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December 19, 2023

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

Re: Questions Regarding Implementation of USDA Transparency in Poultry Grower Contracting and Tournaments Final Rule

Dear Secretary Vilsack:

On behalf of the National Chicken Council (NCC), I am writing regarding the final rule recently published by the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS), "Transparency in Poultry Grower Contracting and Tournaments" (Final Rule).¹ NCC is the national, non-profit trade association that represents vertically integrated companies that produce and process more than 95 percent of the chicken marketed in the United States. NCC members will be directly affected by the Final Rule.

The Final Rule imposes fundamentally new requirements that will affect every aspect of live poultry dealers' operations. Never before has the industry been required to maintain and provide such voluminous amounts of data, with such high consequences for failure, much less on such compressed timeframes. Making implementation more challenging still, the Final Rule introduces myriad new requirements and concepts while providing little guidance on how industry might comply. Moreover, the seemingly rushed implementation process has raised grave concerns throughout the regulated industry. To name but a few concerns: the Form PSD-6100 instructions referenced in the rule were not released until well after the final rule was published; AMS has held no educational outreach for the regulated industry, with the upcoming webinar coming nearly a month after the rule was published and with very little notice; and many considerations around how the general requirements in the Final Rule would apply to details of the industry were simply left unaddressed. Indeed, in our comments to the proposed rule published on June 8, 2022, we identified many vague points that would require clarification for effective implementation, which AMS failed to address in the preamble to the Final Rule.

¹ 88 Fed. Reg. 83210 (Nov. 28, 2023).

AMS's failure to provide meaningful guidance and clarity is materially affecting our members' ability to understand AMS's expectations and take appropriate steps to comply with the Final Rule. It is critical that the regulated industry be provided the clarity needed to understand the rule's requirements and adequate time to implement programs to comply with the requirements. In working with our member companies, we have identified the following initial questions and points that must be clarified before it is appropriate to make the rule effective. We urge AMS to provide guidance on these points as soon as possible. In light of these ambiguities, the overarching complexity of implementing the Final Rule's requirements, and other considerations, in a separate letter NCC has requested that USDA extend the effective date for the Final Rule by at least 180 days.

As our members work toward understanding and implementing the Final Rule's requirements, we respectfully request AMS to provide guidance on the following questions as soon as possible, and well before the Final Rule is to take effect.

General Questions

1. Does AMS anticipate issuing guidance with frequently asked questions (FAQs) or similar guidance regarding the Final Rule? If so, would this be issued sufficiently far in advance of the effective date for industry to use it to develop implementation programs? How does AMS intend to solicit implementation questions?
2. In light of the brief implementation period, the limited information that has been provided regarding mechanisms for industry compliance, the number of outstanding questions that remain regarding how industry can implement programs and systems to comply with the Final Rule, and the fact that a key form for implementing the rule (Form PSD 6100) was not released until well after the Final Rule was published, does AMS plan to announce a period of enforcement discretion to allow live poultry dealers and growers to implement the requirements of the Final Rule in an orderly manner?
3. The Final Rule contemplates live poultry dealers providing various data from the last 5 years. In most instances, companies have not been collecting the data being requested, and certainly not with the expectation that it be managed and used as required in the Final Rule. Please explain how companies are expected to address the following situations:
 - a. Required data is not available from the relevant historical period.
 - b. Required data is only partially available (*e.g.*, data exists for only some instances, or for only certain regions or accounts).
 - c. Required data was collected in some manner but was not collected or maintained in conformance with the governance framework that the company establishes under the Final Rule.
 - d. Required data was collected in whole or in part, but the data collection, maintenance, or management procedure or process changed during the 5-year period.
4. Information provided in the Live Poultry Dealer Disclosure Document (referred to here as the Disclosure Document) necessarily will change over time. Are live poultry dealers required to update Disclosure Document disclosures after they are provided when information changes, or

only when one of the triggering events listed in 9 CFR § 201.102(a) has occurred? If dealers would be required to revise a disclosure, please provide information on the timeline and manner in which this revision should be made.

9 CFR § 201.2, Terms Defined

5. “Gross payments”:
 - a. Clarify how live poultry dealers should calculate “gross payments” in a situation where they are making a payment to a grower but no flock is harvested.
 - b. Clarify how payments that growers receive under programs such as Highly Pathogenic Avian Influenza (HPAI) depopulation indemnity payments are to be addressed when calculating gross payments.
6. “Grower variable costs”:
 - a. In the preamble, AMS explains that “If animal welfare and other special growout requirements give rise to profitability and financial risks, they would be considered variable costs for growers and are required to be disclosed in accordance with the variable cost disclosure requirements of this rule.”² The definition of “grower variable costs” focuses on “costs related to poultry production.” It is unclear how “profitability and financial risks” that are not themselves direct costs would be considered costs under this definition or how an integrator could be reasonably expected to understand what types of profitability risks would require disclosure. NCC’s understanding is that financial considerations that are not direct costs fall outside the definition of “grower variable costs.”
7. “Minimum number of placements”:
 - a. The number of placements in a year can vary depending on where the new year falls in the placement and collection cycle. Two growers might on average receive the same number flocks per year over a multi-year period but might have different numbers of flocks per year in a given year due to timing. Clarify how a situation like this is to be addressed through the minimum placement disclosure requirement. Can the minimum be provided as a decimal (*e.g.*, 4.5 flocks per year) to reflect this effect?
 - b. Most contracts are not entered into at the start of the year. NCC interprets flocks to be delivered “for growout annually” to mean that the minimum number of guaranteed flocks would be pro-rated for contracts not entered into at the start of the year.
 - c. How does AMS intend to evaluate whether a minimum number of placements term has been met on an annual basis when the pro-rated number of placements computes as a

² 88 Fed. Reg. 83210, 83246 (Nov. 28, 2023).

non-whole number? The only logical approach would be rounding down to the next-lowest whole number.

8. "Number of placements":

- a. As with the above question for "minimum number of placements," clarify how this number should be provided when the number of flocks a grower will receive varies based on the year.
- b. Clarify the role this defined term plays in the regulations, as it does not appear elsewhere.

9. "Poultry grower ranking system":

- a. Clarify whether systems where only a small component of compensation is based on a comparative system would be considered a "poultry grower ranking system."
- b. For example, would a system where all growers get a contractually defined base pay and the top three growers in the pool are awarded a bonus payment be considered a poultry grower ranking system?

10. "Prospective broiler grower":

- a. The Final Rule defines this term as "a person or entity with whom the live poultry dealer is *considering* entering into a broiler growing arrangement" (*emphasis added*). Clarify what is meant by "considering" in this instance.
- b. At what point does a casual or early-stage conversation transition to the point that a person becomes a prospective grower?
- c. How does AMS intend to evaluate whether a live poultry grower is "considering" entering into a broiler growing arrangement?
- d. How is a live poultry dealer expected to demonstrate or document its intent or thinking during any given discussion?

9 CFR § 201.100, Records to be furnished poultry growers and sellers

11. The Final Rule states in § 201.100(b)(6) that live poultry dealers may not prohibit poultry growers or prospective poultry growers from discussing the terms of an arrangement or the Live Poultry Dealer Disclosure Document (Dealer Disclosure Document) with a business associate, "a person not employed by the grower, but with whom the grower has a valid business reason for consulting with when entering into or operating under a poultry growing arrangement." Clarify and provide examples of what would be a "valid business reason."

9 CFR § 201.102, Disclosures for broiler production

12. The Final Rule states in § 201.102(a)(1) that a live poultry dealer must provide certain documents to a prospective or current grower "at least 14 calendar days before the live poultry

dealer executes the broiler growing arrangement (provided that the grower may waive up to 7 calendar days of that time period).”

- a. How does AMS plan to determine whether a grower waives a portion of these 14 days?
 - b. If a grower waives days under this provision, how should such waiver be documented?
 - c. How should a live poultry dealer handle a situation where a grower unilaterally elects to execute an arrangement sooner than 7 days, despite instructions from the grower to wait 7 days before signing?
13. The Final Rule contemplates a grower receiving a disclosure statement in three instances outlined in § 201.102(a)(1)–(3): seeking to renew, revise, or replace an existing arrangement or establish a new arrangement; seeking to enter a new arrangement with a grower or prospective grower that will require housing modifications; or seeking to offer or impose housing modifications.
- a. Confirm these are the only triggering events for current growers to receive a Dealer Disclosure Document. In other words, we understand that AMS is not requiring live poultry dealers to provide Disclosure Documents to all current growers on the effective date of the rule if none of the above events have occurred.
 - b. If an individual grower needs to receive a Dealer Disclosure Document in one of the three instances outlined above and the live poultry dealer updates the Document to reflect a change in information from the last time the dealer updated the Dealer Disclosure Document, is the dealer required to issue an update to every grower that has previously received a Dealer Disclosure Document? We do not read the Final Rule as requiring this.
14. The Final Rule states in § 201.102(a)(3) that a live poultry dealer seeking “to offer or impose modifications to existing housing specifications that could *reasonably require* a broiler grower or prospective broiler grower to make an additional capital investment” must provide certain information to the grower. (Emphasis added).
- a. What does AMS mean by “could reasonably require” an additional capital investment?
 - b. How does AMS intend to evaluate whether a given modification “could reasonably require” an additional capital investment?
 - c. Under what circumstances would a live poultry dealer be expected to demonstrate that it did not believe that a housing specification change “could reasonably require” an additional capital investment? How would a situation involving an unexpected need for an additional capital investment be evaluated?
 - d. How is a live poultry dealer expected to know whether a grower did in fact incur an additional capital investment?
 - e. Are live poultry dealers required to collect information from growers to determine what could “reasonably require” a grower to make an investment?

15. In § 201.102(b), the Final Rule requires the Dealer Disclosure Document to include a cover page with specific disclosures as specified in the rule.
- a. The Final Rule does not prohibit additional explanatory material on the cover page, and the information that must be disclosed may require additional information to be understood properly. How does AMS intend to consider the presence of additional information on the cover page.
 - b. Please clarify whether all of the information listed in § 201.102(b) to be included on the “cover page” is required to fit a single page. It seems unlikely all of this information would fit.
16. Section 201.102(b)(3) requires disclosing the length of the term of the broiler growing arrangement.
- a. “Term” is not defined, and it is not clear what the “length of the term” of the broiler growing arrangement would be in for a contract that has a self-executing continuation clause, especially flock-to-flock or yearly arrangements that the parties expressly or by practice intend to continue indefinitely until terminated. How does AMS interpret the length of the term of such an arrangement?
 - b. How does AMS define the beginning and end of a broiler growing arrangement with regard to the length of the term of the arrangement?
 - c. How does AMS intend to determine the length of the term of an arrangement that is not conducive to a set time frame. For example, a flock-to-flock arrangement would last at least as long as the time it takes to raise the first flock, but it would not be known the flock would be harvested until the flock is placed, which might be uncertain when the contract is signed.
17. In § 201.102(c)(1), the Final Rule requires the Dealer Disclosure Document to include a summary of litigation of the past 5 years between the live poultry dealer and any broiler grower.
- a. Clarify whether this summary must include the following:
 - i. Litigation involving someone who is a broiler grower but is not a broiler grower for the live poultry dealer issuing the Dealer Disclosure Document and the litigation is unrelated to poultry contracting.
 - ii. Information related to litigation that has been sealed by a court and is not available in the public record. If this litigation is to be included in the summary, clarify how the dealer should handle sensitive or confidential information, such as information contained in a confidential settlement, or other sealed filings, without violating the terms of a court agreement.
 - b. The Final Rule requires the summary to cover the “previous 5 years.” NCC interprets that as referring to the previous 5 calendar years. In other words, for a disclosure being provided in 2024, it would summarize litigation from 2018-2023. If AMS views this

differently, please explain how AMS will evaluate whether a live poultry dealer has kept its list sufficiently current.

- c. There will necessarily be a lag in data collection and data reporting through the disclosures. For example, if a lawsuit is resolved on December 30, it is unlikely the live poultry dealer would be in a position to include it in a Disclosure Document presented on January 2. How does AMS intend to evaluate whether disclosures are sufficiently current?
 - d. For purposes of determining what cases fit within the 5 years, does AMS expect the summary to include any case that has had an open docket during the last 5 years, including cases that may have been filed long before and are not yet concluded? Or should the summary include only cases that have been filed in the last 5 years?
 - e. For purposes of determining whether something constitutes litigation requiring disclosure, it would appear most appropriate to look to whether the live poultry dealer has been served with a complaint. We recommend AMS confirm this interpretation.
 - f. Is the litigation summary expected to include summaries of frivolous litigation or repetitive lawsuits filed by a single grower?
 - g. AMS indicated in its preamble to the Proposed Rule that it is requiring a litigation summary in the Dealer Disclosure Document because it hopes for growers to be able to use this information to assess how litigious a live poultry dealer is: "Information about a live poultry dealer's litigation with poultry growers within the relevant period, particularly the basis of the litigation and the volume of litigation relative to the number of growers with whom the dealer contracts, would help growers identify conflict origins and better assess potential risk of conflict." 87 Fed. Reg. 34980, 34994 (June 8, 2022). How does AMS envision this summary having the desired effect when the number of growers a dealer works with is not required to be disclosed (and would likely be confidential)?
18. In § 201.102(c)(2), the Final Rule requires the Dealer Disclosure Document to include a summary of bankruptcy filings in the last 5 years "by the live poultry dealer and any parent, subsidiary, or related entity of the live poultry dealer."
- a. As for the litigation summary above, the regulation as written would indicate this disclosure would encompass bankruptcies from the previous 5 calendar years. As with the earlier comment, if this is not the case, AMS should clarify how it intends to evaluate whether a listing is sufficiently current.
 - b. Given the complexity and length of bankruptcy filings, how does AMS intend to evaluate whether the summary provided is adequate?
 - c. Please clarify which entities would be considered "related entities" for purposes of this summary. Does AMS expect that the disclosure to include information on a bankruptcy filed by a company that at the time was unaffiliated with the live poultry dealer but subsequently became part of the same corporate entity?

- d. Does AMS expect the relevant date to be the date the bankruptcy papers were filed, or some other date?
19. In § 201.102(c)(3)–(4), the Final Rule requires the Disclosure Document to include a statement describing the live poultry dealer’s policies and procedures regarding the potential sale or of the grower’s facility or assignment of their growing arrangement, including a buyout of the growing arrangement in (c)(3) and their policies and procedures (as well as appeal rights) arising from a list of events outlined in (c)(4) (e.g., increased lay-out time, natural disasters, feed outages, etc.).
- a. It will not be possible to include all details about a policy in the summary. How does AMS intend to evaluate whether a summary is sufficient?
 - b. AMS notes that informal policies are considered policies for purposes of this disclosure. Please clarify what constitutes such an informal policy. How does AMS intend to determine whether an informal policy exists?
20. In § 201.102(c)(5), the Final Rule requires the Dealer Disclosure Document to include a table showing average annual broiler grower turnover rates for the previous year “and the average of the 5 previous calendar years at a company level and at a local complex level.”
- a. Grower turnover is not defined. Please clarify what is meant by broiler grower turnover. For example, broiler growers often operate multi-generational businesses that are passed within a family. If a retiring grower sells her farm to her daughter, does AMS consider that a grower turnover? Likewise, are retirements considered grower turnover?
 - b. The Form PSD-6100 instructions call for “averaging the number of growers at the beginning and end of the period.” AMS has not explained what constitutes a “grower” for purposes of the calculation. Would all growers under contract be counted, including growers who have not had a placement or a settlement that year (e.g., a new or returning grower)?
 - c. As is mentioned in the General Questions section above, it is unclear how AMS expects live poultry dealers to provide this information when they were not previously required to maintain such records. Please explain how dealers should handle this disclosure item when such information is not available, or if only partial data is available.
21. In § 201.102(d)(1), the Final Rule requires the Dealer Disclosure Document to include tables showing average annual gross payments for the five previous years and include certain data in such tables.
- a. As is mentioned regarding the definition of “gross payments” above, please clarify how live poultry dealers should calculate or adjust “gross payments” in atypical situations.
 - b. Not all live poultry dealers have perfectly defined or stratified housing tiers, and housing can differ along multiple variables. It is not always evident how the housing on a given farm compares to another. It will be important for AMS to provide flexible guidance in how live poultry dealers can specify this in a disclosure. Does AMS intend for every

possible housing permutation to be captured in a separate table? Doing so would result in a voluminous document.

22. Regarding the requirement in § 201.102(d)(2) to include in the Dealer Disclosure Document information about forward-looking financial projections:
- a. How does AMS intend to evaluate whether a live poultry dealer was aware that an additional capital investment “may be required”?
 - b. Are forward-looking projections when additional capital investments may be required even if the additional capital investments do not render the historical gross payment figures unrepresentative?
 - c. How does AMS intend to evaluate whether gross payments “do not accurately represent projected grower gross annual payments” such that forward-looking projections must be provided? Because the Final Rule contemplates that forward-looking projections are not always required, NCC presumes that AMS does not expect normal economic phenomena, such as inflation, to trigger forward-looking projections.
23. In § 201.102(d)(3), the Final Rule requires live poultry dealers to include in the Dealer Disclosure Document a summary of information the dealer collects or maintains regarding grower variable costs inherent to broiler production.
- a. AMS has not explained what it considers to be “collecting” data for purposes of this requirement. For example, if the live poultry dealer does not actively seek out such information but nonetheless receives some information on grower costs, it is unclear whether that would trigger disclosure under the Final Rule.
 - b. How would AMS view a situation where a regional employee of the live poultry dealer learns something about grower variable costs, but not as part of a structured program to collect such information? Presumably, the live poultry dealer in that situation would not be considered to be collecting and maintaining that information.
 - c. AMS should explain how it expects live poultry dealers to handle partial or incomplete information on grower variable costs, or grower variable costs relevant to only a particular region.
 - d. If a live poultry dealer were to possess information about variable costs associated with a single grower, would that information be required to be disclosed?
 - e. Are live poultry dealers required to maintain unsolicited information? If so, is there a mechanism by which a dealer could decline to receive such information?
 - f. How does AMS intend to evaluate qualifiers or disclaimers that may be provided to accompany information about grower variable costs?
 - g. How does AMS intend to evaluate whether the summary of grower variable costs is sufficient?

- h. If a live poultry dealer has collected information on grower variable costs over a long period, what time frame does AMS view as being relevant for the disclosure?
24. In § 201.102(e), the Final Rule exempts small live poultry dealers from certain disclosure requirements if they slaughter “fewer than 2 million live pounds of broilers weekly (104 million pounds annually).”
- a. Please provide additional information on this threshold—would smaller companies that slaughter 5 million pounds in one outlier week still qualify for the exemption if their annual production is lower than 104 million pounds annually?
 - b. If a historically “small” live poultry dealer crosses the threshold during the year and no longer qualifies as a small poultry dealer, would the dealer be required to make the disclosures required in the Final Rule for the whole year, or just moving forward?
 - c. Would AMS provide the formerly small live poultry dealer a transition period to collect the relevant data and establish a governance framework, or would the Final Rule’s requirements be enforced immediately? As with the questions raised elsewhere in this letter about the 5-year lookback period, how would AMS expect the formerly small live poultry dealer to assemble and report historical information?
 - d. Small live poultry dealers are required to provide disclosures in limited circumstances. Are small live poultry dealers expected to maintain all the data that would be required in anticipation of needing to make a disclosure, even if they are not currently required to make one?
 - e. Are small live poultry dealers subject to the governance framework requirements, even when not required to make a disclosure?
25. Regarding the requirement to maintain a governance framework in § 201.102(f):
- a. This requirement is extremely broad and vague. Please provide guidance on AMS’s expectations for how such framework should be structured and what features it should include.
 - b. Concerning § 201.102(f)(1)(ii) and the requirement for the governance framework to ensure compliance with all obligations under the Packers and Stockyards Act (PSA), please clarify whether live poultry dealers that deal in other poultry or livestock regulated by the PSA are required to audit and ensure compliance for all species or just broilers.
 - c. Regarding the certification required in § 201.102(f)(2), please more information on what range of employees might be considered a “principal executive officer or officers.” Could a senior executive who is not in the traditional C-suite appropriately make this certification?
 - d. For live poultry dealers that are organized as a subsidiary within a larger corporate entity, does AMS intend to evaluate the appropriate corporate officers at the entity level for the live poultry dealer?

- e. The wording of the certification requirement in § 201.102(f)(2) is unclear. Based on the preamble discussion and language in the regulation, NCC understands this provision as requiring that the executive certify that the live poultry dealer has in place a governance framework, not that the executive has actual knowledge that every statement in the disclosure is true.
 - f. How does AMS envision the executive certification applying to forward-looking projections described in § 201.102(d)(2), which by definition cannot perfectly predict future conditions?
 - g. Please explain and provide examples of what constitutes a “material fact” such that its untruthfulness or omission would render the Disclosure Document misleading.
26. In § 201.12(g)(3), the final rule indicates that live poultry dealers “may” reference Form PSD 6100 “for further instructions on the presentation of information and certain calculations,” raising several questions:
- a. The document release is entitled “6100 Live Poultry Dealer Disclosure Document Form Instructions.” It is unclear whether these are instructions for completing a to-be-released Form PSD 6100 template, or whether this is the document referenced in the regulations. AMS should clarify this point quickly so that industry understands how to use this document.
 - b. The regulations clearly contemplate Form PSD-6100 playing an important role for implementing the regulations, but the instructions for the form were not made available until December 14, nearly two weeks later (and after more than 20% of the implementation period). Does AMS plan to delay the effective date or otherwise exercise enforcement discretion based on this delay?
 - c. Footnotes 1 and 2 of Form PSD-6100 seem to suggest that AMS expects live poultry dealers to follow the instructions in the form (“AMS has provided specific computation instructions so that all live poultry dealers calculate annual grower turnover rates using the same formula”; “AMS has provided specific computation instructions so that all live poultry dealers calculate average annual gross payments by quintile using the same computation instructions”). Please confirm that use of the instructions is optional.
27. Regarding § 201.102(g)(4) and the requirement to ensure growers are aware of their right to request translation assistance:
- a. Where a live poultry dealer must provide at least 14 calendar days for a grower to execute an agreement, but the grower may waive 7 days, how does AMS envision this waiver materializing in the context of non-native English speakers?
28. Regarding the requirement in § 201.102(h) to provide information about minimum placements and stocking density in the poultry growing arrangement, please clarify the following:
- a. Please confirm AMS intends for this requirement to apply only to copies of contracts that are renewed, revised, or entered into after the rule’s effective date, February 12,

2024 (i.e., that AMS is not requiring live poultry dealers to amend existing contracts to include this information by February 12, 2024).

- b. The Final Rule imposes no limitations on the ability of the parties to structure the guaranteed minimums to account for various factors, such as the grower's compliance with contract terms and bird welfare requirements, or animal disease considerations. For example, if a grower is located within an HPAI quarantine zone, flocks cannot be placed. The details may be such that they cannot be succinctly summarized in a disclosure page. AMS should reiterate that the actual terms of the broiler growing arrangement govern and that live poultry dealers may, but are not required to, explain this in any disclosures.
- c. How does AMS intend to determine whether a reported minimum placement or stocking density is deceptive? There are poultry growing arrangements in which both parties fully understand that the minimum guaranteed placement is indeed zero.

9 CFR § 201.104, Disclosures for broiler grower ranking system payments

29. Regarding § 201.104(b) on disclosures made during flock placement:

- a. In § 201.104(b)(6), the live poultry dealer is required to report to the grower upon placement "known health impairments." AMS states in the preamble to the Final Rule that "'health impairments' as generally understood provides an appropriate context for classification." 88 Fed. Reg. 83254. Although the term "health impairments," is likely understood consistently at a conceptual level, different companies or veterinarians may view nuanced situations differently. Please clarify what the term "health impairments" means and provide examples.
- b. In § 201.104(b)(3), please identify how a live poultry dealer can address a situation in which the sex of the birds may be known for some but not all of the growers in the settlement pool, or some but not all of the birds in a placement.
- c. In §§ 201.104(b)(2) and (b)(3), AMS should clarify precisely what is meant by the "ratio" of breeds and sexes or clarify that this information can be presented differently based on how the live poultry dealer decides to track it. For example, it is unclear whether AMS intends for a numerical ratio, a percentage, or some other comparison.
- d. For § 201.104(b)(7), please confirm that the live poultry dealer is not limited to making only those adjustments identified in this disclosure.
- e. For § 201.104(b)(5), it is unclear how AMS intends for live poultry dealers to present the breeder flock age when chicks come from multiple breeder flocks. It would likely be cumbersome to list every single breeder flock age or to provide ratios, as some placements could have chicks from dozens of different layers. It would appear that AMS is seeking the average breeder flock age, although guidance is lacking.

30. Regarding § 201.104(c) on disclosures made on grouping or ranking sheets:

- a. All of the questions presented above for placement disclosures under § 201.105(b) apply similarly to the settlement disclosures in § 201.104(c).
- b. It is unclear what level of detail is expected for the housing specification disclosures, especially for live poultry dealers that do not have rigid tiers of housing.
- c. In § 201.104(c)(2)(vi), it is unclear when AMS would view a feed outage as beginning. That term might reasonably be construed as indicating when feed lines are empty, when feed bins are empty, or some other situation.
- d. As with disclosures made during flock placement above, in § 201.104(c)(2)(iii), it is unclear how AMS expects a live poultry dealer can address a situation in which the sex of the birds may be known for some but not all of the growers in the settlement pool.

NCC urges AMS to quickly issue additional guidance to industry providing clarity on the questions raised above, as well as on the others that are likely to arise, to ensure that industry can appropriately implement the rule in an orderly and predictable manner. Without AMS's feedback on the above, it will be extremely difficult for industry to prepare for the effective date of the Final Rule. Please feel free to contact us with any questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Mike Brown', with a long horizontal flourish extending to the right.

Mike Brown
President
National Chicken Council

Cc: Bruce Summers, Administrator, USDA Agricultural Marketing Service

S. Brett Offutt, Chief Legal Officer and Policy Advisor, Packers and Stockyards Division, USDA
Agricultural Marketing Service Fair Trade Practices Program

Andy Green, Senior Advisor for Fair and Competitive Markets, USDA