enough birds to be profitable and to ensure inputs are received at the correct times. In addition to the weight compensation system, growers are ranked against each other in a tournament system. In each tournament the growers with the highest farm

weight receive higher compensation and those with the lowest weight experience a deduction from the average pay. *Id*.

Building and maintaining the facilities to grow chickens is an expensive process that frequently requires growers to take out loans. S. Douglas Beets, *Business Ethics in the Broiler Industry*, Business and Society Review 240, 245 (2019). Providing growers with additional information such as the rules of the tournament system they are entering, the number of birds they will receive, and financial history of growers and the processors will allow growers to make more informed choices and increase accountability in the chicken industry.

**Current Interpretations of the Packers and Stockyards Act**

Growers across the United States, in the poultry industry as well as other animal raising industries, have called for more antitrust legislation against the meat processors. Lucy Nicholson, *U.S. Farm Group Seeks Stronger Antitrust Action with New Campaign*, Reuters, Sept. 23, 2021; *Fairness for Farmers: A Farmer's Union Project*, https://nfu.org/fairness-for-farmers/. Growers argue that processors have colluded to pay lower prices to growers and drive-up prices for consumers. Diana L. Moss & Rob Larew, *Modern Farmer Highlights AAI-NFU Op-Ed: Don't Stop at Big Tech – We Need to Bust Big Agriculture, Too*, American Antitrust Institute (February 3, 2021). Growers have been campaigning for more transparency and a reduction in monopoly and/or monopsony power in the industry. Lucy Nicholson, *U.S. Farm Group Seeks Stronger Antitrust Action with New Campaign*. Since releasing the Proposed Rule, grower's unions and organizations have come out in support of it arguing that it is a step in the right direction. Aaron Johnson, *Proposed USDA Rule Would Increase Transparency in Poultry Industry – Reforms Would Require Poultry Companies to Disclose New Information on Earning Potential, Input Quality, Tournament Groups and Formulas*, Rural Advancement Foundation International (May 26, 2022). A recent proposed settlement agreement between the Department of Justice and poultry processors regarding an alleged conspiracy to suppress worker pay at poultry processing plants and address deceptive abuses against poultry growers includes disclosure requirements like the Proposed Rule, or the Proposed Rule itself if implemented to increase transparency. Proposed Final Judgement at 21, *United States v. Cargill Meat Solutions, et. al.*, No. 1:22-cv-01821 (D. Md. 2022).

**Effects of the Current Rulemaking**

The Proposed Rule will supplement the Act to decrease the information imbalance and increase transparency between chicken growers and processors. Transparency in Poultry Grower Contracting and Tournaments, 87 Fed. Reg. 34,980 (June 8, 2022). The Proposed Rule will increase the number of financial and legal disclosures poultry processors must provide to new or continuing poultry growers when signing a contract to grow poultry or competing in a tournament system. *Id*. The additional disclosures will allow poultry growers to better analyze the agreement they are entering into and understand the baseline profits they can expect. Allowing growers access to minimum stocking number of birds, previous and ongoing litigation between the processor and growers, processor's bankruptcy records, and previous financial trends of similarly situated growers will increase transparency in the poultry industry and lead to more economic stability for growers. *Id*.

§201.100(f) stipulates that poultry processors will establish a governance framework to ensure growers are receiving the correct information and records are being maintained from previous years. *Id*. Providing this much control over the governance structure to the poultry processors that currently control the ambiguous poultry system may present a problem. The audit and testing system, implemented under §201.100(f) and §201.100(g), is a step in the right direction. But mandating some role for either governmental or external auditors in a company's audit and testing program would increase the likelihood that it is rigorous, and in turn, that the financial disclosures provide useful and fully accurate information to growers. For example, an external audit of governance controls and disclosure documents could be considered. The USDA should strengthen the language in §201.100(f) to provide clearer requirements for the live poultry processor's governance systems and increase the processor's accountability to the USDA and state attorney's general for the initial years following implementation of the governance system.

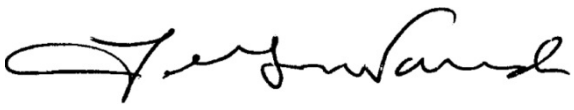
87 FR 34980 will increase the financial stability and preparedness of poultry farmers across the United States through a more transparent contract system, and as such we support the adoption of this Proposed Rule. We further recommend revising 201.100(f) to provide stronger oversight language in the creation and management of a new governance system to reduce or eliminate opportunities to manipulate this new governance system.

Respectfully Submitted,

Keith Ellison
Attorney General of Minnesota

Rob Bonta
Attorney General of California

Kathleen Jennings
Attorney General of Delaware



Lawrence Wasden
Attorney General of Idaho

Kwame Raoul
Attorney General of Illinois

Tom Miller
Attorney General of Iowa

Josh Shapiro
Attorney General Commonwealth
of Pennsylvania

Brian E. Frosh
Attorney General of Maryland

Aaron D. Ford
Attorney General of Nevada

Josh Stein
Attorney General of North Carolina