August 8, 2024

U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

Submitted via Regulations.gov

RE: Proposed Rule on *Poultry Grower Payment Systems and Capital Improvement Systems*, AMS-FTPP-22-0046

Farm Action respectfully submits this comment to the United States Department of Agriculture ("USDA") regarding the proposed rule Poultry Grower Payment Systems and Capital Improvement Systems, 89 Fed. Reg. 49002 (proposed June 10, 2024) ("Proposed Rule").

Farm Action is a nonprofit organization dedicated to ending corporate monopolies and to ensuring a fair food and agricultural system. We seek to establish a fairer balance of power between everyday people and big corporations through advocacy, research, policy development, and political expertise. We are made up of farmers, ranchers, rural communities, policymakers, and advocates.

The Proposed Rule is not perfect. Notably, the Proposed Rule does not outright preclude Live Poultry Dealers ("LPDs") from using the Tournament System, or broiler grower ranking systems, to compensate poultry growers. We remain convinced, based on the law and the lived experiences of countless growers, that the Tournament System is inherently unfair and *per se* violates the Packers and Stockyards Act ("the Act").[1] Even so, the Proposed Rule is a crucial and overdue step forward. It does not level the playing field between growers and LPDs, but it undeniably tips the balance closer toward fairness. For that reason, we support the Proposed Rule and urge its adoption.

However, before USDA finally adopts the Proposed Rule, we urge USDA to consider revisions designed to protect growers from LPDs' abuse. Broadly speaking, many of the Proposed Rule's provisions appear aimed more toward supporting USDA's enforcement actions than preventing growers from being harmed in the first place. To be sure, we support the goal of better enabling USDA to pursue LPDs who abuse growers through violations of the Act. But from a grower's perspective, by the time an enforcement action is ripe, it is too late: the harm already has occurred.

Toward that end, this comment addresses the Proposed Rule's three parts – Proposed Section 201.106, Proposed Section 201.110, and Proposed Section 201.112 – and offers suggestions that would strengthen the Proposed Rule and thereby better protect growers.

To be clear, these opportunities to improve upon the Proposed Rule need not reopen a notice and comment period. Farm Action's suggestions for strengthening the Proposed Rule – both those presented through answers to the Proposed Rule's questions and otherwise offered herein – would clearly constitute "logical outgrowth" of the Proposed Rule and, therefore, would not require

[1] Farm Action, Comment Letter on Proposed Rule on Poultry Growing Tournament System: Fairness and Related Concerns, AMS-FTPP-22-0046 (Sept. 29, 2022), https://www.regulations.gov/comment/AMS-FTPP-22-0046-0156.

additional notice and comment. *See Stringfellow Mem'l Hosp. v. Azar*, 317 F. Supp. 3d 168, 186 (D.D.C. 2018) (citing *Envtl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005)). And indeed, USDA should finalize the Proposed Rule. Poultry growers have waited too long for relief from the Tournament System, and even the Proposed Rule's incomplete relief would be a meaningful step toward leveling the power imbalance under which growers work.

I. The Proposed Rule is Not Impeded by the Supreme Court's *Loper Bright* Decision

As an initial matter, USDA should rest assured that its authority to complete this rulemaking has not been shaken by the Supreme Court's recent decision in *Loper Bright v. Raimondo*.

Loper Bright overruled the longstanding judicial principle of "*Chevron* deference," under which courts generally deferred to agencies' interpretations of ambiguous provisions within authorizing statutes. 144 S.Ct. at 2273. Going forward under *Loper Bright*, though, it is the job of courts to say what the law is. *Id.* at 2258.

Even so, *Loper Bright* reaffirms that courts must "stay out of discretionary policymaking left to the political branches." *Id.* at 2268.

Loper Bright imposes no hurdle to this rulemaking because USDA is exercising its policymaking authority, rather than wiggling its way into a novel statutory interpretation. As the Proposed Rule clearly explains, the Act provides that "[t]he Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of" the Act. 7 U.S.C. § 228(a) (cited by 89 Fed. Reg. at 49002). Among those provisions is the Act's prohibition on live poultry dealers "[e]ngag[ing] in or us[ing] any unfair, unjustly discriminatory, or deceptive practice or device[.]" 7 U.S.C. § 192(a).

The requirements within the Proposed Rule are policies through which USDA will perform its work of carrying out the Act's prohibition on unfair practices. *Loper Bright* confirms that courts must continue to respect such decisions, even in a world without *Chevron* deference.

II. The Proposed Rule's Provisions Concerning *Broiler Grower Compensation Design (Proposed § 201.106)*

Farm Action is supportive of Proposed Section 201.106. It is essential to avoiding unfair practices within the broiler grower industry that growers receive a fair and firm base-pay rate. Proposed Section 201.106 is an important and welcome step in that direction but needs additional clarification to protect poultry growers.

Our greatest concern is that LPDs will seek to manipulate growers with unfairly low base-pay rates, with "bonus" payments providing growers their only meaningful chance at truly fair compensation. To USDA's credit, this concern has not eluded Proposed Section 201.106, as the Proposed Rule notes: "For example, if an LPD set the base pay rate at $0.01, AMS would almost certainly find that this violates [the Act]." 89 Fed. Reg. at 49010. We believe that minor revisions to Proposed Section 201.106 would strengthen it against such manipulation.

The best way to accomplish this would be to require LPDs to provide growers with a fair and firm base price. Food and Water Watch's comment to this Proposed Rule offers a thoughtful framework for calculating that fair and firm base price,[2] and Farm Action supports that proposal. At a minimum, Farm Action supports the Proposed Rule's efforts to cap performance-based bonus compensation. Otherwise, reviewing agreements for unfairness would be possible only through

[2] Food & Water Watch, Comment Letter on Proposed Rule on Poultry Grower Payment Systems and Capital Improvement Systems, AMS-FTPP-22-0046 (Aug. 9, 2024).

case-by-case determinations. In addition to being an inefficient way to address such a wide-scale problem, it would leave growers with the burden of fighting an uphill battle in a power dynamic that already disfavors them. Furthermore, case-by-case determinations would leave growers vulnerable to USDA's appetite for enforcement actions, which historically has been inconsistent from administration to administration.

It is crucial to remember that the broiler grower industry is especially consolidated. It also is highly localized: more than half of growers have only one or two LPDs in their region. Given LPDs' history of collusive behavior, allowing LPDs to compensate growers through overvalued performance-based compensation would open the door to LPDs suppressing compensation across the industry.

These concerns inform our answers to several of the Proposed Rule's questions concerning Proposed Section 201.106.

> *2. AMS has indicated that if the base pay rate is suppressed below the competitive levels, such as due to the LPD's unlawful exercise of market power or other legally unjustified means, and does not provide a reasonable return considering the operating costs and the costs of investments over the long term, the compensation system may be unfair. Should AMS adopt a rule that more prescriptively requires that the base pay rate must be expected to provide a reasonable opportunity for a grower that delivers under the contract to earn a reasonable return if they comply generally with the specified production practices? If so, please describe the rationale and methodology to be applied (including whether and how it should account for local market power dynamics); and if not, would another approach be more effective?*

A more prescriptive approach would be better. As stated above, case-by-case determinations without clear guiding standards are problematic: they are overly burdensome on growers, and they leave growers vulnerable to inconsistencies between different administrations.

The broiler grower industry is hyperlocalized. *See* 89 Fed. Reg. at 49004 ("This can result in poultry production that is often highly localized and concentrated at a regional level."). Ninety percent of poultry is transported 60 miles or less from farm to production. More than half of poultry growers have only one or two LPDs in their region. For that reason, LPDs typically have little competition to recruit growers – and LPDs have little incentive to treat growers fairly. Growers often accept terms because they have no other choice.

Accordingly, requiring that the base-pay rate *alone* (i.e., without the addition of any performance-based bonus compensation) provide a reasonable opportunity for a grower to earn a reasonable return would better accomplish Proposed Section 201.106's purpose. As previously noted, we support the framework proposed for defining a fair base price in Food & Water Watch's comment.

> *3. Is it presumptively unfair for comparison-based compensation to equal or exceed 25 percent of total (base pay rate plus comparison-based) compensation for any grower? If so, is the 25 percent threshold the appropriate portion to presume unfairness, and is it most effective if calculated at the complex level or at the individual grower level?*

Yes, a compensation arrangement should be presumed unfair where its total compensation consists of 25 percent or more comparison-based compensation. Although a specific case's facts might demonstrate unfairness even when comparison-based compensation is less than 25 percent of total compensation, the threshold of 25 percent would be appropriate. That is the threshold to which the Settling Defendants agreed in the *United States v. Cargill Meat Solutions Corp.* Consent

Decree, No. 22-cv-1821 (D. Md. Apr. 9, 2024); industry uniformity persuades in favor of employing the same threshold here.

> *4. Is case-by-case enforcement of the fairness of the total comparison-based bonus effective? Should AMS include a paragraph (b) to proposed § 201.106 stating that, "Although unfairness will be determined on a case by case basis, the LPD shall be deemed presumptively in violation of this paragraph (b) if: on an annual basis at any complex [for any grower] of the LPD, the amount of Performance Payments exceeds 25% of the sum of Performance Payments and Base Payments, where 'Performance Payments' are the compensation paid to broiler grower that is subject to adjustment based upon the relative performance in a grouping, ranking, or other comparison to broiler growers; and 'Base Payments' are all compensation that is guaranteed to be paid to broiler growers."?*

As noted, we have concerns about relying on case-by-case enforcement as the *de facto* method for enforcing fairness and therefore support the Proposed Section including a paragraph (b) so stating.

> *11. What risks might growers and/or LPDs face during any transition to the proposed § 201.106? How might AMS mitigate transition risks? How might AMS more fully account for unfairness and deception that may have occurred in the course of contracting for the current broiler growing arrangement? Should AMS establish a backstop for this regulation or set out criteria based on existing obligations under the present contract with the grower (e.g., requiring that the current base pay rate be the new minimum rate, or requiring current payments overall remain comparable), on a relationship between compensation per pound (pool payments) at the complex and the minimum pay, or on the proportion of comparison-based compensation for a grower (such as a limit to 25 percent of total compensation). If so, how long should any transition limitations extend?*

Aside from complying with their legal obligations under the Act, LPDs face no risks during the transition period. We do have concerns, however, that during the transition growers are at great risk of having their base pay reduced as LPDs rework their grower payment systems. This is why we emphasize the need for USDA to establish and require LPDs to provide growers with a firm and fair base price, as outlined above.

> *12. To minimize transition risks to growers, should AMS include a requirement that LPDs submit to AMS for review any contracts modified or revised to comply with new § 201.106? Should compensation data be required to be submitted for review? Should AMS review of modified or revised contracts during any transition assess the changes made to ensure LPDs have not reduced total aggregated and individual grower payments in such a way that is inconsistent with payment expectations under the original contracts?*

Yes, AMS should include a requirement that LPDs submit to AMS for review any contracts modified or revised to comply with the new § 201.106. It is essential that compensation data be included in that submission, and AMS's review of said contracts should ensure that any changes made do not result in reduced total aggregated and individual grower payments in such a way that is inconsistent with payment expectations under the original contracts.

The *Cargill* consent decree wisely provided for the appointment of a monitor to oversee compliance – presumably (and correctly) out of the realization that, without some level of enforcement, LPDs cannot be trusted to do any better than to skirt their legal duties, which invariably will lead to violations, many of which will go unreported by growers. In this instance,

ensuring that any contract modifications or revisions comply with Proposed Section 201.106 is a task better left to AMS. In any instance, history and experience underscore that the matter cannot be left to LPDs' assurances.

> *13. Should AMS make the effective date for the provisions of this proposed rule 180 days following publication of the final rule in the Federal Register? If you recommend shorter or longer for some or all of the provisions, please explain why.*

No. Farm Action strongly urges AMS to make the effective date 30 days from publication of the Final Rule in the Federal Register. Poultry growers have waited more than a decade for USDA to step in and protect them from the unfair practices that the Tournament System is designed to impose. Furthermore, USDA's appetite for enforcement of the Act has been inconsistent from administration to administration. Growers' need for the Proposed Rule's protections is urgent. In no event should AMS effectuate the Proposed Rule any later than November 1, 2024.

III. The Proposed Rule's Provisions Concerning *Operation of Broiler Grower Ranking Systems (Proposed § 201.110)*

Farm Action remains convinced that the tournament system is *per se* unfair and cannot be operated without violating the Act.

Subject to that qualification, and speaking broadly, Farm Action is supportive of Proposed Section 201.110. Our chief concern is that Proposed Section 201.110 places too much trust in LPDs. Notwithstanding the design requirements that would be required by Proposed Section 201.106, *supra*, it is difficult to imagine LPDs suddenly operating ranking systems fairly, given their longstanding reliance on the Tournament System to abuse and manipulate growers; a leopard cannot change its spots, but it can be declawed.

Consistent with that skepticism, we are of the view that Proposed Section 201.110 would benefit from greater routine oversight, such as through USDA audits. Such oversight would be consistent with the Secretary's authority to "prescribe the manner and form in which [LPDs'] accounts, records, and memoranda shall be kept." 7 U.S.C. § 221. Otherwise, Proposed Section 201.110 is susceptible to becoming merely a recordkeeping responsibility of little utility to a grower except through enforcement action – by which time a grower already has been harmed.

We are encouraged, though, by the questions posed by the Proposed Rule, which suggest that USDA is already contemplating measures to strengthen Proposed Section 201.110. Farm Action addresses some of those questions:

> *1. Does proposed § 201.110 effectively and appropriately benefit growers in reducing unfairness and deception? If so, why? If not, in what ways can it better do so?*

Farm Action is of the view that Proposed Section 201.110 is an important step toward protecting growers from unfairness and deception. As explained above, we believe that some form of oversight, such as audits, is crucial to strengthen Proposed Section 201.110 into a tool that prevents harm as well as supporting redress of harm.

With that goal in mind, USDA should consider requiring the established documentation of policies and procedures that justify the duty of fair comparison and any associated performance bonus payments be submitted to USDA and made publicly available.

Additionally, USDA should consider offering both LPDs and growers greater clarity regarding behavior that violates Proposed Section 201.110. Farm Action is supportive of the

suggestion raised by Food and Water Watch's comment, including that USDA provide a list of behaviors that constitute presumptive violations of Proposed Section 201.110. Farm Action also supports Food and Water Watch's proposal to provide greater clarity concerning the non comparison-based pay mechanism by establishing that growers may request non comparison-based compensation when they believe that have been exposed to unfair comparisons – and may require an LPD to self-report to AMS for possible investigation whenever the LPD refuses such a request.[3]

2. Are the duty of fair compensation and the factors for evaluating whether the LPD reasonably designed its ranking system to deliver fair comparison appropriately designed? If not, how should they be changed?

Subject to the concerns stated above regarding necessary oversight (and the inherent unfairness of the tournament system), Farm Action's view is that the duty of fair compensation and the factors for evaluating the LPD's ranking system are appropriately designed.

9. Are there simpler means to achieve the ends proposed in § 201.110? For example, would a limitation on the proportion of comparison-based compensation to total compensation – like comparison-based compensation limited to 10 percent of total compensation – be sufficient to provide flexibility to LPDs and protect growers from variability in inputs and flock production practices?

Yes, there is a simpler way to achieve Proposed Section 201.110's goals: banning the Tournament System outright as a *per se* violation of the Act. Short of that step, no, there is no simpler way to achieve Proposed Section 201.110's goals. As stated above, if anything, Proposed Section 201.110 needs additions. Its provisions should be the bare minimum.

10. Should AMS's final rule expressly clarify that a pattern or practice (including, but not limited to, intentional, arbitrary, or punitive distribution) of unequal, dissimilar, or inappropriate inputs or flock production practices would be an unfair practice under the Act under any payment system that relies upon grower performance relative to inputs or production practices provided by the LPD (such as feed efficiency) irrespective of whether the payment system was a tournament? In particular,

a. Please explain why or why not or suggest alternative approaches to address particular concerns with non-tournament pay systems that rely on grower performance.

Yes, it is unfair to pay growers in a comparison-based system in which inputs and other practices are unequal. It is fundamental to contract law that contracting parties perform under an implied covenant of good faith and fair dealing. Restatement (Second) of Contracts § 205 (Am. L. Inst. 1981) ("Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement."; U.C.C. § 1-203 (Unif. L. Comm'n & Am. L. Inst. 2024) ("Every contract . . . imposes an obligation of good faith in its performance or enforcement."). It would stand that principle on its head for LPDs to claim that they may sabotage growers' efforts without violating the Act's prohibition on unfair practices.

When a grower is under contract with an LPD, the grower is "locked in" for the full term of the agreement. The grower's livelihood depends on their ability to grow chickens – which, in turn, relies on the quality of the LPD's inputs.

When a grower declines to accommodate LPD requests on matters not covered by the contract – for example, when the LPD requests an Additional Capital Investment ("ACI") – the

[3] Food & Water Watch Comment Letter, *supra* n. 2.

threat of LPD retaliation via delivery of inferior inputs is understood by all involved. This has been a common experience. For example, in 2019, a grower purchased an eight-house chicken farm for approximately $2 million. Sanderson Farms contracted with the farmer and provided no indication that any upgrades to the chicken farm would be necessary, other than digging an additional well. Later that year, the farmer had low-weight chicks, and Sanderson Farms blamed it on the water. Sanderson Farms provided the grower with a list of required updates, totaling $300,000, which included digging yet another well. The grower refused because of the cost. Shortly thereafter, Sanderson Farms stopped providing chicks to the grower. The grower then went *six months* without any chicks, when the average time between flocks is generally two weeks. The farmer had no other available LPDs in his region, so he had two options: provide an additional $300,000 worth of upgrades (which Sanderson Farms did not mention when he purchased the chicken farm) or wait for untenable periods of time between flock deliveries, causing him severe financial hardship.

IV. The Proposed Rule's Provisions Concerning *Broiler Grower Capital Improvement Disclosure Document (Proposed § 201.112)*.

In its current form, Proposed Section 201.112 appears principally to be designed as a tool for strengthening the resources available to USDA during enforcement actions. This is a laudable goal of which we are supportive. But Proposed Section 201.112 falls short as a tool for preventing the sorts of injuries that sometimes lead to enforcement actions.

At bottom, our view of Proposed Section 201.112 is that it rests on two misapprehensions.

First, Proposed Section 201.112 assumes that LPDs will act in good faith through honest, transparent disclosures.[4] Decades of experience show that this assumption is a mistake. As USDA acknowledges elsewhere in the Proposed Rule, the poultry industry is already "susceptible to both unfairness and deception." 89 Fed. Reg. at 49003. The Proposed Rule also explains (correctly) that "LPDs also commonly do not adequately perform under their contracts with growers, failing to meet growers' reasonable expectations relating to contractual performance or behaving in a punitive or inequitable manner to growers." *Id.* at 49012.

Farmers' experiences support these observations. For instance, one poultry grower took out a $500,000 loan to build a chicken house on his farm but refused to add additional equipment, despite Tyson's request. Shortly thereafter, Tyson provided him with sick chickens and ultimately terminated his contract.

LPDs simply have not earned the benefit of the doubt – and yet Proposed Section 201.112 relies on LPDs to make truthful, earnest disclosures without any oversight. To be sure, if USDA initiates an enforcement action against an LPD and discovers that the LPD's disclosures under Proposed Section 201.112 were not adequately transparent, that information would be valuable evidence of a P&S Act violation. But by that point, it is too late for the grower.

Therefore, Proposed Section 201.112 would benefit greatly from a requirement that LPDs' disclosures thereunder be reviewed by a reliable third party – be it USDA or some other entity with the credibility to determine that the disclosures are trustworthy. Leaving the disclosures' credibility to LPDs, though, accomplishes little if growers cannot trust them.

Second, Proposed Section 201.112 relies on the misassumption that growers and LPDs' contractual relationships exist at arm's length. This is simply not true. LPDs enjoy near-total control of the relationship, and they commonly abuse that power when growers refuse to make an ACI. *See*,

[4] Notably, for many growers, English is a second language. Proposed Section 201.112 would benefit from clarification that the disclosures must be made in the grower's preferred language.

e.g., 89 Fed. Reg. at 49012 ("LPDs also commonly . . . behave[e] in a punitive or inequitable manner to growers.").

If Proposed Section 201.112 is to have any benefit outside an after-the-fact enforcement action, then it must include protections for growers who choose – even when provided a truthful, earnest disclosure – not to agree to an ACI. Otherwise, the imbalance of power between grower and LPD has not changed at all, save that the LPD must provide an additional sheet of paper before exploiting that imbalance.

Growers need to be empowered to decide an ACI request based on whether it is the most financially advantageous option available to them – rather than making the decision out of fear. Proposed Section 201.112 could be revised to achieve this goal in any number of ways. For example, Proposed Section 201.112 could require that an LPD making an ACI request also offer the grower a new contract of a length sufficient for the grower to recover the cost of their investment. If an LPD entered into a contract with a grower to begin with, then presumably, the grower's facilities were adequate to satisfy the LPD over the length of their contractual relationship; if the LPD later wants a grower to upgrade those facilities, then the grower should be able to move forward knowing that the LPD will not pull the rug out from underneath them by ending the contract before the requested ACI has been paid for.

Proposed Section 201.112 also would benefit from including a prohibition against retaliation for refusing an ACI request, such as by reducing a grower's chicken supply following a grower's refusal to perform an ACI. This is a common experience, as the anecdotes above show.

Those views inform our responses to the following questions posed by the Proposed Rule:

> *1. Do the Capital Improvement Disclosure Document provisions of the proposed rule assist growers in identifying and appropriately addressing concerns that growers have expressed relating to ACIs? If so, why? If not, what ways can it better do so?*

Proposed Section 201.112 undoubtedly identifies concerns that growers feel related to ACIs. However, it does not adequately address those concerns because it does not level the imbalance of power between growers and LPDs. To be sure, LPDs' lack of candor concerning their justifications for ACI requests have contributed to that imbalance. But the role played by ACI requests toward driving that imbalance lies principally in the threat – spoken or otherwise – that the LPD will retaliate against a grower for refusing an ACI request. Requiring LPDs to provide growers with more paperwork before leveraging that imbalance leaves growers with no more meaningful protection than they would enjoy without Proposed Section 201.112.

> *2. Are there specific ACI-related programs or other related conduct that LPDs engage in that are not solved by the proposed disclosures? If so, identify the conduct and whether additional disclosures, presumptions, or prohibitions would effectively address the harms from the conduct. Please explain both the problematic programs/conduct and harms in detail.*

For the reasons stated above in response to Question No. 1, LPD conduct leveraging the imbalance of power is not solved by the proposed disclosures. As stated above, Proposed Section 201.112 could be revised to achieve this goal in any number of ways. For example, Proposed Section 201.112 could require that an LPD making an ACI request also offer the grower a new contract of a length sufficient for the grower to recover the cost of their investment.

> *3. What considerations, if any, should AMS take into account with respect to the timing, delivery, or readability with respect to the Disclosure Document? For example, should AMS include a*

provision requiring that LPDs, at the time they deliver the Disclosure Document to the grower, make reasonable efforts to assist the grower in translating the Disclosure Document and to ensure that growers are aware of their right to request such translation assistance?

Proposed Rule 201.112 should include a requirement that the Disclosure Document be written in the language of the grower's preference.

4. Should proposed § 201.112(b)(5), which requires LPDs to disclose required or approved manufacturers or vendors, also require the disclosure of any material financial benefits that the LPD, or any officer, director, employee or family member of any such person, receives from the use of the required or approved vendor? If so, please explain why for each party recommended to be covered, including examples and explanation where available.

Yes, Proposed Section 201.112(b)(5) should include that additional requirement.

5. Proposed § 201.112(b)(6) does not include a specific format for reporting projected returns. Should LPDs be required to follow a specific format for the analysis required in § 201.112(b)(6)? If so, what individual components would be most usual to growers contemplating ACIs?

Yes, LPDs should be required to do so.

9. What disclosures, forms, presumptions, or prohibitions could AMS require or incentivize of an LPD to align the length of any contract following an ACI with any debt that the grower undertook as part of the ACI? In particular:

> *a. Should AMS establish a categorical presumption of unfairness when the duration of the contract is shorter than the duration of the loan or other similar requirement.*

Yes, AMS should establish such a presumption of unfairness.

10. Should AMS amend § 201.216 to revise or include additional criteria that may be considered as categorical presumptions of unfairness or otherwise as violations of the Act? Please provide as much specificity as possible in your responses regarding why or why not, including examples and data if possible. In particular:

> *a. Should AMS revise or include as an additional requirement that "A live poultry dealer shall not mandate an additional capital investment unless the cost of the required additional capital investment can reasonably be expected to be recouped by the poultry grower"?*

Yes, AMS should include such a requirement.

11. Should AMS make the effective date for the provisions of this proposed rule 180 days following publication of the final rule in the Federal Register? If you recommend shorter or longer for some or all of the provisions, please explain why.

No. As explained above in response to Proposed Section 201.106's Question No. 13, Farm Action strongly urges AMS to make the effective date 30 days from publication of the Final Rule in the Federal Register.

V. Conclusion

Farm Action remains pleased by USDA's interest in the tournament system's unfairness. We are encouraged by the steps enumerated by the Proposed Rule to bring the power imbalance enjoyed by LPDs closer to level. We are supportive of the Proposed Rule's finalization. We also hope that USDA will use this long-awaited opportunity to strengthen the Proposed Rule in order to protect growers from an industry that has abused them for decades. Many of the Proposed Rule's questions suggest that USDA sees this opportunity. We urge USDA to do that.