



# Legal Impact for Chickens

August 9, 2022

**Submitted via regulations.gov**

The Honorable Tom Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20250

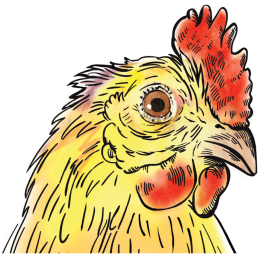
**Re: Transparency in Poultry Grower Contracting and Tournaments; Proposed Rule; RIN 0581-AE03; 87 Fed. Reg. 34980 (June 8, 2022)**

Dear Mr. Secretary,

Thank you so much for the opportunity to comment on the Transparency in Poultry Grower Contracting and Tournaments proposed rule.

As a 501(c)(3) non-profit charity dedicated to improving conditions for chickens and other farmed animals, Legal Impact for Chickens (LIC) respectfully submits the following comments.

We write to recommend additional disclosures beyond those in the proposed rule, in order to further remedy information asymmetry between growers and integrators, protect avian and human



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health and welfare, and slow the growth of antibiotic-resistant bacteria. Towards these ends, we ask the Agricultural Marketing Service (AMS) to (1) require dealers to provide health-and-welfare-related disclosures before contracting, (2) require additional health-related disclosures at delivery, and (3) increase transparency by increasing access to disclosures. Details on each of these suggestions are below.

## **1. AMS should require dealers to provide health-and-welfare-related disclosures before contracting.**

LIC applauds AMS for proposing to require that live poultry dealers give certain information to prospective poultry growers “at least seven days before” executing a contract.<sup>1</sup> LIC urges AMS to add health-and-welfare-related information to the list of required pre-contracting disclosures.

### **A. Why require pre-contracting health-and-welfare disclosures?**

Health-and-welfare-related information is crucial to help prospective growers decide whether to enter the poultry growing business in general, and whether to contract with a specific dealer in particular. This is so for multiple reasons:

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<sup>1</sup> Transparency in Poultry Grower Contracting and Tournaments, 87 Fed. Reg. 34980-01.



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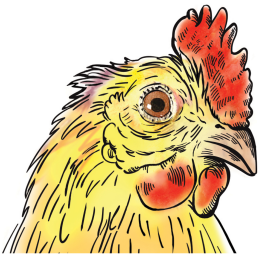
First, avian health-and-welfare-related information impacts the expected pre-slaughter avian mortality rate. And the pre-slaughter mortality rate, in turn, affects how much money a grower can expect to make through a contract.<sup>2</sup>

Second, many growers are currently forced to witness animal suffering which the growers didn't expect upon entering into their contract.<sup>3</sup> Health-and-welfare information will help a prospective grower decide whether he or she feels comfortable with the way the dealer will ultimately require him or her to treat chickens. Such information will also help a prospective grower decide whether he or she feels comfortable with the likely state of the animals he or she will ultimately be seeing, smelling, and caring for every day.

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<sup>2</sup> See, e.g., 87 Fed. Reg. at 34985 (“These treatments may affect the flock’s growth rate or mortality and, therefore, grower payments.”)

<sup>3</sup> See, e.g., Audrey Miller, *Why this Chicken Farmer is Growing Mushrooms*, <https://stonepierpress.org/goodfoodnews/transformation> (“[Craig] Watts was a contract farmer. . . . He had to follow Perdue Farm’s specifications on how to raise and house his birds—even if he didn’t agree with it. To promote efficiency, for instance, Perdue mandated that Watts crowd his birds into giant, windowless barns. The result was disastrous, for the chickens as well as for Watts. The combination of tens of thousands of chickens generating particulate matter and gases and confined in poorly ventilated buildings can cause respiratory issues in workers. The chickens also suffered; the trapped heat combined with the ammonia emitted by waste is so intense it actually burns their chests. ‘There’ll be no feathers on their chest with these industrial chickens,’ says Watts. . . . Watts was introduced to Leah Garcés, [an animal-welfare advocate]. When she asked if he’d allow his barns to be filmed to expose the reality of contract chicken farming, he agreed. The video went viral, revealing to the public the rarely seen truth of chicken production, and Watts’s story was featured in the New York Times. In return for going public with his concerns, Watts says he received a retaliatory increase in farm inspections from Perdue. After raising a few more flocks, he quit.”).



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Third, animal-welfare information will help a prospective grower assess the level of legal and reputational risk associated with the proposed contract. Growers generally have little power to decide how to raise the animals in their care.<sup>4</sup> Rather, growers generally must follow instructions given to them by the dealer. As a result, growers may find themselves forced or pressured by their dealer to carry out inhumane animal-care practices which they disagree with.<sup>5</sup> Such inhumane practices, in turn, may result in criminal or civil liability, public embarrassment, or both, for the hapless grower.<sup>6</sup> Ironically, in some cases, the *dealer* may even punish the grower for being caught mistreating animals by cutting ties with the grower.<sup>7</sup> A dealer has a motivation to respond to bad publicity by blaming an individual grower, in order to paint any publicly exposed animal-welfare issues as isolated to that particular grower, thereby protecting the dealer's *own* reputation. This motivation exists even if, in reality, the *dealer* is largely to blame for the animal suffering at the grower's facility.

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<sup>4</sup> See, e.g., *id.* (“He had to follow Perdue Farm’s specifications on how to raise and house his birds—even if he didn’t agree with it.”).

<sup>5</sup> See, e.g., *id.* (same).

<sup>6</sup> See, e.g., Erica Shaffer, *Tyson contract farm faces animal abuse claims* (Jul. 09, 2015), <https://www.meatpoultry.com/articles/13204-tyson-contract-farm-faces-animal-abuse-claims>.

<sup>7</sup> See, e.g., Carolyn Heneghan, *Perdue Farms ends relationship with contract farms after animal cruelty conviction* (Jan. 6, 2016), <https://www.fooddiver.com/news/perdue-farms-ends-relationship-with-contract-farms-after-animal-cruelty-con/411615/>.



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Fourth, the process of raising chickens for a dealer may have negative health effects on the grower and any of the grower's family members or staff who help out in the chicken barns, due to factors like poultry-house dust and ammonia.<sup>8</sup>

For all these reasons, requiring disclosures about animal health and welfare before contracting will let prospective growers make an informed decision about whether working with a certain poultry dealer is right for them.

Because dealers typically dictate the breed of bird used (including, for instance, by dictating a breed known for health problems), the layout of the barn (including, for instance, by dictating a barn with no windows), the way the animals are fed, and the amount of money available to the grower for animal-welfare interventions, the dealer has the most control over the birds' health and welfare. The dealer's history with animal health and welfare is thus extremely material to a prospective grower.

## **B. What types of health-and-welfare disclosures should AMS require?**

First, LIC agrees with AMS's idea of requiring dealers to disclose "[a] summary of litigation over the prior six years between the live poultry dealer and any poultry grower; including the nature of the

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<sup>8</sup> See, e.g., Miller, *supra* ("The result was disastrous, for the chickens as well as for Watts. The combination of tens of thousands of chickens generating particulate matter and gases and confined in poorly ventilated buildings can cause respiratory issues in workers.").



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litigation, its location, the initiating party, a brief description of the controversy, and any resolution.”<sup>9</sup>

This may help prospective growers learn information related to animal health or welfare if such information was the subject of litigation between the dealer and a grower.

Second, LIC recommends that dealers should also be required to disclose any other past litigation accusing the dealer or any of its growers or agents of poultry mistreatment. This should include, among other things, (1) lawsuits related to alleged ‘humanewashing’ (in which a producer allegedly pretends to treat animals better than the producer really does), and (2) lawsuits related to alleged violations of cruelty or neglect laws.

Third, LIC asks AMS to require disclosure of any past government investigations, charges, arrests, or convictions of the dealer or its growers or agents for violation of an animal-welfare-related law, such as a state law against animal cruelty, neglect, or abandonment.

Fourth, a dealer should be required to disclose any known health risks associated with the breed(s) of birds that the dealer will be sending to the grower; the expected pre-slaughter mortality rate for the birds (based on the dealer’s experience with comparable growers); the most common causes of pre-slaughter death; and any other aggregated health data known to the dealer.

Fifth, LIC urges AMS to require dealers to disclose certain public concerns about the dealers’ treatment of birds. This disclosure should include (1) any poultry-welfare advocacy campaigns launched

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<sup>9</sup> 87 Fed. Reg. 34980-01.



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against the dealer in the last six years, including what the advocates requested and how the dealer responded to the request, and (2) a summary of the types of animal-health-or-welfare-related complaints that the dealer has received from its growers in the past six years.

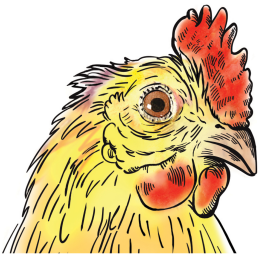
Sixth, LIC supports the suggestion by Food Animals Concerns Trust (FACT) that dealers should be required to disclose health risks from poultry-house dust and ammonia. As FACT notes, “[t]he respiratory dangers of breathing dust and ammonia from inside poultry houses has been well documented, and prospective growers must be given that information as well as information about how to protect themselves and their employees from those dangers.”<sup>10</sup> Prospective growers should also be warned about the effects of such dust and ammonia on the birds themselves.

Lastly, we support the suggestion by the Animal Welfare Institute that dealers should be required to disclose their animal-welfare policies, and should “be required to disclose that these policies are *minimum* animal welfare standards that do not guarantee optimum animal welfare or health,” thus alerting “growers that more may be required of them to maintain a healthy flock.”<sup>11</sup>

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<sup>10</sup> Food Animals Concerns Trust, Comment on Transparency in Poultry Grower Contracting and Tournaments Proposed Rule, AMS-FTPP-21-0044-0207 (Aug. 7–8, 2022), <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0207>.

<sup>11</sup> Animal Welfare Institute, Comment on Transparency in Poultry Grower Contracting and Tournaments Proposed Rule, AMS-FTPP-21-0044-0109 (Jul 31 – Aug 1, 2022), <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0109>.



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## **2. AMS should require additional health-related disclosures at delivery.**

In addition to the pre-contracting disclosures mentioned above, we recommend that the rule require poultry dealers to disclose certain health information when they deliver a new batch of chicks.

Specifically, we suggest mandating disclosure of (1) any known health issues present in the flock being delivered (e.g. an infection), (2) any past veterinary care rendered to the chicks, (3) any known health risks associated with these chicks' particular genetic line, (4) whether the chicks have experienced any temperature stress, (5) maternal health and nutrition history, and (6) whether the chicks have experienced any feed disruption.

Such disclosures would help growers better care for birds. AMS has acknowledged the relevance of many of the above-mentioned factors to flock health.<sup>12</sup> And AMS has offered an illustration of how information regarding such factors could help a grower better care for a flock: Specifically, AMS described how a grower aware of a salmonella infection within a flock can manage the flock differently and thereby lower mortality, decrease condemnations, and increase farm weights and feed efficiency.<sup>13</sup> On the other hand, without the above-suggested disclosures, lack of information may impede growers' ability to provide suitable veterinary care, because the growers may be unaware of existing problems and already-existing treatments.

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<sup>12</sup> See, e.g. 87 Fed. Reg. at 34985, 34990, 35000.

<sup>13</sup> See *id.* at 34980-01.





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The above-suggested disclosures would also help slow antibiotic resistance. Antibiotic resistance is an urgent human health issue caused by the overuse of antibiotics.<sup>14</sup> And researchers at the University of California, Los Angeles found significantly fewer antibiotic-resistant *E.coli* isolates in chickens “incubated, hatched, raised, slaughtered, and packaged by one party,” than in conventionally grown chickens.<sup>15</sup> The single-party chickens even had fewer antibiotic-resistant isolates than chickens labeled as antibiotic-free!<sup>16</sup> This suggests that continuity of care—where everyone involved with the birds knows about the birds’ previous medical treatment—decreases the risk of antibiotic-resistant bacteria. Such decrease presumably occurs by avoiding the overuse of antibiotics.

In addition, by improving growers’ ability to care for poultry, such health-relevant disclosures may lead to better growth outcomes and fewer deaths, thus yielding financial dividends for both growers and dealers.

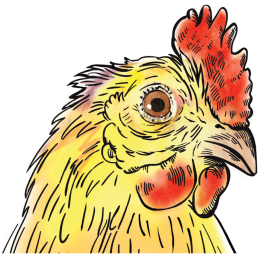
LIC urges AMS to require each of the above-suggested disclosures at the time of chick delivery.

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<sup>14</sup> *Antibiotic Resistance*, World Health Org. (Jul. 31, 2020), <https://www.who.int/news-room/fact-sheets/detail/antibiotic-resistance>.

<sup>15</sup> See Sanchez, Helen M et al. “Antibiotic Resistance of *Escherichia coli* Isolated from *Conventional, No Antibiotics*, and *Humane Family Owned Retail Broiler Chicken Meat*.” *Animals: an open access journal from MDPI* vol. 10,12 2217. 26 Nov. 2020, doi:10.3390/ani10122217.

<sup>16</sup> *Id.*



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### **3. The rule should increase transparency by increasing access to disclosures.**

As AMS has noted, there is a massive difference in the data available to growers and dealers.<sup>17</sup> While this proposed rule increases the data available to growers, growers may not be able to use the data to identify deceptive practices or unfair tournaments without support from outside organizations. A grower may also wish to share information with an industry association or advocacy organization in order to work collectively with other growers for better bargaining power. The ability to freely share and compare proposed contracts with one another will also give prospective growers a better sense of how fair a given proposal is. The proposed rule should thus explicitly let growers share disclosed information with anyone.

The current section 201.100 of title 9 of the Code of Federal Regulations empowers growers to “discuss the terms of a poultry growing arrangement offer” with a narrow list of individuals and entities.<sup>18</sup> The proposed regulation suggests empowering growers to discuss “the accompanying Live Poultry Dealer Disclosure Document” with that same narrow list of individuals, as well.<sup>19</sup>

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<sup>17</sup> See, e.g. 87 Fed. Reg at 35017 (“The contracts themselves are often incomplete and exhibit asymmetry in the information available to live poultry dealers and contract growers. Because live poultry dealers supply most of the inputs, much of the production information is available only to the grower from the live poultry dealer.”).

<sup>18</sup> 9 C.F.R. § 201.100(b).

<sup>19</sup> 87 Fed. Reg. 34980-01.



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This provision should be expanded. Growers should receive the right to discuss the terms of the poultry growing arrangement offer, and the accompanying Live Poultry Dealer Disclosure Document, with anyone they see fit. The proposed rule should also guarantee that the grower will not face any retaliation or penalty from the integrator for sharing disclosed information.

Thank you so much for your time and consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alene Anello'. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Alene Anello  
President

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